

Your Experiences are Important



CTP Claimants deliberative
democracy workshop

Report from a workshop held
in Canberra, 28 February, 2018

A group of local law firms, including Blumers, MEJ, Slaters and Maurice Blackburn, asked an independent consultant to design and deliver an independently-facilitated deliberative democracy workshop to capture the experience of the Canberra community under the current CTP scheme.

As a result, a number of recent compulsory third party insurance claimants were invited to participate in a deliberative workshop on Wednesday 28 February in Canberra. This is the post workshop report of that day.

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Executive Summary

This workshop captured the lived experience of people who have engaged with the current Compulsory Third Party insurance (CTP) system. The brave stories of these people painted a picture of the enormous impact an accident can have on a person's health and life, often forever. They remind us that people engage with the CTP system at their most vulnerable, when they have suffered a life-changing event.

In general, although able to suggest improvements to the system, these people felt that the current system had served them well and were concerned that any changes might jeopardise the support and compensation that those injured in car accidents can receive to support them on their road to recovery.

It was felt strongly that not-at-fault accident victims should have access to compensation for harm caused to them by at-fault drivers, sometimes through negligence. Participants acknowledged the value of supporting the immediate health needs of at-fault drivers, but saw the role of CTP insurance as ensuring adequate compensation for victims; compensation needed to cover their immediate and future health needs.

Key observations that emerged from the workshop as being most relevant to the reform of the CTP system include:

- **Accident victims are extremely vulnerable immediately after their accidents.**
People need immediate support and assistance to navigate the CTP system. This may seem obvious, but it seems that few accident victims are aware, or are made aware, of their rights and responsibilities under the system. At the same time, accident victims need time to meet their obligations under the system, and this varies from case-to-case and from person-to-person. Information provision, support and flexible timeframes are important to accommodate the trauma inherent in vehicle accidents.
- **There is infinite variety in the experiences of accident and injury.**
A similar accident, and similar injuries, can have a very different effect on different people and their lives. The onset of symptoms, the process of diagnosis, time for recovery and the ultimate impact on a person's life can all vary enormously; and no two injuries are experienced in the same way. This has important implications for how injuries are defined and dealt with under a CTP model, particularly if injury thresholds apply, and how victims with different needs are supported over time, particularly if caps and limits are considered. An effective CTP system cannot apply a 'one-size-fits-all' solution, nor a box-ticking exercise, to the diversity, complexity and nuance of human trauma.

- **Accidents can affect people for the rest of their lives, with effects manifesting differently over time.**

CTP claimants are often put under pressure to settle their claims, one way or another, without having full knowledge or a reliable forecast of the lasting impacts of the accident and how they will be affected into the future. Diagnosis may be delayed, and new medical and psychological issues can and often do emerge later on, leaving people with inadequate support in the longer term. While early access to medical treatment is important, support over the longer term is also very important. It is necessary to consider how a CTP scheme can cater for these two timeframes and support victims throughout their recovery.

- **The psychological legacy of road accidents can outlive physical injuries and is often neglected.**

Many accident victims have trauma, anxiety and depression long after they have recovered from their physical injuries. This can be exacerbated by the long-term effects of medication, which are rarely taken into account. Mental health effects are harder to substantiate and quantify, despite potentially being more significant in terms of overall life impact than physical injuries. They are potentially compounded by the stress of navigating the CTP system. Psychological effects, including how they are assessed and treated, are a key consideration in reviewing the system.

- **In an adversarial system, accident victims can be made to feel responsible for their accidents and their injuries.**

A number of not-at-fault claimants were put in positions where they felt blamed for their accidents – based on questions about their account of the accident or their character – or for their medical condition – based on presumptions about their pre-accident fitness and history. This is extremely upsetting and grossly unfair to people recovering from road accidents and places an unnecessary additional burden on them.

- **Medical assessments can be influenced by financial incentives.**

Many of the participants had concerns about specialists nominated by insurance companies and lawyers and the assessments they had made of their accident injuries, which seemed to be influenced by who was paying. They strongly supported the establishment of an independent panel of medical specialists to assess and support accident victims during claims. Such a panel, if established with an appropriate governance and integrity framework, could provide unbiased injury assessments that take account of the diversity and complexity of accident injuries and their impacts.

- **The human dimension of accidents, and the vulnerability of victims, call for advocates who can support claimants through the process.**

Under the current system, lawyers play this role of advocates. This advocacy is extremely important in helping victims to navigate the system and generally in taking account of the human dimension of road accidents and injuries. The emotional support provided by advocates can also not be under-estimated. A CTP system needs a mechanism/s to deal with the complex, case-by-case nature of vehicle accidents and their human impacts and to stand beside victims through the process.

These observations point to the need for a CTP system that is nuanced, flexible and humane in dealing with accident victims. There is no point in a CTP system that is efficient, but not effective at supporting the range of accident victims in their return to health and wellbeing.

How to use this report

This report was prepared based on materials (see Appendix D – Workshop notes) and transcripts (provided by Auscript,) from a workshop involving 13 CTP claimants from across the ACT. It also took account of stories and comments submitted online by an additional 7 CTP claimants.

The report provides an Executive Summary of the key observations from the workshop that are highly relevant to the current review of the CTP system.

The body of the report has three sections:

- 1. **CTP Stories** provides a sample of the stories of participants (more stories from workshop participants and those who submitted their stories online are available in Appendix B – Stories)
- 2. **Objectives for the CTP Scheme** provides insights and questions raised by participants about the objectives for a CTP scheme that were developed by the citizens' jury.
- 3. **Elements of CTP models** provides views and judgments on key elements and trade-offs of a CTP scheme.

The report raises issues critical to the effectiveness of a CTP system in catering to the needs of those exposed to the trauma and disruption of motor vehicle accidents. These issues are worthy of further deliberation. The lived experience of people who have suffered from such accidents can shine a light on the nuances of an administrative system that ultimately affects the extent to which accident victims can return to having healthy, prosperous lives. I commend the insights and reflections of the workshop participants to anyone considering improvement to the CTP system.

It was a privilege for me to be part of this process. Like many people in Canberra, I had not thought much about CTP insurance. Like most, I had pushed out of my mind the prospect of being involved in a serious car accident. I probably paid more attention to the premiums I paid each year, than to what might happen if I became an accident victim. This process gave me graphic and moving insights into the CTP system and the people that it serves.

Dr A. Wendy Russell
Director, Double Arrow Consulting

12 March 2018

Introduction

Context

This workshop was sponsored by a group of law firms in Canberra, in order to provide a perspective on Compulsory Third Party insurance (CTP) reform based on the lived experiences of CTP claimants. A CTP review process had been initiated by the ACT government in 2017, employing a citizens' jury to deliberate about the CTP system and whether it meets the needs of Canberrans. The citizens' jury had met twice, and had heard from a range of witnesses, including a number of people who had been involved in CTP claims. The jury had developed a set of objectives, which would then be used to develop and subsequently evaluate a number of different CTP models generated by an expert panel. The citizens' jury is due to meet again in March to consider the models. As part of the wider public debate about the issue and to provide useful input to the citizens' jury process and the government's deliberations, this workshop was designed to hear of people's lived experiences with the CTP system, and to get their perspectives on the objectives, and elements of potential CTP models. Hearing from this experience turned out to be incredibly informative and eye-opening.

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Objectives of the workshop:

- To elicit and capture the lived experience of CTP claimants
- To gather their perspectives and judgements on reform of the CTP system in relation to the objectives established by the citizens' jury

Participants

The project drew a random sample of CTP claimants from a list of legal clients and brought them together to share their experiences and deliberate about some of the key issues in a 1 day workshop (see Appendix A - methodology). There were 13 participants, six women and seven men. Ages ranged from twenties to seventies, and participants came from a range of backgrounds and occupations, including public service, small business and trades. There was a variety of types of accidents, involving cars, motorbikes and bicycles, and injuries ranged from minor to severe. All claimants were not-at-fault.

The participants contributed wholeheartedly, and their engagement and willingness to share made the event a success. The group worked extremely well together, creating an atmosphere of respectful listening and mutual support throughout the workshop. Their high level of engagement, openness and insightful views were impressive. The range of diverse and rich experiences gave participants and observers a window into the variety and complexity of road vehicle accidents and their life-changing impacts.

Workshop Schedule

9:00	Registration	
9:45	Introductions	Who is here? What do we need to do today to support each other and do our best thinking?
10:15	Stories	What is your CTP story? What is something we appreciated about the story?
11:30	Morning tea	Is there something nice to eat?
12:00	Deliberation on Objectives	What do you think the citizens' jury needs to know to make the best decision? How can your experience best inform the deliberations of the jury?
13:00	Elements of a CTP scheme	What are some of the key trade-offs? What does your experience tell us about them?
14:45	Close	How did we go?

Method

The workshop was designed and facilitated by an independent consultant (Dr Wendy Russell) with expertise in deliberative democracy. It was designed to capture the lived experience of participants, to encourage them to deliberate together about objectives and characteristics of a CTP system, and to draw on the diverse views and insights of this group (see Appendix A – methodology).

The participants were provided with the citizens' jury report, information that was in the public domain about possible model options, and a comparison of CTP systems in Australian States and Territories beforehand as a read-ahead to aid preparation of for the workshop (see Appendix B – information materials).

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1 CTP Stories

Participants were given time to share the stories of their accidents. They were given the following prompting questions:

- How did your accident happen and what was the effect on you?
- What was your experience with the Compulsory Third Party insurance system following your accident?
- What has been the outcome and how do you feel about it? What would you change, if you could?

For each person sharing their story, a person was assigned to support them and comment afterwards on what they appreciated about the story.

The story session was very moving and quite emotional. The solidarity and support within the group seemed to be one of the most rewarding aspects of the workshop for participants. Observers also seemed to have been moved and to find the stories somewhat surreal, informative and confronting.

A selection of stories are summarised below. Further stories can be found in Appendix B, including stories submitted online by CTP claimants who were unable to attend the workshop.

Please note the names have been changed to protect the privacy of individuals.

Nathan

Nathan was involved in a motor vehicle accident in 2010 on Canberra Avenue. He had to brake quickly, to avoid hitting a vehicle in front of him that was abruptly braking because a right turn lane was full. Nathan was hit by the vehicle behind him, as the driver was distracted by a van on the verge (thinking it was police radar unit). The impact speed was 80km/h and soon after impact Nathan's vehicle was airborne and pushed on to the median strip, a couple metres short of a huge tree.

Nathan was able to get out of his car, but was taken to Queanbeyan hospital where he was found to have neck and lower back injuries and blurred vision. He took a week off work at the time, but had problems with his vision when he returned to work. He attended physiotherapy for nine months. After this time, the insurance company made an offer. "They offered a paltry amount, which was 'peanuts' compared to the real costs, so that's when I went to my lawyers", he said.

He had a lawyer look after his case, and it went fairly quickly. "It was easy access to the CTP", he said. His car was written off and the market price was paid within two weeks. The settlement with the insurer took two or three years. Though happy with the settlement at the time, Nathan commented, "I just felt that, you know, my neck has never been the same". He now suffers scoliosis, but couldn't prove that the accident caused this, nor an enlargement of a hernia, that subsequently needed treatment. He also continues to have problems and treatment for a burst blood vessel in his left eye.

Rochelle

Rochelle's daughter was involved in an accident when she was 15. She was having a driving lesson and a young driver T-boned her car (hit the side) at speed. The car flipped over and ended up in someone's front yard. "The police called me, I asked if the accident was serious, he said, "You might want to get down to Canberra Hospital quickly,"" she said. Her daughter was unconscious for some time, and suffered head and neck injuries, which continue to affect her.

Rochelle explained tearfully, "She's actually – she is doing okay. She has had a lot of work. Like it smashed half her body." She had teeth smashed, bruising on her face, neck and shoulder, a broken collarbone, a smashed upper arm (she now has a very large plate), broken ribs, and bruising down both of her legs. She has difficulties at Uni and requires special software and a scribe for any written work. "But we keep trying with her disability and she is a very positive person," commented Rochelle.

The CTP claim went through within a few years. "I think, if anything, I would have waited longer now for the outcome because the psychological issues, the physical issues take time to come in, and at the time I just wanted it done," she said. "We didn't press criminal charges because the other driver was 18 and he had to cope with seeing her being cut out of the car, and because I couldn't cope with a litigated matter when my daughter was just out of hospital and requiring a lot of care. This had to be decided quickly and we were just not able to think about this."

Larry

Larry's accident happened in 2015, while driving his large, orange scooter to work. He was approaching a roundabout and a driver on his left failed to give way. He braked, his scooter slipped, and he fell off, shattering the right-hand side of his helmet. "And the last I actually remember of the accident was my visor scooting on down towards my work." Larry commented.

Larry gained consciousness as police and ambulance staff stood around him saying, "Well, do we throw him into the ambulance as a possible dead on arrival or is he going to live?" He received suspected cracks to his neck and spine, was immobilised for spinal precautions for just over a week, and suffers ongoing memory problems. He spent time in a psych ward because of a panic attack following an attempted MRI. It took 18 months for specialists to provide the diagnosis that both temporal lobes had been damaged. "I'm now on medications for seizures. I'll be on those for the rest of my life. It's not going to stop me from getting back on a bike. I'm just going to have to get one with three wheels." Larry said wryly.

In terms of CTP, Larry is still in the process, because his injuries haven't fully 'run out', and has several months before his case will be finalised. This was not Larry's first experience with the CTP system, and he went with the same law firm each time. He found them to be pretty good. His only dissatisfaction was with a prior accident where the other party 'did a runner' and his claim went through a government-run insurance scheme, which did not provide adequate cover, in his view. "What would I change?," he asked. "Not much other than the way the government support scheme is handled for those that have nobody they can actually sue."

June

June was riding her bicycle from work one evening in 2010 and was exiting an underpass. It was twilight, but she had lights on her bike. "A four-wheel drive came down off the road," she said and paused, overcome with emotion, "and cut across in front of me, across the bike path." She went over the bonnet and landed about seven metres up the footpath. She lost consciousness for a while and was taken to hospital. After a quick check, she was released.

A couple of months later she went and had X-rays for ongoing pain. The specialists said, "Nothing serious. You're just very badly bruised." It took 18 months before her lawyer said, "You need an MRI," and they discovered the real damage to her knee. "One thing that upset me was I kind of got a life sentence. The young man that was driving, who deliberately went down and took a shortcut around all the traffic, got neg driving, \$300 fine and two points off his licence," she commented.

June knew nothing about CTP, and had never made a claim before. She went to a lawyer recommended as dealing with cyclist claims. The whole process took six years. June had to deal with three different solicitors, due to staff turnover, but her main frustration was that the insurance company tried to make out that her injuries were due to her age and past activity and incidents. "Now, as well as cycling and trekking with a heavy backpack, I'm a national netball umpire. I had to give that up. So I was very fit in mind and body." She was happy with the eventual outcome, but it was a long, traumatic process. "If I could reverse it and take the time back I would give back any payout and have my knee back and my welfare back," June said.

Nancy

Nancy was T-boned (hit from the side) on the Barton Highway on her way to work by a driver who failed to give way. "[She] came through a red light, through a stop sign and through a give way sign", Nancy said. She suffered serious injuries at the time, and was diagnosed 18 months later with permanent brain damage affecting her memory. "My memory was lost, I couldn't remember how to use a blender and I used to be a chef." She kept working, but has had to change jobs and career trajectory because of her memory problems.

Nancy's experience with the CTP system was "appalling". She went through a lawyer, who she was very happy with ("brilliant", "the only saving grace"), but only lodged her claim within the timeframe because another person assisted her. "I went through the window sideways and was in no state to claim", she said. She feels that the timeframe is "just ridiculous" for someone involved in a bad accident.

She had to deal with cross-jurisdiction issues, as the driver was from NSW, and also suffered assumptions made about her existing state. "A specialist [chosen by the other party's insurance company] wrote that I was a fat, middle aged woman, who was unfit, and exceptionally emotional," she explained. "I had 27 years as a fire fighter and deputy captain Murrumbateman and I was not unfit." She attributes her 'exceptional emotion' to her accident. "I had the feeling they tried to blame me and I was, like, how could they blame me when I was stationary and I got hit by someone on the side?" she asked incredulously.

The claim took many years and Nancy chose to settle just before it went to court. "I just said, I can't do it anymore. It's just too much. I just want to get on with my life," she said. But she was left with permanent brain damage. "It's not being able to remember things that happened to my children as they were growing up," she said.

Max

In early 2013, Max was approaching a set of lights on the Monaro highway that had just changed to green, when he was hit from behind by a speeding car. His car spun off the road and rolled several times. He managed to get out of the car, then passed out. He was assisted by passers-by (“I came to with ladies holding sheets over me to keep the sun off me; it was like a 40 degree day”) and taken to hospital in an ambulance. He suffered crushed vertebrae, a shoulder injury resulting in permanent loss of function, had glass removed from his head, and continues to have blurry vision and chronic pain.

Max’s case was made more difficult because a routine blood test at the hospital showed trace amounts of THC, following a ‘few puffs of a joint’ some weeks before the accident. Despite being cleared in court for DUI (driving under the influence), the other party’s insurance company continued to attribute blame to Max for the accident, backed up by their chosen specialists. His lawyer was ‘sensational’ and recommended alternative specialists to counter the claims. “But the whole process was just quite upsetting. Every time, you’re hearing that it’s your fault, your fault. When, you know, I was clearly doing the right thing and someone decided to hit me at 120 ks and send me off the side of the road.”

Max has ‘a bedside table full’ of painkillers but has had to manage his use of them because his work requires him to work with electrical and mechanical equipment, and he needs to be ‘with it’. Also, he’s seen a lot of mates get into heavy substance abuse due to painkillers as a result of accidents. “I took the moral standpoint to take a weaker painkiller and have that little bit of pain”, he commented, in order to avoid ending up ‘a zombie’ or having ongoing illicit drug problems. He is now hoping to start a family, and is concerned about how his injuries will impact his ability to care for his children. “It’s a bit of a scary time,” he said, “You know, having little ones running around, bending over, picking them up all the time with crushed vertebrae.”

Aileen

Aileen was being driven by her husband when an elderly gentleman turned out in front of them, neglecting to give way. Her husband was driving slowly enough to stop before hitting the man's car, but had to slam on the brakes, and was then hit by the car behind. They were both able to get out of the car, but Kathleen was injured on the right side of her body, including her shoulder and neck. She was also in shock and it took her back to a previous accident years ago. Because of that experience – “I can remember sitting in my doctor's surgery all those years ago crying my heart out because I wasn't to blame but I was being blamed and it was a terrible situation” – she immediately got a lawyer.

“So I thought, you know, the first thing you do is you're very vulnerable, you're emotional, you've got a lot on your plate. Your health is the most important thing. You've got to outsource the stress to someone who can look after it for you and deal with all of that and I also knew how adversarial it could be,” Aileen said. She was very happy with her lawyer (“really, really wonderful”), and was also able to draw on her previous experience to have confidence that she would be supported and could focus on her health, on paying for treatment and on continuing her career. This was particularly important to her as a carer and the main breadwinner in her family.

“I tend to be a glass half full person”, Aileen commented, “which actually sometimes works against you a bit [in this process] because you finds ways to adapt and manage. But I don't regret that”. Aileen was happy with the outcome of her claim and has made adaptations so that she can keep working. The compensation has been important. She contrasted her experience with that of a daughter in Victoria, who hasn't been able to get adequate support for her health needs.

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2 Objectives for the CTP scheme

In the second session of the workshop, participants were asked to deliberate as a group on the objectives established by the citizens' jury. In discussing the objectives, they were asked to consider the questions:

What do you think the jury needs to know to make the best decision?

How can your experience best inform the deliberations of the jury?

How would this objective have changed the outcome for you (positively or negatively)?

The participants discussed the objectives in small groups and took notes on any issues that needed to be considered in applying the objectives, and questions that were raised. They then moved around and added comments in reaction to the issues and questions on the previous group, and additional issues and questions. Conversations were lively and engaged, with much sharing of experiences and respectful airing of differences of opinion.

The summary of notes (see Appendix D – Workshop Notes) that follows provides insights into some of the challenges and nuances of applying these objectives, some of the tensions between them, and of how application of the objectives might affect accident victims.

1. Early access to medical treatment, economic support and rehabilitation services

While participants clearly supported early access to treatment and support, they identified a number of obstacles to this early access that need to be considered.

Participants reported experiences of different specialists giving different reports of diagnoses and required treatment, some of which were regarded as inaccurate, and felt that this was influenced by who was paying them and the incentives that exist. Apart from discrepancies in reports and diagnoses, some specialists respond to the CTP system by adopting a 'box-ticking' approach, may lack empathy for vulnerable accident victims, and may not give adequate attention to their individual cases. This can be equally true of other systems eg Workers' Compensation, with case workers sometimes pushing for victims to return to work. A number of participants had had claims with Workers Comp and CTP, and felt that the interaction of these systems, and how they complement each other, needs to be considered.

In response to these problems, it was strongly recommended that a board of independent specialists, not tied to the other actors in the CTP system (e.g. insurers), and not influenced by cost-saving imperatives, would be valuable and would overcome some of the bias that currently exists. Such a body might also make early assessment and access to services more effective and efficient.

In the participants' experience, the current system seems to work better for those who are able to pay upfront fees and be reimbursed. Provisions for economic hardship, and access to support services under these circumstances, is an important issue for a CTP system. This is especially important given the majority of accident victims who have to take time off work because of their injuries.

Time to diagnosis was an issue raised a number of times, with a number of examples of conditions that were difficult to diagnose and others taking some time to manifest. A push for early diagnosis and settlement can be problematic in these cases, as some conditions can be under-diagnosed or missed entirely. The system may work for minor injuries, but not adequately address complexities associated with major illnesses and ongoing ramifications.

Another very significant issue is the psychological effects of a vehicle accident. These may be delayed and ongoing, often lasting much longer than physical injuries. They tend to be disregarded or neglected in assessments, because they are difficult to characterise and quantify, but they are a very significant legacy of an accident, with implications for health, economic activity and rehabilitation.

Another neglected issue is the side effects of medication (particularly pain medication). The psychological effects of painkillers (e.g. addiction) can be ongoing and tend to be overlooked. This is not dealt with adequately in the current system, in medical assessments or in assessment of economic support and rehabilitation.

These problems of time to diagnosis, slow to manifest conditions, long-term psychological effects and treatment side-effects highlight the need for adequate ongoing support and a flexible and person-centred system of assessment and cover. Early access to treatment and support will not necessarily solve these problems nor remove this need.

2. Equitable cover for all people injured in a motor vehicle accident

Participants agreed that at-fault drivers need to be looked after ('they shouldn't be doubly punished'), but questioned whether the CTP system is the appropriate system for this. They considered whether at-fault drivers are adequately covered through the general health system (e.g. through Medicare, health insurance, TPD) or through additional vehicle accident insurance, and how this fits with the CTP system. The fairness of treating at-fault and not-at-fault drivers similarly, and of not-at-fault drivers having to pay for treatment of at-fault drivers through their premiums, was questioned. There were associated questions about how much 'equitable cover' would be likely to affect premiums, and whether it would affect no-claim bonuses, for example. There was strong agreement that cover for at-fault drivers should not lead to a consequent reduction in the amount of compensation available to the not-at-fault.

Participants did suggest that 'equitable cover' might provide support for drivers involved in no-fault accidents such as single vehicle accidents or hit-and-run situations and that this would be positive.

There was also strong agreement that if 'equitable cover' can take away from an adversarial system, that this might make the claims process easier and less traumatic. In telling their stories, a number of participants had described situations in which they were made to feel responsible for their accident (by questioning their character or version of the accident, for example), or for their injuries (because of their age or assumptions about their pre-accident fitness or condition). This was clearly extremely upsetting and frustrating, on top of the trauma of the accident, and seemed to come from the adversarial nature of the current system. This was clearly something participants would like to see changed.

Participants went on to discuss whether 'equitable' support means the same cover for everyone, and considered differential treatment of at-fault vs not-at-fault e.g. supporting at-fault drivers for injuries but not 'impact on life' etc. It was felt that any payment scheme needs to be established looking at the whole picture, including premiums and costs, but also the ongoing health needs of victims in all their diversity and complexity. Once again this highlights the importance of a flexible and responsive system.

3. A value for money and efficient system

In terms of this objective, participants pointed out that a scheme may be efficient (achieving a certain outcome at least cost), but it may not be effective in meeting the needs of those injured. The CTP system is inherently complex, and currently lacks transparency (e.g. without public information about payouts, it's hard to know what's reasonable, including in negotiations). There is a concern that an efficient system may put premiums and costs above the medical, economic and rehabilitation needs of those for whom the system exists – those who are unfortunate enough to be in an accident.

Participants also asked: What does value-for-money mean? It depends what people want and need and what they're prepared to pay, and where the money goes (medical expenses, legal costs, managing future risks). The desired outcome is hard to define (medical, psychological), especially given the 'human factor' that makes impacts and outcomes hard to quantify.

In this context, participants wondered about the implications of leaving out 'the middle man', in the current system, the lawyer. In an adversarial system, you need the 'middle man', someone to make it fair and reasonable (someone with a business proposition is not going to necessarily be fair and reasonable). Even with a no-fault system, there are times when parties just don't agree (about medical assessments, for example). There need to be mechanisms to settle these disputes, mechanisms that consider the interests, needs and vulnerabilities of accident victims. There was concern about whether victims would be treated equitably without this 'middle man' (advocate), given the complexity of the system.

4. Promote broader knowledge of the scheme and safer driver practices.

In telling their stories, a number of claimants described knowing very little about the CTP system at the start of their claim process. Some were able to lodge a claim on time only because they had friends or family to alert them to the requirements. A sense of initial ignorance and disorientation about what to do was a common experience. One participant sought advice at his local police station about what he should do following his accident. This reflects a general low awareness of the CTP scheme and its requirements in the wider community, until people need to turn to it when they have an accident. The relatively high response rate of invitees to this workshop compared to the citizens' jury may reflect the sad fact that CTP seems irrelevant until you need it; nobody thinks about it much until they are thrown into the turmoil of a vehicle accident. This indicates the importance of raising awareness and knowledge of the scheme more broadly, and of developing mechanisms to inform people at the time of accidents (this was explored under the next objective).

In terms of safer driver practices, participants felt that defensive driving education is important, particularly for high school students, new drivers, immigrants (with international licenses) and those who are returning to driving after having their licences cancelled for a period of time. A suggestion was that this education could include subsidised hands-on defensive driving courses for students in years 11 and 12 (cars and motorbikes) to supplement the current instruction they receive. This raised the obvious question of cost, and participants felt that it would be worthwhile for the CTP system to contribute to driver education, but also felt that the ACT government should assist. There is an additional issue with selecting appropriate suppliers to provide this education.

It was suggested that existing drivers could be required to take refresher courses, perhaps every 5 or 10 years. This could include bicycles as well as cars and motorbikes. Targeted programs to improve driver practices were also suggested, including media campaigns, and incentives such as discounts on rego for drivers who avoid at-fault accidents or incidents.

Inconsistency across state and territory boundaries, both in traffic rules and CTP systems, is an issue for safe driving and for understanding and navigating CTP schemes. A national system would overcome this. It was also recognised that road infrastructure is an important dimension of road safety. It was noteworthy that a number of the accidents participants had experienced had happened on the same roads in Canberra.

5. Implement a support system to better navigate the claims process

Participants certainly agreed that more support and information about the system would help people going through claims, particularly early on. They suggested that information could be provided by emergency services or hospital staff. Many felt that it would have helped to have someone explain the whole process, and particularly the relevant time limits for applications. Support could include information sheets but also seminars or blogs and appropriate channels to disseminate this information. For most, solicitors provided this support, but given cost and time constraints, it would make sense to have a system in place to provide this support and information, including for victims who are not legally represented (including those at-fault).

It was felt that support and information are particularly important around medical assessments. It is not always clear what the obligations of specialists and expert witnesses are, the system is complex and lacks transparency, and medical assessments sometimes seem to be biased according to who is paying for them. Victims need support to obtain thorough medical assessment early on, and also need to know what to do if an assessment seems inaccurate. It was suggested that an independent, government-funded body or tribunal could register claims and hear issues arising from insurers' reports.

There was strong agreement that a support system should also include psychological support, which is needed beyond existing time limits. It was clear from participants' stories that the psychological effects of accidents can far outlive physical injuries.

There was some divergence about whether a support system should be funded separately to the CTP system, but it was regarded as important to most participants that funding for a support system should not result in reductions in the compensation available to not-at-fault drivers.

6. A system that strengthens integrity and reduces fraudulent behaviour.

The group made the point that no system can prevent all fraudulent behaviour, but also asked the question "How much fraud actually happens?" More needs to be known about how much and what types of fraud currently take place to address this issue. Greater transparency would strengthen integrity, including giving victims involved in CTP claims easy access to their records.

Once again, the issue of medical assessments was raised, and the importance of competent, independent assessment highlighted. There were a number of tales of misdiagnoses and injuries being missed that delayed and complicated the claims process. It was suggested that having independent specialists, not beholden to insurance companies, would strengthen the system.

Another suggestion for tightening up the system was getting more detailed reports from emergency responders. However, there were mixed opinions about whether this should be an emergency staff responsibility, given their main focus on saving life. There need to be systems for taking and keeping records, for emergency staff and police, for example, which are accessible and informative for the CTP system. However, additional measures, such as detailed post accident assessments conducted by hospital-appointed trauma teams, might also strengthen the system. Channels for more detailed accident reporting could be integrated with channels for information provision (see previous sections).

Participants felt that it was important for legal teams to be brutally honest in assessing clients' cases. Workshop participants were happy with their lawyers but recognised that any system could have its "ambulance chasers", who rort the system. A couple of the CTP claimants who were unable to attend but submitted their stories online (see Appendix B) were more critical of lawyers, citing inadequate action to support the client and suspected collusion with the insurer. This suggests that there remains a risk of pockets of poor legal practice within the system, which is an issue for the legal profession as well as for the system overall.

3 Elements of CTP models

In the final session, small groups discussed some of the key issues and trade-offs involved in CTP systems, as reflected in information released about options for CTP reform. Two of these (injury thresholds and caps and limits) were selected by the workshop designers as being critical trade-offs in designing a new system; ones that are particularly relevant to accident victims. Stimulus material and questions were developed to guide these discussions (see below). The third topic (government vs private) was agreed on by the group, as an important dimension to be considered. An additional topic (independent specialists) was considered by the group working on injury thresholds. For each topic, they were asked to consider advantages, disadvantages and remedies.

These conversations were once again respectful and thoughtful, and participants explored both sides of issues, even when they had strong views. They listened well and were prepared to challenge each other. Their experiences provide an important lens for considering these trade-offs, and how they might affect real people faced with the trauma of a vehicle accident.

At the end of the session, participants said they were 'interested', 'curious', 'intrigued' and 'hopeful' about where the process would go, about this report, and about how both might impact the larger CTP reform process. Participants thanked organisers for the opportunity and each other for their collaboration and support. They left optimistic that the citizens' jury and the ACT government will consider their perspectives and find opportunities to draw on their lived experience as they grapple with this important policy decision.

Injury Thresholds (provided topic*)

** The group also considered the issue of **independent medical specialists**.*

One of the ways that CTP schemes save money (which can contribute to lower premiums) is to differentiate between different types and severity of injuries. For example, thresholds can be introduced – either monetary caps on payments or time limits for support – for 'minor' injuries.

This element relies on defined criteria and protocols for assessing injuries. Different systems deal with injuries differently, e.g. SA vs QLD (see handout materials, Appendix B)

Issues arise when similar injuries affect different people differently e.g. some people recover from whiplash after a few months, while others continue to have symptoms indefinitely.

Questions

What may be the advantages of having injury thresholds?

What may be the disadvantages or unintended consequences of injury thresholds?

How could the disadvantages be overcome?

The group considered that injury thresholds would provide for defined payments for specific injuries, which may simplify the system. However, they felt there would be difficulties with defining specific injuries, and with injuries that did not fit into recognised definitions and thresholds (there were a number of experiences with injuries not fitting existing categories). It was felt that an important provision if injury thresholds were introduced would be a requirement for definitions to be reviewed regularly (e.g. every 5 years) as medical procedures and practices evolve and improve.

Another disadvantage of injury thresholds raised was that they don't consider pre-accident lifestyle or quality of life. For example, the loss of a leg for someone who leads a sedentary lifestyle will have less impact than on a person with a very active lifestyle ('if you're out there mountain biking or running or skiing, it's going to have a huge impact on your life'). This is also relevant to the type of work and career paths of accident victims. Relatively minor injuries e.g. a finger injury, could have much greater impact on a craft or tradesperson or a musician, who all use their hands at work, for example. In general, the group were uncomfortable about the use of injury thresholds because of the complexity of injury assessment.

The group also considered the independence of medical specialists, an issue that had come up throughout the day. It was considered that an independent panel of specialists under the CTP system would increase fairness and equity across the board. It would remove bias, and allow for a more efficient process. It would also overcome the significant emotion and psychological trauma participants had experienced in the assessment process and in receiving what they regarded as untruthful reports.

In considering the disadvantages of an independent panel of specialists, the issue of the cost of such a panel was raised, including setting appropriate rates of pay, and who should pay (this would depend on the type of CTP system but would have to remove financial incentives for particular outcomes). For larger states, there is also a potential issue of where the panel would be based, with capital cities more likely but leading to limited access for those in rural and regional areas. This is less of an issue for the ACT, where a centrally located panel would be relatively accessible to everyone.

Caps & limits (provided topic)

Another way that CTP schemes save money (which can contribute to lower premiums) is to put caps and limits on payments and support, including for particular items, such as income support (see options document for examples). In schemes that support at-fault drivers, there are generally lower caps and more limits for at-fault vs not-at-fault drivers.

Questions

What may be the advantages of having caps and limits?

What may be the disadvantages or unintended consequences of caps and limits?

**What are the advantages and disadvantages of caps and limits on support for at-fault drivers?*

How could the disadvantages be overcome?

The group's general view was that they were not comfortable with caps and limits, because of the complexity and diversity of cases, but they explored advantages and disadvantages, focusing on the inclusion of at-fault drivers in the CTP system. The advantages of caps and limits and cover for at-fault drivers raised by the group included that it covers more injured parties, providing more certainty and equality in the way treatment is provided. It might also streamline the process for insurers, potentially reducing the number of matters that need to go to court, allowing them to be resolved faster, leading to a quicker process overall. It might thus also divert more money into treatment.

Disadvantages with caps and limits included a concern that caps, in not necessarily meeting the individual needs of each claimant, could potentially inhibit treatment and rehabilitation, affecting recovery. Time limits may stimulate a push for early diagnosis, potentially leading to symptoms being missed or misdiagnosed, particularly those that have delayed onset. This was a significant issue, based on the experiences of the group. There was concern that there would be no ongoing contingency for injuries that continue beyond time limits or indefinitely, nor for psychological and mental health issues stemming from the accident and potentially from the process.

There was also concern about ongoing economic loss, and how this would be compensated. For a number of participants, their ongoing functioning and productivity, and consequently their lives and careers, had clearly been significantly affected by their accident. In this context, there was concern that inclusion of at-fault drivers would mean that not-at-fault parties receive less, and thereby bear more loss from someone else's wrong-doing. Participants regarded this as fundamentally unfair.

Government-run vs private CTP systems (participant-selected topic)

The issue of whether a scheme is government-run or based on private providers was considered an important element of CTP systems. In considering disadvantages of a government-run system, the participants raised concerns about the lack of competition leading to monopolist behaviour and poor financial management due to a lack of efficiency incentives. There were also concerns that prices would be set, including in view of political considerations and goals and to offset the costs of the scheme (with political pressure to reduce premiums), which may disadvantage people claiming under the system. There is a fundamental trade-off between prices and claims. A government-run system is potentially rules-driven rather than human-driven, which may mean that individuals' needs are not adequately taken into account, and it takes out the role of the lawyer as advocate, which is regarded as important for vulnerable victims.

On the positive side, a government-run scheme tends to take out the profit motive (unless of course the government seeks to take large dividends), which can lower prices and costs, including by taking out the middle man (such as lawyers). It also removes the need for a regulatory environment to govern the private sector. As a compromise, it was suggested that government regulation of a private system could allow for common law claims, and should encourage transparency.

Conclusion

The provision of an effective system of cover for citizens involved in motor vehicle accidents is an important and complex policy problem. The ACT Government has drawn on the methods and principles of deliberative democracy and established a citizens' jury to consider this problem and to potentially decide on changes to the current system. Part of their daunting task is to balance the interests of the majority in the community who pay for the scheme but don't require the benefits of it, and the minority who suddenly depend on it, because their life is turned upside-down by a motor vehicle accident. This balance is fraught because any person in the majority could find themselves joining the minority at any time.

As part of this balancing exercise, it is critical that the citizens in the jury have some understanding of the experiences of that minority of accident victims, and that they have some kind of opportunity to stand in their shoes, to see how the CTP system looks from their perspective. This workshop and this report are aimed at providing such an opportunity, and we hope that it complements and enriches the testimonies the jury has already heard.

One of the key observations from this workshop is that vehicle accidents and their impacts on people's lives are enormously diverse. This is why we have also drawn on deliberative democracy principles to bring together a diverse group with a range of perspectives to also deliberate on the challenges of CTP insurance, and share with the jury their views and judgments, as well as the experiences they have drawn on in making these judgments.

We also feel that the very real concerns that CTP claimants have about changes to the system deserve to be heard as part of the policy deliberations, particularly concerns about impacts or unintended consequences changes may have on future claimants. These concerns are not primarily for themselves, but for others in the community who have the misfortune to also go through the traumatic experience of an accident.

In summary, the workshop participants are concerned that future claimants will not have the same level of support that would allow them to recover their health and wellbeing, particularly given the complex and ongoing nature of accident injuries and their psychological effects. They are also concerned that a new system, in seeking efficiency and certainty in setting definitions and parameters, may lose some of the flexibility and responsiveness to the human dimension of accident trauma and recovery that is necessary for an effective and humane system.

Appendix A – Methodology & Evaluation

A group of local law firms, including Blumers, MEJ, Slaters and Maurice Blackburn, asked an independent consultant to design and deliver an independently-facilitated deliberative democracy workshop to capture the experience of the Canberra community under the current CTP scheme. Nicole Seils, of CNS projects, led the project and liaised with the law firms. Dr Wendy Russell led the design and facilitation of the workshop, and prepared this report.

Steps involved in the project:

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Recruitment/selection

- A list of 104 names of CTP clients was provided by law firms as an Excel spreadsheet (with details of demographics, accident and injury type, and outcome of the CTP process). Initial selection was made by choosing every fourth name on the list (random selection across the list captured geographic diversity).
- Contact was made with these people and an official invitation emailed to them (see Appendix B). A follow-up phone call confirmed attendance.
- Further rounds of invitations were extended to achieve the target number of attendees, with selection of every second name, then every third. In all, 85 of the 104 names were contacted, and 20 confirmed they would attend.

This represented a response rate of 24%. Those who expressed interest but were unable to attend were invited to share their stories via an online survey. Seven people submitted online stories. There were several apologies and three no-shows on the day (taking the response rate down to 15%).



Workshop attendees:

- 13 CTP claimants
- Observers:
 - Anita Perkins, Executive Director, Communications & Engagement, CMTEDD, ACT Government
 - Jane Alvers, Centre for Deliberative Democracy and Global Governance, University of Canberra
 - Walter Hawkins, Maurice Blackburn; Amy Burr, Blumers, representing the sponsoring law firms
- Support personnel:
 - Nicole Seils, CNS projects (logistics, assistance with facilitation, liaison with observers)
 - Rebecca Nash, Maurice Blackburn (strategy team)
 - Orly Beer, psychologist (on stand-by to provide support to participants during the workshop, if required, given the nature of the workshop and the likelihood of accident stories triggering emotional reactions)
 - Aleksa Ozegovic, Auscript (sound technician)

Design

The workshop was designed by Dr Wendy Russell of Double Arrow Consulting, in consultation with the Project Lead, Nicole Seils of CNS Projects.

- Introductory session
Acknowledgement of country, introduction to the workshop, a round of participant introductions.
- Development of guidelines for the day (by participants):
 - o Respect
 - o Mutual understanding
 - o Listening, hearing
 - o Give people time
 - o Consciousness of emotions
 - o Non-judgmental
 - o Value difference
 - o Respect privacy
- Story session
Participants told their stories as they were ready. For each speaker, a person was assigned to support them and to say some words of appreciation at the end.
- Deliberation on objectives session
Station Rounds, in which small groups (3-4) gathered around a flipchart or butchers paper with an objective written on it. They raised issues and questions associated with the objective and a nominated scribe wrote these down. After a period of discussion and writing, scribes remained and groups moved to the next station. There they considered the notes from the last group, and added comments and symbols (✓ X ?) to indicate whether they agreed, disagreed or were unsure about the issue or question. They then added additional issues and questions. In this way the groups moved through each station. The scribes then reported back on the objective they had covered.

- Elements session
Two key elements were presented to the group (injury thresholds, caps and limits), with stimulus material and questions (see Session 3 Elements above). The group selected an additional key element or trade-off of a CTP model (government vs private). Participants formed small groups around topics of interest. A scribe was nominated for each group and they discussed advantages, disadvantages and possible remedies for the key elements considered. Scribes then reported back.
- The workshop concluded with thanks, a description of what would happen next, and a quick check-out.

Evaluation

Post-workshop Survey results

Eleven people responded to the survey, 8 participants and 3 observers. Overall, most respondents found the workshop 'good' (55%) or 'excellent' (36%), and one person found it 'ok'. Most participants (→80%) felt they had the opportunity to be heard, that the workshop allowed them to share their experiences and encouraged them to work effectively and collaboratively, and that it was a good use of their time. Most (65%) thought the workshop had helped them to work through some of the issues, but a few were undecided or disagreed. One commented that 'the (or our) issues' were never defined.

All respondents agreed that the workshop had been well organised and well facilitated. Most felt that the structure of the workshop had suited the purpose, with two people unsure or undecided about this. Several participants said that the best thing about the workshop was being able to share personal experiences within an empathic group. Others appreciated the opportunity to voice opinions without judgement, to be heard as an individual, and to work through issues and consider how the CTP system could be improved. One person commented on the facilitator giving time and being sensitive, and another appreciated the energy in the room.

When asked how the workshop could be improved, several people commented on organisation and timeframes (needed more time), and one person suggested clearer objectives. A couple of people commented that more information was needed up front (on basic concepts, and about the implications of different policy options), and another suggested that information about the mission of Government in pursuing this policy reform was needed. When asked what they would do or change as a result of the workshop, a couple of respondents indicated that they would continue to engage with the ACT government on the issue, and another intended to inform family and friends about the CTP process and proposed changes to it.

Facilitators comments

The number of participants who attended, though less than expected, in fact worked well in the time available and contributed to an atmosphere of respectful listening and mutual support throughout the workshop. There seemed to be quite good diversity in the group, with a spread of age, education, and gender. Their stories were rich and diverse. Most attendees were happy with the role their lawyer had played in their case and quite a number were clients of the same firm (and in fact of particular lawyers, who were held in very high regard). In contrast, a couple of the stories submitted online, by people who were unable or unwilling to attend, were more negative. This type of self-selection is a factor for any workshop or forum of this kind (including citizens' juries) and therefore not surprising, but worth considering in reading the report. These submitted online stories have however been taken into account in writing this report.

The story session was very moving and quite emotional. For each speaker, a person was assigned to support them, which may have contributed to the group pulling together and supporting one another. This seemed to be one of the most rewarding aspects of the workshop for participants. Observers also seemed to have been moved and to find the stories eye-opening and informative. Conversation throughout the workshop seemed respectful and considered. The nominated scribes played an important role in capturing and stimulating discussion. Their scribing was variable but generally of high quality.

In general, I felt that the workshop went well, and the structure was effective given the objectives and constraints. The participants contributed wholeheartedly, and their engagement and willingness to share made the event a success. I hope that this report helps to clarify and present their perspectives, and to have their experiences considered in this important policy deliberation.



Appendix B – Invitation & Information sheets

A copy of the **Final Report of the Citizens' Jury on CTP insurance** and timeframe was also provided to workshop participants.

Found here: <https://www.yoursay.act.gov.au/ctp>

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State-by-State comparisons – CTP schemes

The ACT Scheme:

- Premium paid:** For a standard passenger vehicle the range is \$541.90 to \$565.60 per annum.
- How long has the existing scheme been in place?** The existing scheme was introduced in late 2008.
- What the scheme provides for injured motorists:**
 - Early access to medical treatment:** Provided that relevant paperwork and a police report is provided to the CTP insurer within 30 working days, the insurer can make early payments of reasonable medical expenses for up to 6 months and for up to \$5,000 in total.
 - Economic support:** Wage or income loss is not paid as part of the claim from the insurer, but can be claimed in court proceedings, paid on settlement or judgement.
 - Rehabilitation services:** Medical treatment has a wide definition under the scheme but does not specifically include the services of a rehabilitation provider. In-house insurer rehabilitation providers do make contact with claimants but rehabilitation services are more commonly picked up after the 6 month deadline.
- Who can access the scheme?** This is a fault based scheme. It is accessible for people seeking damages including general or non-economic loss, special damages including medical and rehabilitation; wage or income loss; superannuation; paid and unpaid home help and assistance; funds management (for larger claims); and interest on past damages.

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State-by-State comparisons – CTP schemes

- Are there thresholds or specific exclusions?** There are no threshold limits imposed in common law. It does not include accidents where no other vehicle is involved (e.g. accidents involving animals). The injured person is not restricted from accessing other compensation schemes such as workers compensation, and for the more seriously injured, income and disability insurance which may be part of their superannuation scheme. A person catastrophically injured may be eligible to join the ACT Lifetime Care and Support Scheme (LTCSS) on a no fault basis.
- What systems are in place to help injured motorists navigate the claims process?** Some claimants rely on their CTP insurer for guidance – but the insurers are not required to provide much information, including warnings about limitation periods. ACT Treasury has some limited information on its website but it has not been updated for over 12 months.
- What measures are in place to protect against rotting of the scheme and fraudulent behaviour?** Rorting and fraudulent behaviour has not been identified as a major issue in the ACT scheme. The accident has to be reported to the police for a claim to be made. The paperwork requires the claimant to declare the information provided is true, correct and complete and if not it may amount to an offence in the relevant legislation. Penalties can be up to \$15,000 or one year's imprisonment.
- Is the scheme financially solvent/strong?** Yes. Insurers are making a profit and increased competition has come into the market since it opened up approximately 5 years ago.

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State-by-State comparisons – CTP schemes

The NSW Scheme:

- Premium paid:** For a standard passenger vehicle in a metropolitan area, the premium range is \$468 to \$566 per annum.
- How long has the existing scheme been in place?** The existing scheme was introduced in December 2017.
- What the scheme provides for injured motorists:**
 - Early access to medical treatment:** As a no-fault scheme, all road users have the ability to claim for medical expenses, rehabilitation and loss of income.
 - Economic support:** As above
 - Rehabilitation services:** As above
- Who can access the scheme?** This is a no fault scheme. Anyone injured can access the benefits for a period of six months. After the six months, the injured person must be able to prove they have more than a 'minor injury' to be entitled to further treatment. The types of damages that can be claimed through common law include non-economic loss, and wage or income loss.
- Are there thresholds or specific exclusions?** Yes. The injured person cannot claim ongoing treatment or loss of income after six months if their injury is deemed a 'minor injury'. This includes whiplash. In many cases, six months is not long enough for the injury to recover. The ability to claim costs associated with gratuitous care (care provided for free, say, by friends and family) has been removed from all claims. An injured person is required to liaise with the insurer or the regulator in

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State-by-State comparisons – CTP schemes

- order to continue treatment or access to household assistance – this could be for a range of impacts, outside of the 6 months to up to indefinitely. In many cases, in practice this leads to disputes over denial of treatment or care.**
- What systems are in place to help injured motorists navigate the claims process?** There is CTPAssist, a helpline to assist injured motorists navigate the scheme. There are strict rules and timeframes around when law firms can become involved to advise on further actions available.
- What measures are in place to protect against rotting of the scheme and fraudulent behaviour?** The Motor Accidents Injuries Act 2017 has specific provisions to deter fraudulent claims being made. These provisions include an obligation on the insurers to act to deter fraudulent claims being made, and penalties for a person who commits fraud for their own benefit or for another person who benefits.
- Is the scheme financially solvent/strong?** This is a new scheme, so viability is difficult to estimate at this time. Premiums reduced by about \$100 per annum when the new scheme was introduced.

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State-by-State comparisons – CTP schemes

The SA Scheme:

- Premium paid:** For a standard passenger vehicle in a metropolitan area, the premium is \$514 per annum. This is made up of a CTP premium of \$400, plus a Lifetime Support Scheme levy of \$114.
- How long has the existing scheme been in place?** The existing scheme was introduced in July 2013.
- What the scheme provides for injured motorists:**
 - Early access to medical treatment:** The payment of accident related medical expenses is included; however, these are often contested in the courts.
 - Economic support:** Wage or income loss can only be claimed if financial hardship can be proven.
 - Rehabilitation services:** The payment of accident related rehabilitation expenses is included; however, these are also often contested in the courts.
- Who can access the scheme?** This is a fault based scheme. Anyone injured can access the scheme if another person is accepted as being at fault by the insurer. In cases where the injured person and another person are equally at fault, damages are reduced according to proportion of fault.
- Are there thresholds or specific exclusions?** Yes. As a fault based scheme, it does not include accidents where no other vehicle is involved (e.g. accidents involving animals), or where fault lies with the injured person.

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State-by-State comparisons – CTP schemes

Certain thresholds exist, for example, a person who sustains a 'minor physical injury' may not in fact be able to work because of it, but is precluded from claiming future economic loss due to definition of minor.

There are also thresholds in place for certain types of damages, including non-economic loss, future loss of earning capacity, gratuitous services and loss or impairment of consortium (legal action by a spouse or partner).

- What systems are in place to help injured motorists navigate the claims process?** There are caseworkers appointed by the CTP insurers who will provide guidance, but the quality of information may be affected by conflict of interest.
- What measures are in place to protect against rotting of the scheme and fraudulent behaviour?** There is a CTP regulator in place to help detect and prevent fraudulent activity. The laws allow for the engagement of private investigators to assist in detection.
- Is the scheme financially solvent/strong?** Yes. There appear to be no current concerns regarding the solvency of the scheme.

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State-by-State comparisons – CTP schemes

The QLD Scheme:

- Premium paid:** For a standard passenger vehicle in a metropolitan area, the premium is \$355 per annum.
- How long has the existing scheme been in place?** The existing scheme was introduced in 2000. In July 2016, Queensland also introduced the National Injury Insurance Scheme (NIIS), covering catastrophic injuries on a no-fault basis. This is paid as a levy and is included in CTP premiums.
- What the scheme provides for injured motorists:**
 - Early access to medical treatment:** The CTP insurer will cover related medical expenses. The injured can also receive reimbursement early on in the process for necessary treatment that was paid for prior to commencing the claim.
 - Economic support:** The scheme does not entitle injured persons to any non-rehabilitation financial support during the claim process. However, sometimes an advance on damages is paid by the insurer to meet immediate financial needs. The insurer pays the client at the conclusion of the claim for any loss of income.
 - Rehabilitation services:** The CTP insurer will cover related rehabilitation expenses. Most claimants' requests for comprehensive rehabilitation are accepted by insurers. Those with catastrophic injuries receive comprehensive rehabilitation, care and equipment through NIIS, with fault not being relevant to that entitlement.

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State-by-State comparisons – CTP schemes

- Who can access the scheme?** This is a fault based scheme. Anyone injured can access the scheme if another person is accepted as being at fault by the insurer. The types of damages covered include reasonable and appropriate rehabilitation. At fault drivers can also access compensation if catastrophically injured in Queensland through the National Injury Insurance Scheme.
- Are there thresholds or specific exclusions?** No. There are no thresholds in the Queensland system. The scheme provides fair access to benefits for all injured motorists. The Queensland scheme has a low dispute rate (less than 1%) in the courts compared to other schemes.
- What systems are in place to help injured motorists navigate the claims process?** CTP insurers can help clients with navigating the system. There are no restrictions on engaging law firms to assist them in navigating the scheme. The Motor Accident Insurance Commission (the regulatory body that oversees insurers) provides information about the claims process, including fact sheets, as well as assisting with complaints.
- What measures are in place to protect against rotting of the scheme and fraudulent behaviour?** Rorting and fraudulent behaviour has not been identified as a major issue in the Queensland scheme. This view was supported by a recent review of the Queensland CTP process.
- Is the scheme financially solvent/strong?** Yes. A comprehensive review of the Queensland CTP scheme commissioned by the State Government in 2016 found the fundamentals of the Queensland scheme to be sound.

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TO GET YOU THINKING - CONSIDER THE OPTIONS

Public Domain info on possible options for your scheme design - subject to change. Illustrative only.

New Scheme Criteria	All Fault	No-Fault
Option A - Cap/Support		
1. Treatment	1. 6 months cap	1. Common law - unlimited
2. Domestic Services	2. 6 months cap	2. Common law - unlimited
3. Income Benefits	3. 80% for 12 months	3. 100% income support
4. Quality of Life	4. Not applicable	4. Max \$200,000 with "any" cap
5. Death	5. Funeral costs	5. Funeral costs + financial support to dependants
6. Support - Legal fees	6. Fixed fees	6. Court costs
Option B - Cap/Support		
1. Treatment	1. 12 months cap	1. Common law - unlimited
2. Domestic Services	2. 12 months cap	2. Common law - unlimited
3. Income Benefits	3. 80% for 12 months	3. After 12 months 100% + "any" cap
4. Quality of Life	4. Not applicable	4. Max \$200,000 with "any" cap
5. Death	5. Funeral costs + \$20,000 for dependants	5. Funeral costs + financial support to dependants
6. Support - Legal fees	6. Fixed fees	6. Court costs

Participants - The focus here is to think through what each option would have meant for your circumstances?

*These rates are illustrative only. **These rates are illustrative only. ***Not applicable. ****These rates are illustrative only.

Option C - Cap/Support	Option D - Cap/Support
1. Treatment	1. 5 years cap
2. Domestic Services	2. 5 years paid care only
3. Income Benefits	3. 60% for 5 years
4. Quality of Life	4. 2% per 100% treated then capped at \$200,000
5. Death	5. Funeral costs + \$20,000 for dependants
6. Support - Legal fees	6. Legal
1. Treatment	1. 5 years cap
2. Domestic Services	2. 5 years
3. Income Benefits	3. 100% with a 10% cap
4. Quality of Life	4. 10% per 100% treated then capped at \$200,000 and "any" cap
5. Death	5. Funeral costs + financial support to dependants
6. Support - Legal fees	6. Legal

Participants - The focus here is to think through what each option would have meant for your circumstances?

*These rates are illustrative only. **These rates are illustrative only. ***Not applicable. ****These rates are illustrative only.

YOUR EXPERIENCES ARE IMPORTANT

YOU HAVE BEEN SELECTED

AGENDA

PACIFICATOR

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Appendix C – Stories

These are additional stories from participants of the workshop and stories submitted by other CTP claimants online. They echo many of the issues raised by the stories section of the report, and further highlight the complexity of people's experience of vehicle accidents and the challenges of working through the CTP system.

Angel

Angel's car accident happened nine years ago, but she is still not able to speak of it without "the emotions riding close to the surface". She had a head-on collision when a car coming the other way at about 60 km/h turned right without giving way, and they hit bonnet to bonnet. She walked away from the accident, but it caused significant psychological trauma. She had injuries requiring about five years worth of treatment and rehabilitation, including two surgeries on her wrist and three surgeries on her neck. She has returned to work full-time, but continues to suffer severe chronic pain, requiring ongoing treatment.

Her accident was covered by workers' compensation, and she had good, early access to cover for medical expenses through that scheme. When it came to the CTP insurance, liability was accepted quite quickly, with no dispute over fault. "I had quite a good experience with the CTP insurance system", Angel commented. "I settled my case at about the four year mark after the accident, quite deliberately because I didn't want to go through a court process. I actually think that was quite important for my wellbeing to do that. So I wouldn't change it if I had my time over. I'm quite happy with the outcome in the end."

Gerry

Gerry was hit from behind while stopped at lights seven years ago. "There was cars on both sides so I've got nowhere to go, and I saw a girl tearing up behind me in an older car," he said. "And there was nothing I could [do] other than brace myself." Gerry had an arm in plaster at the time, which had to be recast, and suffered neck injuries. He went to hospital and suffered extreme pain while waiting for treatment. He has ongoing problems with headaches.

Gerry went with a lawyer, who he was very happy with, but got caught up in a cross-jurisdiction case because the at-fault driver was from New South Wales, which has a different CTP system. As a result, he was required to go to a number of specialists. It was in fact the NSW lawyers' specialist who picked up on long-term problems Gerry had as a result of the accident.

The claim took about two years, and Gerry is not entirely happy with the outcome, particularly the medical treatment he received, and continues to suffer extremely bad headaches. "I still went back to work but I take pretty strong painkillers when it hits me," he said. He was over 60 at the time, but very fit and strong. Like June, he was angered when assessments took account of his age, without considering his pre-accident level of fitness.

Brett

Brett was driving at 80 km/h when he collided with a vehicle that turned towards him on a red signal. His wife suffered a broken sternum and Brett received injuries to both his knees when the dashboard was pushed into them. He's had one knee surgery and two shoulder surgeries as a result. He still attends physio every month, and has chronic pain, requiring pain medication perpetually. The accident has affected many of his activities, and he's had to make adjustments, such as buying a new camper that he is able to set up without his pain flaring up.

He went to a solicitor on the recommendation of a friend who was going through the same thing. "I had no idea about the process," he said. "So I lent on them [the lawyers] heavily to guide me on what to do. They were brilliant; would go over things that they told me countless times, over and over again to try and help me understand the process." Brett settled his claim after four years, "just before walking in the front door of the court".

Brett experienced the CTP process as very rigid and not accommodating people who "don't quite move as fast as the system wants them to", including in absorbing high volumes of information. He suggested that the CTP process should be a bit more transparent, specifically from the insurance companies, particularly for those not represented by a solicitor, commenting, "I think [they] hide behind lack of information to benefit themselves".

Shelley

Shelley's accident happened in 2015, when she was driving home along the Tuggeranong Parkway. She was at the end of a queue of stopped traffic, and was hit from behind by someone who didn't realise that the traffic had stopped. "She admitted that she was too busy with the kids in the backseat," Shelley said. "And she hit me doing 80 km/h while I was stationary". Shelley suffered concussion, neck and shoulder injuries, and lower back injuries. She is still having physio and taking medication for these, and they affect her everyday life (she has pain in sitting too long).

After having difficulty communicating with the insurance company (“They weren’t responding to my emails, things like that), she took her case to a legal firm. “I’m very happy that I did,” she said. “I was able to leave a lot of that stress with them to manage. They were able to inform me of what I needed to do.”

One of the biggest impacts on Shelley is that although her accident was in a car, her passion is for riding motorbikes. “I’ve found it very hard not being able to ride for quite a long period of time,” Shelley admitted. She has bought a very light helmet, but even with that her neck starts to hurt after 10 minutes. “So I’m struggling to [ride the same] distance, [and] any rides now have to be broken up, which has been a major impact for me.”

“A very wise man said to me, “You still have to live life. You’ve still got to get on with it.” So that’s sort of what I’ve tried to do,” Shelley remarked. She agreed with others that the current system could use some improvement, but thinks that the current reform process is really a cost saving exercise for the Act Government. “It doesn’t respect our rights at all,” she said.

Luiz

Luiz and his wife were involved in an accident on the Majura Parkway, when a truck hit them from behind. The driver had been distracted by a motorcade of police drivers. Luiz saw the truck approaching and managed to accelerate his car out of the line of the truck, but still collided with the car in front. He and his wife both suffered whiplash, but fortunately no major injuries.

Luiz called his insurer to tow his car away and fill out paperwork. It was Luiz’ first accident, “so I didn’t know anything about anything”. He went to the police station to ask, “What can I do?”. The police advised him to find a solicitor, which he did. They arranged for him to see a physio and get x-rays. He got another car. Then, six months later, the same thing happened to his new car – a ute ran into him while stopped at a roundabout. He once again suffered from whiplash.

“So in one year I got two of these processes”, he said. They settled with compensation payouts and fortunately have not needed any further treatment. Luiz was aware at the time that if he suffered delayed symptoms, it would be too late to claim for them. After seven years, he hasn’t had ongoing physical problems, and he has been happy with the process. However, he has continued to experience anxiety with tailgating, especially trucks. “I got in a few altercations with tailgating cars and trucks on the freeway,” he said. “Once I reported a tailgater to the police. I never had any road rage incidents but if someone tailgates me I have no patience at all. I make sure they know I’m not happy with the situation - I think that’s the long term thing, the anxiety. “

Craig

Craig was working as a postman at the time of his accident four years ago. A lady in a car hit him on a roundabout at about 60 kilometres an hour. He was thrown over the handlebars, and ended up in the middle of the roundabout. He narrowly missed being hit by another car. After losing consciousness for a while, he got off the road, felt fine and continued his delivery round. "The adrenaline was pumping," he said. After about an hour he had to stop as things began aching. He suffered minor whiplash, lower back injuries and a broken wrist.

Craig started out with workers' compensation, but then made a claim against the at-fault driver's insurance. Workers comp supported his physio and other expenses, which he paid back after settlement. He found a lawyer, who he was very happy with, who explained things 'in layman's language'. Craig's claim took two years and he was quite happy. He did comment on the issue of symptoms and trauma emerging after settlement. "[You] sign on the dotted line, it's all over". He suggested there should be a clause about the psychological effects of a motor vehicle accident, whether you're at fault or not, allowing you to re-apply for a psychological assessment after a settlement.

Online stories:

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Dennis

Dennis was hit from the rear causing his car to run into the vehicle in front, which then hit the vehicle in front of that. His car was written off. He sustained some minor neck injury and a whiplash type injury to his right arm necessitating several physio sessions. The injury caused residual pain and neurological pain along his arm for several months, but there have been no longer-term issues.

"My memory [of the accident] has faded somewhat, but the time from accident to final payment seemed unnecessarily protracted. It was obvious that the driver who rammed me was grossly negligent; as far as I'm aware ACT Police did charge him with negligent driving so the arguments between the two sides' legal reps also seemed too protracted," Dennis commented.



"I lost a car that while old was well maintained and eminently usable for a further long time. When someone is inconvenienced as I was there should be support offered to assist in transport. There was none. I had to rely on friends' and family generosity loaning me a car to allow me to continue working. My place of work is not well served by public transport," he added.

Jean

Jean was rear-ended by a learner driver. A spider crawled across his windscreen as they were approaching traffic lights. The lights were red so the incident was low speed. Jean suffered whiplash and pain, tingling and numbness in her feet and legs.

“My solicitor worked quickly,” Jean commented. “A settlement was reached and I received compensation. I’m very grateful to my solicitor for his hard work. I was reasonably happy with the settlement. Having only just reached a settlement for a public liability claim, I was eager for a speedy outcome.”

Karl

Karl was riding his bicycle in an off-road cycle path when a car performed a U-Turn across a solid line and into the cycle path right in front of him. Karl’s bicycle was snapped in half and he was catapulted head first across the bonnet of the car.

“I received compensation for my broken bicycle and for injuries sustained in the collision,” Karl said.

Trudy

Trudy suffered whiplash after someone ran up the rear of her mother’s car. Trudy was happy with the process, saying, “The system was easy to navigate and my claim was handled fairly. I received fair compensation”.

Bob

Bob was stopped at a set of traffic lights and was hit from behind. He suffered shock & minor injuries, mainly to his collarbone and lower neck. He continues to have anxiety when stopped at lights with traffic approaching from behind.

Bob’s case was mainly dealt with through his solicitor, after some initial contact with the CTP provider. “The forms to fill out seemed very complex and detailed,” he said.

Bob commented, “I have received compensation but thought there was some collusion between solicitor and CTP provider. [It] also took longer than expected.”

Sally

Sally was parked at a set of lights and a driver (who was on his phone) hit her rear at approximately 60 km/h. This resulted in a 4-car pile up. Sally was taken to hospital with suspected spinal injuries and a broken thumb but was released approximately 6 hours later, suffering severe whiplash. She had to take leave from work for a period of time and attended physiotherapy. To this day she still suffers from soreness in her upper back and neck.

Sally was generally happy with her claim process. "I was awarded a pay out that I believe adequately reflected my injuries/situation," she said.

Appendix D - Workshop Notes

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Guidelines

What do we need to do today to support each other and do our best thinking?

Respect

Mutual understanding, share experiences

Listening, hearing

Give people time

Consciousness of emotions

Non-judgmental

Value difference

Respect privacy

Deliberation on Objectives – Issues, questions, comments

1. Early access to medical treatment, economic support and rehabilitation services

<p>Medical</p> <p>█ called by police, to hosp wait diagnosis. Treat at hosp for several months - ? physio rather medical costs</p> <p>█ – Aus Post, workers' comp, insurers' specialist, report & to Dr - quite different – 6 weeks after accident diagnosis</p> <p>█ – ambulance –home, ? & workers comp – appointed case worker (at every apt) 3hrs – 3days – questioned constantly recommendations, had early assistance</p> <p>█ – drove hospital – saw Dr next day, physio/hydro (paid himself) no CTP assistance, driven by WM[?]</p> <p>█ – WC didn't get treatment 18 months, paid herself [?] card – pay out of pocket, [(terminates)?]</p> <p>█ –no WC, paid for treatment, pd by physio – reimbursed</p> <p>█ – no WC – paid some, not all, pay up front</p>	<p>Agreed specialist – independent board – to cover insurer and claimant</p> <p>Biased towards payer Double pay</p> <p>Relationship W.C. caseworker putting pressure on workers & doctors</p> <p>Relationship with medical professionals - empathy</p>
<p>Economic</p> <p>█ – had access)</p> <p>█ had access) average --> repaid from s' ment (cancelled 9 months)</p> <p>█ – insurer paid to \$15000 [?] time off work ([twice?])1000 hrs sick leave</p>	<p>Rehab</p> <p>Side effects of med</p> <p>Psych effects delayed & ongoing & relate to medical, economic & rehab</p>

Rehab	
█ – workers' comp paid	System works for minor injuries – does not adequately address issues associated with major illness and ongoing ramifications
█ – “ “	
█ – paid himself	
█ – paid herself	
█ – pd herself, refunded s' ment - equipment often no usable eg sit/ stand desk	
█ – pay for own rehab/MRI	
█ – Pd insurer – s' ment gone through O.O.P	

2. Equitable cover for all people injured in a motor vehicle accident

Issues & Questions	Comments
1. Why should the insured pay through their premiums for the people who were at fault?	<p>We assume this is/refers to a “no fault” scheme ✓</p> <p>✓X✓? – we pay already, X- Should not have to insure everyone for their own at fault actions</p> <p>Is it fair that a person at fault is treated the same as someone not at fault? X Why should our premiums cover the at fault and pay more?</p>
2. What happens when people are not insured?	? ? health system nominal defendant?
3. Would premiums increase? If so, by how much?	? ? ? ? might lose no claim bonus – this is a worry
What if it is a single one vehicle accident? – Not covered by CTP --> this might provide support in these situations (eg run into a tree)	
4. If the “at fault” party is injured, aren't they covered by the health system and their other insurances? (circled)	<p>✓✓✓✓? Eg Medicare, health insurance, TPD</p> <p>You can get CTP insurance to cover you if you are at fault. ✓✓✓</p>

5. Does equitable cover take away from an adversarial process?	✓✓✓✓ Easier to get a claim accepted ✓
6. Does "equitable" cover mean that everyone gets the same financial support? Will payments be set without looking at the whole picture?	X ??? X If at fault, injuries should be covered but not compensation for impact on life etc Should be mandatory for all to be insured. ✓
	KEY CONCERN: there should not be a consequent reduction in the amount of compensation available to the "not at fault". ✓✓✓

3. A value for money and efficient system

Something may be efficient (achieving a given outcome at least cost) but it may not be effective in meeting the needs of those injured	Lack of transparency in the system - Issue is complexity inherent in the system ✓✓
How can the CTP scheme be more efficient but also being effective?	
Value for money? Meaning. - depends on what people want or need and how much they are prepared to pay to achieve their aims.	Where does the money go? Medical Legal Manage future risks
In an adversarial system, can we eliminate the "middle-man" – ie the lawyer?	Do we want to eliminate the "middle man"?
Will victims be equitably treated under a "no fault" system and without a lawyer? - system complexity	Leaving out the "human factor"

4. Promote broader knowledge of the scheme and safer driver practices.

Cost of educating -students -new drivers -immigrants -post canceled licence to drive defensively (not aggressively)	CTP should contribute ACT Govt Eg Yr 10 Learner handbook Yrs 11 & 12 – CTP and ACT govt subsidise defensive driver course (cars, motorbikes)[hands-on]
Select appropriate provider (for service above)	AAMI defensive driver
Targeted programmes	Promotion Discount off rego for no accidents
Refreshes courses	Suggest 10 years or 5 years
Cars, motorbikes and bikes	
Cross border traffic rules	Road infrastructure
CTP process should be national	

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5. Implement a support system to better navigate the claims process

Early interaction would help ✓✓✓	Eg information from emergency services or hospital staff✓ [independent body see below]
Better understanding of process with specialist/expert witness referrals would help ✓✓✓	Not clear what their obligations are to you and options if assessment seems wrong Suggest cab-rank rule for experts --> bias towards entity paying was a problem --> Should be done by body to receive register of claims initially, should be govt funded --> suggest a tribunal to hear issues arising from insurers reports
Should include psychological support beyond existing time limits ✓✓✓✓	Solicitor did a lot of this --> support system for unrepresented clients To victims (not only not-at-fault)

Funding a support system should not result in any reduction in compensation available to not-at-fault victims ✓✓	
It would have helped to have someone to explain the whole process (lawyers have time constraints) ✓	Third party body or lawyer Eg seminars, blog, info sheet & appropriate place to disseminate those
Support to obtain more thorough medical assessment early on early triage? ✓	There is a lack of transparency in process and it is complex. Require more transparency around quantum of claims paid.

6. A system that strengthens integrity and reduces fraudulent behavior.

No system can prevent all fraudulent behaviour	✓✓✓
Competent independent medical assessment - insurer	✓✓✓
Legal team to provide brutally honest assessment of client's case	✓? "ambulance chasers"
More detailed reports from emergency responders	All associated records kept ✗ is it emergency crew responsibility? They already have too much to do
Immediate post incident/accident by accident trauma team – hospital appointed	✓
Easy access to your records	
How much fraud actually happens?	Is there more 'fraudulent' activity using 'preferred' medical specialist? Pool of independent specialists – paid by govt? not insurer

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Consideration of key elements of CTP schemes

Caps & limits (provided topic)

Another way that CTP schemes save money (which can contribute to lower premiums) is to put caps and limits on payments and support, including for particular items, such as income support (see options document for examples). In schemes that support at-fault drivers, there are generally lower caps and more limits for at-fault vs not-at-fault drivers.

Questions

What may be the advantages of having caps and limits?

What may be the disadvantages or unintended consequences of caps and limits?

**What are the advantages and disadvantages of caps and limits on support for at-fault drivers?*

How could the disadvantages be overcome?

At fault – not part of CTP

Advantages	Disadvantages
Covers more parties	Not at fault person receives less – bear more of the loss of someone else's wrong doing
Certainty	Reduction to not at fault person receives
Accounting	Caps inhibit treatment and rehab - & would push for early diagnosis & missed/delayed symptoms
Equality	No contingency for injuries on an ongoing basis
Divert more \$\$ into treatment	Economic loss issues
Scale – re injuries	
Streamlines for insurers	
Quicker process	

Injury Thresholds (provided topic*)

The group also considered the issue of **independent specialists.*

One of the ways that CTP schemes save money (which can contribute to lower premiums) is to differentiate between different types and severity of injuries. For example, thresholds can be introduced – either monetary caps on payments or time limits for support – for 'minor' injuries.

This element relies on defined criteria and protocols for assessing injuries.

Different systems deal with injuries differently, e.g. SA vs QLD

Issues arise when similar injuries affect different people differently e.g. some people recover from whiplash after a few months, while others continue to have symptoms indefinitely.

Questions

What may be the advantages of having injury thresholds?

What may be the disadvantages or unintended consequences of injury thresholds?

How could the disadvantages be overcome?

Injury threshold

Pro

- Defined payment for specific injury eg finger, back, leg

Con

- Does not necessarily reflect pre-accident lifestyle
- Specific injury outside recognised thresholds
- May not recognise your pre-accident quality of life

Definitions need to be reviewed (5 years) as medical procedures and practices evolve (improve)

Independent specialists

Pro

- Independent panel of specialists – fairness and equity across the board
- Psychological trauma of untruthful reports
- Removes bias
- More efficient process
- Less emotion

Con

- Cost- who pays (shared between legal sides)
- Where held – capital city
- Rates of pay

Government-run vs private CTP systems (participant-selected topic)

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Cons of govt-run vs private

- No competition
- Monopolist and acts accordingly
- Price set – including against political considerations, as well as scheme costs
- Prices ↓ = claims ↓
- No-one can act as an advocate
- Rules driven [not] human driven
- No middle man – transparency
- Poor financial management, no efficiency incentives

Pros

- No profit motive
- Possibly lower prices
- No middle man – lower cost
- No need for regulatory environment

Regulation --> could allow common law claims
--> should encourage transparency

Evidence – monopolistic actions, financial management



Dr Wendy Russell is Director of Double Arrow Consulting, a Canberra business specialising in deliberative engagement. She is an associate of the Centre for Deliberative Democracy and Global Governance at the University of Canberra and a visiting fellow at the Centre for the Public Awareness of

Science at the Australian National University. She has provided advice to the ACT Government on deliberative engagement, has conducted research on the impacts of deliberative processes in Australia funded by the newDemocracy Foundation, and teaches a course in Science Dialogue at the ANU. Wendy previously worked in the Commonwealth Department of Industry, Innovation, Science, Research and Tertiary Education and before that was senior lecturer in the School of Biological Sciences at the University of Wollongong.