Review of Queensland Compulsory Third Party Insurance Scheme

C.T.P. Review Committee
November 1999

The Honourable David Hamill MLA
Treasurer
Parliament House
George Street
BRISBANE QLD 4000

Dear Minister

Further to our appointment on 22 April 1999, we hereby submit our report in respect of the matters set out in the Terms of Reference for the review of the Queensland CTP Scheme and the Motor Accident Insurance Act 1994 under the National Competition Policy Agreement.

In conducting this review, the Committee has consulted widely with the community, the insurance industry, the legal, medical and allied health professions, motorist and motoring industry associations, relevant Government Departments as well as interstate and overseas CTP administrators and consultants.

The Committee held public meetings in Brisbane and major provincial centres across the State and invited written submissions through newspaper advertisements. There was a total of 149 submissions (written and oral) made to the Committee on a broad range of issues. The Committee, having examined all of the submissions received, developed an Issues Paper designed to give more structure to the consideration of the major issues and to draw further comment.

Following the release of the Issues Paper, the Committee held further public meetings in Brisbane, Rockhampton and Townsville and met with various stakeholders on numerous occasions. A further 33 submissions were made to the Committee in response to the Issues Paper.

There were 19 submissions received by the Committee in response to the release of the Draft Report.

In carrying out its task, the Committee has sought to:

- preserve the existing common law system to the maximum extent;
- streamline the claims process, particularly for smaller claims;
- provide a more competitive environment for stakeholders, particularly insurers;
- offer consumers greater choice and the benefits of a competitive market;

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- depoliticise the premium setting process;
- emphasise rehabilitation and wellness as highly desirable outcomes;
- upgrade community and stakeholder awareness of CTP insurance; *and*
- above all else, preserve the on-going fiscal integrity of the scheme in a manner that keeps premiums affordable and the benefits appropriate.

The Committee is confident that the recommendations will go a long way towards achieving the desired outcomes.

The Committee would like to thank all the stakeholders who assisted the Committee with its review and in particular would compliment those involved for their openness and a clear desire to make the outcome of this review a workable and affordable system of CTP insurance for Queensland for the future.

The review could not have been conducted without the support and invaluable assistance of the Motor Accident Insurance Commission which provided the secretariat for the Committee. The Committee would particularly like to thank the Insurance Commissioner Lesley Anderson, Deputy Insurance Commissioner John Hand and Les Kilmartin and Bill Watson from the secretariat for their outstanding commitment and effort.

In submitting this report, the Committee wishes to thank you and the Government for the privilege of being charged with this responsibility on such an important public issue.

Yours sincerely

BERNARD ROWLEY (CHAIR)

HENRY SMERDON (MEMBER)

NOEL MASON (MEMBER)

WALTER TUTT (MEMBER)

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TERMS OF REFERENCE

1. To examine the fundamentals of the Queensland CTP scheme including scheme design, the affordability of the current scheme for the Queensland motorist and the appropriate role for Government in the scheme.

2. To conduct a review of the Motor Accident Insurance Act 1994 under the National Competition Policy Agreement.

Without limiting the scope of the above, the Review Committee is requested to -

A. As a matter of urgency, consider an immediate amendment to the Motor Accident Insurance Act 1994 to prohibit the soliciting of injured persons to make claims under the Act.

B. Report on whether the present system of personal injury motor vehicle accident insurance provides -

(i) a stable, financially viable, fully funded scheme;

(ii) an appropriate balance between the injured person and the premium-paying motor vehicle owner;

(iii) an efficient and economic system for the delivery of such insurance including payment of claims;

(iv) the most appropriate system for determining premiums;

(v) benefits to the community as a whole, such that they outweigh the costs associated with any restriction of competition;

(vi) appropriate support for injury prevention and rehabilitation; and

(vii) appropriate provision for statutory levy and administration purposes.

The review process is to include the calling of submissions from the public. The Review Committee is to provide recommendations to the Government by 31 October, 1999.

PROCESS OF THE REVIEW

A key objective of the CTP Review Committee has been to ensure the widest possible consultation, bearing in mind the time frame set by the Government for completion of this Report.

The Committee decided on a four-stage process leading to the submission of its final Report to the Government.

STAGE 1

The initial consultation stage included:

- visits to stakeholder organisations;
- advertisements in newspapers calling for written submissions and advising of public meeting dates and venues and of the Committee's website and e-mail facilities;
- attendance at twelve public meetings around Queensland;
- visits to South Australia, Victoria, Tasmania, and New South Wales for briefings on the operation of motor vehicle accident compensation schemes in those States;
- attendance at seminars in Sydney and Brisbane on issues related to CTP schemes; *and*
- discussions with visiting experts from the USA and Canada.

STAGE 2

Written and oral submissions (149 in total) were received from interested parties in response to the Committee's invitation to make submissions. These were then collated and analysed and considered by the Committee as part of the process leading to the preparation of an Issues Paper. The purpose of the Paper was to provide a more specific focus for further public comment.

The Committee engaged Market & Communications Research to conduct a survey of community expectations, understanding of and attitudes toward the operation of the scheme.

Following release of the Issues Paper, public meetings were held in Townsville, Rockhampton and Brisbane. Individual meetings were also held with relevant interest groups.

The Committee visited Perth for briefings on the Western Australian scheme.

At the same time, the National Competition Policy (NCP) Public Benefit Test Plan was released for public comment.

STAGE 3

An additional 33 submissions were received in response to the Issues Paper and ongoing discussions were held with representatives from relevant interest groups.

STAGE 4

The Committee issued a draft of its final Report which included its proposed recommendations. A period of two weeks was allowed for responses to the Draft Report.

The Report has been amended in a limited number of respects to reflect the Committee's further consideration of issues raised in those responses. Recommendations 2.3, 3.2, 3.5, 3.10, 3.16, 3.17, 3.19 and 4.7 have been modified and recommendations 6.32 and 6.33 have been added.

NATIONAL COMPETITION POLICY (NCP) REVIEW

Concurrent with the work of the Committee, the appointed consultants (Argyle Capital and Ernst and Young) conducted a Public Benefit Test in accordance with NCP Principles. The Public Benefit Test Report is provided as Appendix 3 to this Report. The Committee has drawn on the findings of the NCP report where appropriate in the main Report.

EXECUTIVE SUMMARY

The Committee was provided with terms of reference which enabled it to fully examine the current scheme and its operation and to recommend an appropriate form of scheme design for Queensland going forward.

The Committee has found that while there are emerging pressures, short-comings and issues which need to be addressed, by and large the scheme has performed reasonably well, being able to retain to date full common law rights within an affordable set of premiums. However, premium increases in the past three years have placed pressures on affordability.

The Committee's proposals and recommendations should therefore be seen in the context of addressing concerns and problems, meeting National Competition Policy (NCP) requirements and amending the scheme in appropriate areas to address emerging issues.

PHILOSOPHY

The Committee's view is that the philosophy of any scheme should embrace three broad objectives-

a) provide access for persons injured in a motor vehicle accident to appropriate medical, rehabilitation and future care needs, such that the opportunity is available for all injured persons to return, as close as possible, to their pre-accident condition, having regard for any longer term constraints imposed by the injuries suffered.

b) ensure that the motoring public has access to affordable insurance arrangements which will result in indemnification of any liability for personal injury claims arising from a motor vehicle accident.

c) provide opportunities for persons who have suffered personal injuries in motor vehicle accidents to pursue compensation against negligent owners/drivers for other than medical, rehabilitation and future care costs, with a minimum of litigation costs.

The efficacy of any new scheme would have to be judged by how well it meets these objectives. It is acknowledged, though, that achieving an appropriate balance between affordability on the one hand and the needs of injured persons on the other will never be an easy task as an increase in (a) or (c) inevitably means a decrease in affordability and vice-versa.

CURRENT SCHEME

Compulsory Third Party (CTP) motor vehicle insurance in Queensland is underwritten by private insurers who are licensed under the *Motor Accident Insurance Act 1994*.

Premiums are set by regulation following recommendations by the Motor Accident Insurance Commission (MAIC) to the Government.

The scheme provides indemnity to at-fault or negligent owners/drivers of motor vehicles who are found to be liable for injury to a third party resulting from a motor vehicle accident. It also allows unlimited access to common law for injured parties.

Since 1994, the scheme has had an increased focus on the rehabilitation of injured persons and the Act places certain obligations on insurers and claimants in respect of early and appropriate rehabilitation.

The Nominal Defendant is established under the Act to administer claims from third parties injured in accidents where the at-fault vehicle is uninsured or unidentified. It is also the "insurer of last resort" should a licensed insurer become insolvent.

Market Research

The Committee engaged Market and Communications Research (MCR) to conduct a survey of community expectations, understanding of and attitudes toward the scheme, particularly in respect of the scope of CTP coverage, its current cost and perceived need for the scheme to change in any way.

Whilst awareness of the CTP scheme was much higher than the Committee anticipated, understanding of the scheme is limited, with close to half of drivers surveyed saying they have a limited understanding or no understanding at all.

The majority of drivers surveyed understand that they are not covered by CTP if they are at fault, or if they are the driver of the only vehicle involved in the accident. However, around 30% do believe they would be covered in these instances. This is a matter for concern.

There was relatively poor knowledge of the current CTP premium despite the recent publicity. However, when advised of the annual premium level of $286 for a private vehicle, 73% indicated that it was good value for money or that the price was about right.

STRATEGIC FRAMEWORK FOR THE SCHEME

A strong priority of the Committee has been the development of several high-level system criteria or benchmarks against which the scheme's performance can be measured and monitored in the years ahead. These criteria relate to scheme affordability and scheme efficiency.

Affordability

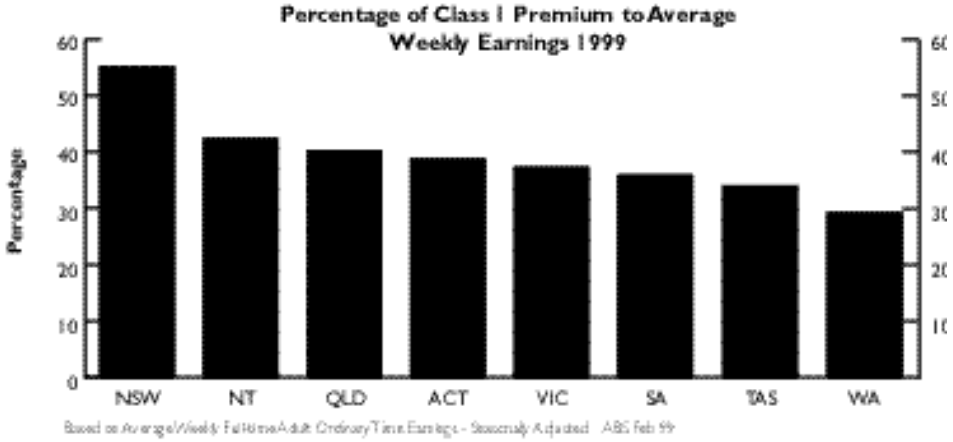
Maintaining affordability for the majority of the motoring public is critical to the long-term viability of the scheme. The ownership of motor vehicles extends widely through our community and the cost of CTP needs to be appropriate but restrained so as not to become an undue burden on those on lower and fixed incomes. Affordability is also a key in maintaining a high proportion of insured and registered vehicles, without which the scheme itself would fail or be seriously compromised.

From an overall perspective, the scheme is judged to be approaching the point where it might generally be seen to be at the limit of affordability as a result of the 1999/2000 premium rise.

Structures need to be put in place to moderate further rises to levels more in keeping with increases in capacity to pay. The Committee considers that an affordability index and upper limit need to be devised and adopted as a serious indicator and trigger respectively for future action in relation to the scheme. The suggested indicative index is the proportion of the Class 1 premium to Queensland Average Weekly Earnings (adult full-time ordinary time basis). The graph at the top of page 9 shows the current affordability ratios on equivalent bases for the various schemes in Australia.

Other bases were considered (for example, Class 1 premium against the fortnightly pension rate). For simplicity, it was decided to target one measure only and Average Weekly Earnings (AWE) can be considered a relatively broad-based measure and generally accepted as being indicative of a community's capacity to pay.

Under the proposal the Government would set the upper limit for the affordability index. If at any time the insurers' proposed CTP premiums to be approved by MAIC are likely to result in the prescribed affordability upper limit being exceeded, the legislation should incorporate appropriate mechanisms, including review and redesign of the scheme, to ensure that the prescribed affordability upper limit is complied with.



Efficiency

The cost of delivery of benefits to injured parties is an important part of the affordability of the scheme. Delivery costs include legal and associated costs, insurer expense and profit allowances and administrative levies. In the 1999/2000 CTP premium, the proportion of premium payable to injured parties (the efficiency index) was assessed at 67%, with the corresponding cost of delivery assessed at 33%. Over the past five years the efficiency index has averaged around 63%.

The Committee is of the view that the current efficiency of the scheme is too low. The recommendations of this Report include a range of suggestions in relation to claims management efficiencies, legal costs and insurer competition which if implemented in full, are expected to improve the efficiency by 5% to 72%. Ideally, the Committee sees 75% as an appropriate longer-term target although it will not be easy to achieve particularly given the GST effects on delivery costs.

A second aspect of scheme efficiency is the relative proportion of claim payments made in respect of serious injuries and minor injuries. Further aspects of scheme efficiency and effectiveness include the speed of delivery and effectiveness of rehabilitation, the time taken for determination of liability by insurers and the time taken to achieve final settlement of claims.

COMPETITION AND NCP ISSUES

CTP insurance in Queensland is a compulsory product. Insurers licensed to conduct CTP insurance business have no right to decline or refuse to renew a CTP policy.

Insurers are required to apply for a licence from MAIC to conduct CTP insurance business in Queensland. Licence conditions stipulate market share requirements, restrictions on re-entry following withdrawal of a licence and limits on commissions paid to agents.

Retention of a compulsory third party motor vehicle insurance scheme is strongly supported in submissions, as are requirements for licensing of insurers, the inability of insurers to decline CTP business and the provision of standard policy coverage.

Premiums are set by regulation following advice to the Government by MAIC. Consequently, the process is seen to be too "close" to the Government. This contributes to the perception among many in the community that CTP insurance is a "government tax".

Some insurers favour continued premium regulation while others favour price competition. Those in favour of continued regulation have raised a concern that price competition will result in premium and market share volatility which in turn will lead to scheme instability.

The premium notification and collection process is tightly bound to motor vehicle registration and renewal. Consequently, the opportunity to effect a change of insurer is constrained by the registration renewal process. There is widespread appreciation of the need to remove some of the current impediments. It is generally acknowledged that the linking with Queensland Transport's motor vehicle registration system provides significant efficiencies and reduces uninsured/unregistered vehicle numbers. However, some insurers favour de-coupling.

The NCP Review concluded that the existing scheme would need some legislative or scheme design changes to satisfy NCP requirements, notwithstanding the public benefits which arise in some areas. Premium setting, licensing of insurers, and commission restrictions are examples of NCP sensitive aspects of the scheme.

The Committee proposes to significantly improve the competitiveness of the scheme by -

- removing market share requirements;
- removing commission restrictions;
- removing the five year embargo following withdrawal of an insurer's licence;
- introducing a more competitive premium setting process; *and*
- facilitating change of insurer by motor vehicle owners.

Some of the benefits of price competition are that it should -

- provide consumers with better choice options;
- drive more efficient practices by insurers;
- sharpen premium pricing; *and*
- deliver associated consumer benefits, e.g. at-fault cover extension, 24 hour care line by insurers, relationship marketing opportunities.

Based on the modelling of the NCP review and taking into account the dynamics of competition, the Committee believes that the premium offerings and/or other benefits provided under a competitive model represent potential savings/advantage of greater than $45 million (that is around $20 per Class 1 vehicle) to Queensland motor vehicle owners relative to the current highly regulated scheme.

The Committee's recommended competitive model, referred to in this Report as the Vehicle Class Filing model, has the following features:

- preserves the efficiency and convenience of the linkage of CTP with the Queensland Transport registration system;
- MAIC is required to undertake an actuarial analysis of the scheme and establish floor and ceiling premiums and class relativities;
- insurers to file a premium for all classes of vehicles for MAIC approval on a six monthly basis;
- when approved, the rates are set into the Queensland Transport registration system;
- unless otherwise notified, Queensland Transport would issue the renewal notice with the premium applicable for the current insurer; *and*
- the motorist would be able to change insurer between the receipt of the renewal and payment of the registration/CTP if so desired.

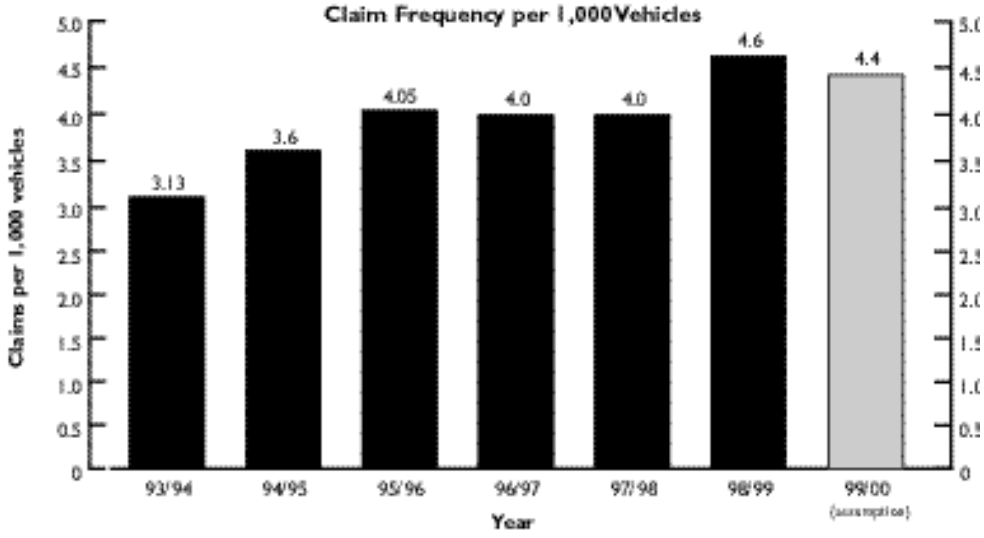
Combined with the affordability index, the proposed competitive premium setting process will allow the market to act with minimal direct government control.

CLAIMS

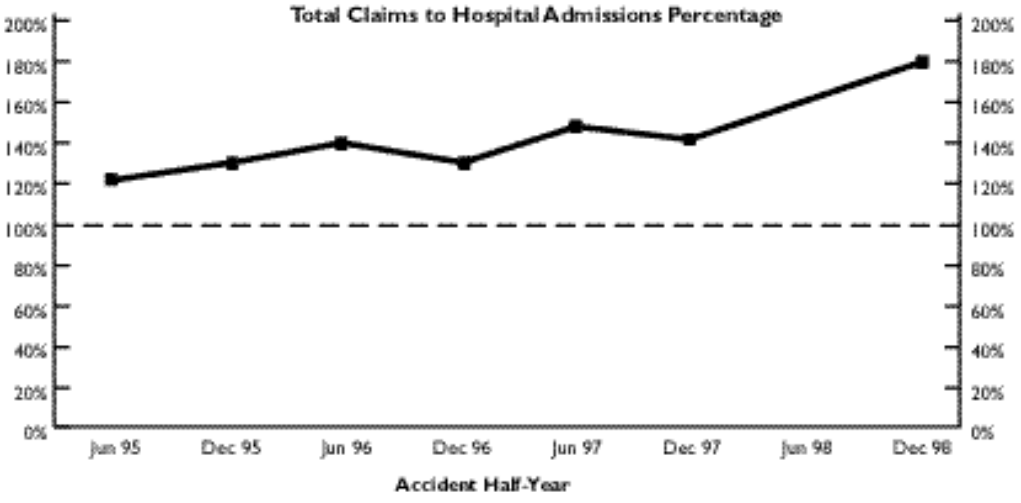
The current claims process is outlined in the Claims Process flowchart on page 44.

The new features to the scheme introduced in the 1994 Act were seen to make the scheme more "claimant friendly" which in some ways contributed to an increase in the incidence of claims. At the same time, restrictions on lawyer advertising were removed, which is widely believed to have been a major factor in the increase in claims incidence. The Committee is of the view that lawyer advertising has had a significant impact on the incidence of claims particularly at the lower end of the spectrum in the past five years. (Graphs 2 and 3).

GRAPH 2



GRAPH 3



NB: In 1995, around 120 claims were made against the scheme for each 100 Hospital Admissions. This had grown to 180 claims for each 100 Hospital Admissions by the end of 1998.

The increase in small claims incidence in the past couple of years can also be attributed to the practice of touting by tow-truck operators (and others) on behalf of some sections of the legal profession. The banning of touting on behalf of lawyers and controls on the nature and content of lawyer advertising received widespread support in submissions.

There is also clear evidence that the major down sizing and/or changes to legal panels by the two largest insurers has caused a number of legal firms to take a very aggressive attitude to obtaining and managing claims particularly ones where the relevant insurer is involved.

While the Committee is not opposed to advertising in general by the legal profession, the Committee agrees with the public concern about touting and the more aggressive advertising strategies of some legal firms.

The Committee's view is that legislation banning touting for or on behalf of the legal profession coupled with appropriately strong statutory authority for the Queensland Law Society to monitor and control standards in lawyer advertising, should assist in providing a more rational and stable environment for claimants and in containing the trend of increasing numbers of minor claims.

Also with respect to trends in minor claims, the legal professions' associations favour abolition of the costs indemnity rule (the unsuccessful litigant pays the successful litigant's legal costs) for the category of claims with less than $20,000 in recoverable damages. There were divergent views on the restriction or abolition of awards for gratuitous care (Griffiths v Kerkemeyer), loss of consortium and loss of servitium from minor claims.

To facilitate early contact between claimants and insurers, the Committee is proposing the establishment of a call centre supervised by MAIC and a simplified Notice of Accident Claim form. A call centre as an early point of contact for potential claimants for advice on the scheme's operation and the claim process is supported by the insurance industry. A simplified, less intimidating claim process is also supported by other submissions that were concerned about extensive litigation costs.

The need to control claims costs is addressed in the Committee's proposals in respect of the abolition of the costs indemnity rule for categories of claims where the total damages recovered in a claim are less than $30,000 and prescribed maximum recoverable costs for claims where the total damages recovered are between $30,000 and $50,000; the limit of $2,000 net per week on awards for economic loss; restrictions on loss of personal comfort/ loss of an employee's services and future care awards; and compulsory conferences prior to the issuing of proceedings. These initiatives, when taken as a whole, have been assessed as providing potential savings in excess of 3% of premiums (in addition to the saving from the legislation banning touting which will save a further 3% of premiums if fully effective in halting the practice).

The Committee undertook a good deal of research and analysis of a points scale for general damages, along similar lines to that currently applying in South Australia. However, the Committee is not recommending the introduction of such a scale at this stage on the basis that the measures which are recommended in this Report should achieve some slow-down in claims growth particularly in the lower end. Should this not be the case, the Committee would endorse introduction of a disability points scale as one of the first options considered.

SUCCESSFUL REHABILITATION OUTCOMES

Rehabilitation is a principal feature of the *Motor Accident Insurance Act 1994*. One of the objectives of the Act is "to promote, and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents". The Act requires CTP insurers to ensure that reasonable rehabilitation services are made available to

the claimant, and progressively fund such services once liability has been admitted on a claim. In many cases, particularly where the injury is serious in nature, the insurer may choose to make rehabilitation services available to the claimant prior to the admission of liability, although this cannot be taken as an admission of liability.

A crucial feature of a successful rehabilitation outcome is early intervention. It is widely recognised that if rehabilitation is needed, it must be provided as soon as possible after the injury.

Rehabilitation can be an uncomfortable fit with the adversarial nature of common law. Insurers are often reluctant to agree to meet any rehabilitation costs prior to admitting liability for the claim. The complexity of the current claims process also leaves many claimants feeling intimidated. On the other hand, rehabilitation services can be used as a tool by claimants to increase damages by unreasonably accentuating symptoms and injuries.

The submissions support the continuation of the provision of rehabilitation in the scheme. Some amendments were suggested to the process to ensure that rehabilitation costs met by the scheme are appropriate to the needs of injured persons, without being excessive.

The Committee recommends the adoption of strategies within the existing framework that make the claims process more accessible to claimants by providing information and promoting a balance between successful rehabilitation outcomes for claimants and cost containment within the scheme.

A range of strategies has been developed by the Committee which will assist the whole claims process, including rehabilitation.

The key initiatives are:

- use of information packages and the proposed call centre to provide information on the rehabilitation process;
- insurers to obtain details of injury and offer rehabilitation earlier in the process;
- improved information on the scheme to service providers;
- protocols for direct contact between insurers and claimants; *and*
- a mediation process to resolve disputes about rehabilitation issues.

EVENT COVERAGE

The present scheme covers liability for personal injury arising out of motor vehicle accidents and indemnifies an owner or driver of a vehicle who is found to be liable, in whole or in part, for the cause of the accident.

While the Queensland scheme has full access to common law, in some other States there is a mixture of common law and no-fault.

There is a level of support for the introduction of a compensation scheme providing a scale of benefits (medical, rehabilitation and care costs, loss of wages, etc) on a no-fault basis. This would cover persons (including drivers) injured in motor vehicle accidents, irrespective of fault.

The no-fault concept could be broadened to allow access to common law with or without limitation, such as the Victorian or Tasmanian models.

There are, however, potential difficulties in attempting to operate a no-fault component within a predominantly common law scheme. For example, there would be inconsistencies if the common law component provided lump sum benefits and the no-fault component provided income benefits. Common law benefits also take longer to deliver than no-fault benefits.

The Committee examined two possible no-fault systems to address the issues -

- a no-fault component in the existing common law scheme to provide benefits to catastrophically injured persons, *and*
- an optional first party policy which could be purchased at the time of purchasing the compulsory third party policy.

A crucial factor in a no-fault long term care component is the "gateway" to the long term care benefits. Schemes could quickly become unaffordable if the benefits become available to a broad range of injured persons.

The Committee has not recommended that a no-fault option be incorporated in the standard CTP cover, but rather has left the insurance industry to provide options for the motoring public. The possibility of a legislated no-fault cover should be kept under review for possible adoption in the future if demand increases and is not being adequately met by the insurance industry.

SUPPLEMENTARY ISSUES

There are a number of issues, including some raised in submissions, which are important to the operation of the scheme but which have not been covered under the major headings of this review. These are dealt with in detail in the last chapter of the Report.

SUMMARY OF RECOMMENDATIONS

The following is a complete list of the Committee's recommendations. The aggregate effect of these recommendations should achieve the objectives of the Terms of Reference and, at the same time, satisfy the requirements of National Competition Policy.

Affordability

1.1 An appropriate affordability index, based on the percentage that Class 1 premiums represent of average weekly earnings and an upper limit, be established and prescribed in legislation.

1.2 If at any time the insurers' Class 1 CTP premiums submitted for approval by MAIC are likely to result in the prescribed affordability upper limit being exceeded, the legislation should incorporate appropriate mechanisms, including review and redesign of the scheme, to ensure that the prescribed affordability upper limit is complied with.

Efficiency

1.3 Long-term target rates of efficiency be established, expressing as a proportion of the premium -

a) payments made to injured parties generally; *and*

b) payments made in respect of serious and other injury claims.

1.4 Necessary improvements be made to claims data collection, especially in terms of injury severity coding, in order to establish the long-term target rates in 1.3(b).

1.5 MAIC to consider whether the rate of efficiency proposed in 1.3 should be based on Class 1 or all classes and on accident year or payment year data.

Competition and Premiums Fixed by Government

2.1 The current system of government approved premium rates be replaced by a competitive premium determination process. It is proposed that insurers file premium rates six monthly by vehicle class which will be approved by MAIC subject to a floor and ceiling pricing range as determined from time to time. The model should retain the features of the Queensland Transport motor vehicle registration system.

Licensing Insurers

2.2 Licensing of insurers participating in CTP business in Queensland should continue, subject to the insurer's continuing compliance with the relevant Commonwealth Legislation and with the *Motor Accident Insurance Act 1994.*

2.3 Claims payment ratings by recognised, international credit rating organisations (e.g. a Standard & Poor's Insurer Financial Strength Rating) be included as a component of MAIC's overall supervision activities.

2.4 MAIC continue and enhance its supervision activities in regard to licensed insurers, in particular through close monitoring of adherence to business plans, and the commissioning of inspections, audits or actuarial investigations as and when appropriate.

2.5 MAIC should pursue greater cooperation and exchange of information with APRA in the carrying out of MAIC's responsibilities in terms of the Act for prudential supervision of licensed insurers.

Five Year Restriction on being Reinstated if Insurer Withdraws

2.6 The present five-year restriction on an insurer's re-entry to the scheme following withdrawal of a licence should be removed. However, MAIC's powers need to be appropriately strengthened to ensure that an insurer ceasing to write business in Queensland maintains a sufficient presence to manage all outstanding claims to finality and the degree to which an insurer has met this requirement should be taken into account if that insurer seeks a licence in the future.

Industry Deed Prescribing Means of Sharing Claim Costs Between Insurers

2.7 The Industry Deed should be retained.

Nominal Defendant as Only Insurer of Uninsured and Unidentified Vehicles

2.8 The current Nominal Defendant model should be retained.

Impediments to Change of Insurers

2.9 The current impediments to change of insurer by motor vehicle owners on renewal be removed as far as practicable, but only on the basis that the registration renewal date and the CTP insurance renewal date remain linked.

Minimum Market Share Requirements

2.10 The current minimum market share requirement for a licensed insurer as set down in Section 64 in the Act and Section 14 of the Regulation be removed.

Insurers Unable to Decline

2.11 The compulsory acceptance by insurers of requests for CTP insurance cover by motor vehicle owners be retained.

Commissions

2.12 Under a price competitive model, there should be no restrictions on insurers in relation to the payment of commissions, provided that commissions are paid out of insurers' profit margins, giving them the opportunity and discretion to determine their own basis of commission.

Provision of Cover in the First Instance for Negligence of Manufacturers

2.13 The current "first instance" cover for manufacturer's negligence be retained, recognising that it is in the interests of the community.

Lawyer Touting

3.1 The Act be amended to ban touting.

Lawyer Advertising

3.2 The concept of standards being set for advertising by the legal profession is supported. The control of advertising standards is a matter for the relevant authority to exercise appropriate control.

Reporting of Accidents to Police

3.3 The Act be amended to make reporting the accident to Police a prerequisite to a claim.

Early Notice of Injury/Notice of Claim

3.4 The claim advice currently required under Section 34 of the Act be replaced with a standard "Notification of Accident Claim" (NOAC) form that includes a medical certificate and an authority to obtain medical information.

3.5 The NOAC form should be received by the insurer as soon as practicable after the accident, but no later than the requirements currently prescribed for the Section 37 notice (see Recommendation 6.19). If a lawyer is consulted, the NOAC must be submitted within one month of the date of the consultation.

3.6 The insurer is required, within 14 days of receipt of a complying NOAC form, to make provisional determination of liability.

3.7 An Additional Information Form (AIF) similar to the current Section 37 notice be supplied by the claimant within one month, if requested by the insurer. This form which is to be in a prescribed format is to supplement the information already supplied in the NOAC form.

3.8 The establishment of a CTP call centre, supervised by MAIC, is strongly supported. Sufficient emphasis would need to be placed on the information available and knowledge levels of the staff of the centre to enable claimants to receive the information they require on all aspects of the scheme, including the rehabilitation process.

Unlimited Access to Common Law

3.9 The recommendations in respect of the claims process in this Report should be given time to take effect and be evaluated before any further consideration is given to the implementation of caps and thresholds in respect of damages awards, other than the caps and thresholds proposed for loss of consortium/ servitium and in respect of economic loss.

Medico-Legal Reports

3.10 The Act be amended to provide that, if the parties in the claims process cannot agree on an appropriate medical specialist(s) other than the treating specialist(s) to provide a medical report(s) to be admitted in evidence to determine those issues related to disability and impairment, a selection is to be made from a list of approved specialists agreed between relevant parties including the relevant professional bodies and the ICA. This list is to be administered by MAIC and the insurer will meet the cost of the medical report(s) so obtained.

3.11 An application to the Court should be available in special circumstances where one of the parties considers they are disadvantaged in relation to medical reports.

Compulsory Conferences

3.12 The Act should be amended to require compulsory conferences to be called by any party prior to the issue of Court proceedings. The conference process should conclude with final offers recorded and costs penalties applying from any subsequent judgement if the claim is not settled at the conference.

General Damages

3.13 The assessment of general damages at common law should remain unchanged at present.

3.14 If the affordability of the scheme comes under pressure and payments in respect of general damages are identified as a significant contributing factor, then further consideration will need to be given to the early implementation of a disability points scale similar to the South Australian model.

Economic Loss

3.15 The upper limit for recovery of economic loss claims to be $2,000 net of tax per week (indexed).

Legal Costs

3.16 The Act be amended to abolish the costs indemnity rule (including outlays) for claims where the total damages recovered are under $30,000, and to prescribe that maximum recoverable costs including all professional costs are $2,500 for claims not less than $30,000 but less than $50,000. However, costs penalties shall apply in accordance with part 5 of the Uniform Civil Procedure Rules to take effect from the commencement of the proceedings only where either party obtains a judgement no less favourable than its final offer to settle made prior to the commencement of proceedings.

Loss of Personal Comfort/Loss of an Employee's Services (Consortium/Servitium)

3.17 Claims for loss of consortium and/or loss of servitium to be restricted to claims where the assessed general damages component of the injury claim, before contribution for liability, is in excess of $30,000.

3.18 The upper limit for recovery of loss of servitium claims to be $2,000 net of tax per week (indexed) consistent with the limit proposed for economic loss claims.

Awards for Care (Provided Free to Injured Persons - Griffiths v Kerkemeyer)

3.19 The Act be amended to stipulate that claims for gratuitous care should only apply:

- **where it can be demonstrated that the activities now being provided gratuitously were activities previously undertaken by the injured party; *and***
- **if the assessed general damages component of the injury claim, before contribution for liability, is less than $30,000, the provider has suffered loss of income.**

The rate at which such services shall be assessed is the commercial rate for such services or, in the event of the provider earning income, the rate of lost income or the commercial rate whichever is the lesser.

Information Packages/Community Awareness

4.1 Information packages be developed by MAIC and made available to claimants and other interested parties to explain the claims and rehabilitation processes, to encourage early notification of claim and to highlight the advantage of early access to funded treatment.

Improved Information Channels for Service Providers

4.2 Appropriate initiatives for improved information flow for medical and rehabilitation service providers be implemented.

Protocols for Direct Contact between Insurers and Claimants

4.3 Protocols should be implemented which enable insurers to contact claimants directly with respect to rehabilitation, provided the claimant's solicitor is kept informed of the nature and content of any communications.

4.4 Insurers should have the option of forwarding to the claimant copies of correspondence between the insurer and solicitor, so that all parties to the claims process are informed.

Claimant's Obligation to Mitigate Damages

4.5 Section 54 of the Act be amended to place a greater obligation on the claimant in respect of mitigating injury.

Benchmarks for Speed of Delivery and Effectiveness of Rehabilitation

4.6 MAIC should develop benchmarks and performance standards by which the speed of delivery and effectiveness of rehabilitation can be measured and monitored on an ongoing basis. The benchmarks and performance standards should be related to the scheme overall and to individual insurers.

Mediation to Resolve Disputes about Rehabilitation Issues

4.7 Mediation should be made available to assist both claimant and insurer to resolve potentially disputable rehabilitation issues. The mediation process should be facilitated by MAIC acting as an independent third party.

Clinical Practice Guidelines and Treatment Outcome Standards

4.8 While the Committee acknowledges the difficulties of developing appropriate clinical practice guidelines, they are seen as important and continued development should be encouraged and supported. Once a set of guidelines has been developed, it should be adopted wherever possible, if necessary with legislative backing.

Schedule of Fees for Treatment and Medical Reports

4.9 Insurers, direct or through the ICA, should negotiate with health provider associations on acceptable fees for treatment and the provision of medical reports in relation to CTP matters. Legislative control and prescription of such fees for CTP purposes is not supported.

No-fault Long-Term Care Component

5.1 The Queensland scheme should remain a fault-based common law scheme.

5.2 The introduction of a no-fault component for catastrophically injured persons not proceed at this time, but the matter be kept under review by MAIC.

Optional First Party Cover

5.3 MAIC should take steps to inform the motoring public that compensation is not payable unless fault can be established and that individuals, particularly drivers, should consider some form of personal accident insurance policy to cover this and other potential accident situations.

5.4 The insurance industry should be encouraged to develop and promote meaningful first party policies.

5.5 MAIC should keep under review (subject to 5.4) the possibility of a legislated product to provide standardised first party cover, delivered with CTP, on an optional basis.

Nominal Defendant

6.1 The Nominal Defendant should have statutory powers to access information that will facilitate tracing debtors resulting from personal injury claims arising out of the driving of uninsured motor vehicles.

Quality of Data

6.2 MAIC needs to establish standards to ensure both quality and consistency of scheme data. There should be increased auditing by MAIC to ensure standards are achieved and legislated sanctions should be considered for non-compliance

e.g. cost recovery for work involved in achieving compliance. For persistent and serious non-compliance, suspension of a licence may need to be considered.

6.3 The scheme should be transparent to all stakeholders and MAIC should continue to provide all pertinent information on at least a quarterly basis.

Structured Settlements

6.4 MAIC continue to promote the option of structured settlements.

Liability for Workplace Accidents

6.5 The Act be amended to restrict claims to injuries arising from a single event and not conditions that have developed over a period of time.

Inevitable Accident

6.6 No action be taken to amend the Act to remove "inevitable accident" as a common law defence in respect of liability.

Definition of Collision

6.7 No action be taken to include a definition of the term "collision" in the Act.

Trailers

6.8 The existing Nominal Defendant cover in respect of trailers should be broadened to include accidents outside of Queensland, in respect of liability attaching to Queensland registered trailers with a gross vehicle mass of less than 4.5 tonnes, and not otherwise indemnified under a policy of insurance on the hauling vehicle. For large trailers, broader insurance cover should be implemented, using the existing Class 24.

Enforcement

6.9 Continued funding through the "Administration Fee" to Queensland Transport for enforcement activity is supported provided that appropriate performance benchmarks and monitoring arrangements are in place.

6.10 The Act should be amended to define the term "hire vehicle" so as to encompass a vehicle *offered* for hire.

6.11 An increase in the penalty under the Justices Regulation 1993 provision should be implemented for vehicles knowingly insured in the wrong class.

Premium Raising

6.12 CTP cover continues to be funded as an insurance premium and remain integrated with motor vehicle registration.

Premium Collection

6.13 The Committee strongly endorses the continued collection of CTP premiums by Queensland Transport, including six-monthly renewal.

Premium Relativities - Taxis

6.14 The premium relativity for taxis should be closely monitored, and incremented gradually to a level consistent with their assessed class risk rating. The taxi industry should continue to be encouraged to implement strategies designed to improve driver accident records and claims experience and hence reduce the current risk relativity loading.

Premium Relativities - Trucks

6.15 There should be no change at this stage to the current classification of trucks, which is consistent with nationally determined standards.

Premium Relativities - Motor Cycles

6.16 The existing rating method for motorcycles should remain unchanged.

Levies

6.17 The Act should be amended to remove the existing provision regarding the hospital and emergency services levy, and to provide that the Treasurer shall determine from time to time the contribution towards hospital and emergency services costs which should be funded from the CTP premium.

Early Notice of Injury

6.18 The requirement pursuant to Section 34(1)(a) of the Act that the driver or owner of the motor vehicle give written notice to the insurer within one month after the accident, should be deleted.

Notice of Claim Details

6.19 The Act should be amended to strengthen the requirement that a "satisfactory" explanation be provided if the claim is lodged outside the nine month prescribed period (three months for the Nominal Defendant).

6.20 The existing time limits for giving notice to the Nominal Defendant in respect of unidentified vehicles should be retained.

Time Limit for Insurers to Resolve Liability under the Industry Deed

6.21 There should be no change to the current requirement for insurers to resolve disputes between themselves in regard to liability within two months.

Disclosure of Information

6.22 The Act should be amended to make the obligation to disclose information equal for the insurer and the claimant.

Alcohol and Drugs

6.23 Section 58 of the Act should be amended to align with the wording of the *Traffic Act 1949* in respect of alcohol and drugs.

Fraud

6.24 The Act should be amended to facilitate the prosecution of fraud through improved investigative powers for MAIC and the establishment of a two year time limit for prosecutions.

Statute of Limitations

6.25 The current time limits for filing of common law actions in respect of CTP claims are considered appropriate and should not be changed.

Summary Judgement (Interlocutory Judgement)

6.26 The Act should be amended so that summary judgements (interlocutory judgements) in CTP damages claims are prevented.

Court Discount Rate

6.27 The Act should be amended to fix a discount rate of 5% for all components of damages awards.

Interest on Damages

6.28 The Act should be amended to tie interest rates on all CTP damages to the 10 year Treasury Bond rate.

Accident Prevention/Rehabilitation Grants

6.29 MAIC should continue to fund appropriately targeted accident prevention and rehabilitation research projects and initiatives. The Committee considers that MAIC would benefit from broad-based input via, say, an advisory committee to assist with deciding priorities.

Governance

6.30 Section 11 of the Act be amended to allow for more than one advisory committee to be appointed.

Claims Process Benchmarks

6.31 Benchmarks need to be developed for the time taken to decide on liability and resolve claims with the benchmarks to be reviewed after the revised claims process outlined in this Report is finalised.

Obligation to Provide Rehabilitation Services

6.32 The Act be amended to provide that, where there is a likelihood of contributory negligence, notification of the estimated cost and impact of the rehabilitation services to the claimant prior to the provision of rehabilitation be a pre-requisite for an insurer seeking any recovery of expenses paid.

6.33 The Act be amended to clarify references to "reasonable and appropriate" rehabilitation and deductions from damages of amounts paid by the insurer.

CONTEXT

ACCIDENT COMPENSATION PHILOSOPHY

There are three approaches to compulsory motor vehicle accident compensation insurance adopted generally by the various State and Territory jurisdictions. These are outlined below.

Common Law

A common law system seeks to provide an opportunity for third parties injured as a result of a motor vehicle accident to bring an action based on negligence for compensation against an owner/driver.

It is a fault-based system which requires proof of liability. The ultimate recourse, where liability or quantum of compensation cannot be settled through negotiation, is the Courts.

Whilst the Queensland *Motor Accident Insurance Act 1994* has placed an emphasis on the rehabilitation of injured persons, the basic philosophy of indemnity for owners/drivers is still a powerful influence on the way claims under the scheme are managed.

No-Fault

A no-fault system provides coverage for any party injured in a motor vehicle accident. It is based on the premise that it is in society's best interests to ensure that motor accident victims return from injury at their optimum capacity without the strains on family and taxpayer resources which would otherwise apply should such a scheme not exist.

A pure no-fault scheme would operate without any caps on maximum payments in respect of medical or rehabilitation expenses and future care. Lump sum payments would normally be based on a Table of Injuries.

The focus of such a scheme is clearly on medical costs, rehabilitation and future care for all parties.

Full Coverage (i.e Combination of Common Law and No-fault)

Under this approach, certain benefits (medical, rehabilitation, future care, loss of earnings) are available to injured persons regardless of whose fault the accident might be. These are commonly called no-fault benefits or scheduled (statutory) benefits. In addition to no-fault benefits, some motor accident victims are entitled to pursue under common law general and other damages arising from personal injuries suffered as a result of the accident.

The Tasmanian scheme is an example of a combined common law/no-fault scheme.

CURRENT SCHEME

Queensland has had a fault-based common law compulsory third party (CTP) motor vehicle insurance scheme since 1936, providing access to compensation for those persons injured in motor vehicle accidents where negligence can be established against an owner or driver.

A review of the scheme commenced in 1989 revealed growing concerns about the lengthy delays in settlement of claims and the lack of rehabilitation services for injured persons. The review resulted in the Government introducing the *Motor Accident Insurance Act 1994*, the legislation under which the scheme currently operates.

The primary objectives of the Act are:

a) to continue and improve the system of compulsory third party motor vehicle insurance and the scheme of statutory insurance for uninsured and unidentified vehicles operating in Queensland;

b) to provide for the licensing and supervision of insurers providing insurance under policies of compulsory third party motor vehicle insurance;

c) to encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents;

d) to promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents;

e) to establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; *and*

f) to promote measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their results.

Features of the Scheme

The CTP scheme is overseen by the Motor Accident Insurance Commission (MAIC) which is responsible for:

- licensing and prudential supervision of insurers under the scheme;
- monitoring of claims and general provision of rehabilitation; *and*
- recommendations to Government on premiums and levies payable under the scheme.

The legislation requires that motor vehicles used on a road or in a public place be insured against legal liability for personal injury.

The Act also establishes the Nominal Defendant to determine liability for and management of claims by persons injured in accidents with uninsured or unidentified motor vehicles. There are currently six licensed insurers offering CTP insurance. One insurer has a licence status of suspended, pending the run-off of its outstanding claims. Five insurers have ceased to hold licences since the Act commenced in 1994.

Claims Management

The *Motor Accident Insurance Act 1994* establishes:

- principles for determining the insurer;
- duty to notify accidents, provide information and notify claims;
- claims procedures;
- access to rehabilitation; *and*
- a process for Court proceedings.

A person injured in a motor vehicle accident who intends to make a claim under the legislation is required to notify the relevant insurer within one month of contacting a solicitor. A Notice of Claim is to be lodged within nine months of the accident or nine months after the first appearance of symptoms of the injury. The Notice must contain a detailed statement of facts and is to be sworn.

The Notice enables the insurer to make an informed assessment of liability and move into the rehabilitation and settlement phases more quickly. Once the insurer receives a Notice, the insurer has one month to determine whether the Notice complies with the legislative requirements. From the point where it is determined that there is compliance, the insurer has six months to determine liability.

Disputes Between Insurers

The Industry Deed, which all insurers must sign as a condition of the licence, requires insurers to determine which insurer is to be the claim manager and the basis on which claim costs are to be shared. Failing agreement, an arbitrary process is defined in the Regulation. In any other case where issues remain unresolved after two months, the matter is referred to a referee nominated by MAIC.

Rehabilitation

Rehabilitation is a principle feature of the *Motor Accident Insurance Act*. The 1994 Act introduced specific rehabilitation provisions to the scheme which enable an injured person to consider early recovery options relevant to his/her injury experience.

Rehabilitation provisions are designed to:

- promote, encourage and ensure access to rehabilitation services;
- empower an injured person to consider early recovery options;
- assist in optimum recovery for the injured person;
- enable an early return to gainful employment, where appropriate; *and*
- expedite settlement of a claim.

Rehabilitation should be incorporated into a licensed insurer's business activities as it is in fact an integral part of claims management.

Critical to the success of rehabilitation are early referral, assessment, and development and implementation of an approved rehabilitation plan.

Premium Pricing

An important function of MAIC is to recommend to the Government premiums payable for CTP insurance under the Act.

The legislation prescribes a process to be followed in setting rates, which involves:

- seeking submissions from insurers and organisations representing motorists;
- commissioning of actuarial advice;
- recommending premium levels (including levies) to the Treasurer;
- making of a Regulation; *and*
- tabling in the Legislative Assembly, the Insurance Commissioner's recommendations.

Levies

The legislation provides for a number of levies designed to:

- meet the cost of management of the scheme by MAIC;
- fund claims against the Nominal Defendant;
- meet a reasonable proportion of the costs associated with public hospital and emergency services for motor vehicle accident victims; *and*
- cover the costs incurred by Queensland Transport in the collection of CTP premiums and the capture and dissemination of data for use by MAIC and licensed insurers.

ADVANTAGES/DISADVANTAGES OF THE CURRENT SCHEME

The Committee sees a number of advantages and disadvantages with the current scheme. These include:

Advantages

- The compulsory nature of the scheme provides full indemnity for owners/drivers of all registered motor vehicles. The link between registration and compulsory third party insurance provides efficiencies in collection of premium and in enforcement.
- Community rating by class of vehicle helps to spread the cost of CTP insurance across the motor vehicle owning public.
- A regulated scheme underwritten by private insurers removes financial risk from the Government, disciplines pricing of premiums and ensures premiums are adequate for the risks.
- Unlimited access to common law serves to ensure that all injured parties who are not at fault can pursue a claim for compensation in respect of their injuries.
- The requirement for insurers to provide reasonable rehabilitation services to a claimant assists in early recovery from injury, reduces the length of incapacity and the costs to the health system. It is likely to reduce the total cost of claims through the reduction of future economic loss and treatment costs.
- MAIC's role in funding accident prevention and rehabilitation programs is seen as very positive and strongly supported.

Disadvantages

- Motor vehicle owners do not benefit from price competition with the current regulated premium-setting process.
- Community rating by class does not allow insurers to adjust premiums in accordance with individual risk.
- The licensing and regulation of insurers is seen to discourage the entry of new insurers into the market.
- The process of linking CTP insurance premium collection with motor vehicle registration places restrictions on the motor vehicle owner's opportunity to change CTP insurer.
- The process of regulated premium setting is seen to be political.
- The common law process can mitigate against early delivery of rehabilitation services because of the adversarial nature of the system.
- The scheme is fault-based and provides no coverage for at-fault owners/drivers.

MARKET RESEARCH

The Committee's preliminary view was that there was not a wide appreciation or understanding of the CTP scheme within the community. To better gauge this, the Committee engaged a market research agency to conduct a survey of community expectations, understanding of and attitudes towards the operation of the scheme in Queensland. More detail on the market survey results is provided in Appendix 2.

The survey method was two-phased, using quantitative and qualitative methods in order to meet the study objectives.

The key objectives of the market research were to ascertain the public's awareness of and understanding of CTP, in respect of the scope of coverage and the current cost and to assess any perceived need for the scheme to change in any way.

Whilst awareness of the CTP scheme was much higher than the Committee anticipated, understanding of the scheme is limited, with close to half of drivers surveyed saying they have a limited understanding or no understanding at all.

The majority of drivers surveyed understand that they are not covered by CTP if they are at fault, or if they are the only vehicle involved in the accident. However, around 30% do believe they would be covered in these instances. This is a matter for concern.

All of the factors currently covered by CTP are rated as highly important, particularly ambulance, hospital and medical costs, loss of income during recovery period and the cost of long term care.

There was relatively poor knowledge of what the current CTP premium actually is, despite the recent publicity. However, when advised of the annual premium level of $286 for a private vehicle, 73% indicated that it was good value for money or that the price was about right.

Opportunity was also taken in the market survey to test a number of suggested initiatives to improve the scheme. Results are reported in the relevant sections of this Report and in Appendix 2.

MAJOR ISSUES AND RECOMMENDATIONS

STRATEGIC FRAMEWORK FOR THE SCHEME

A strong priority of the Committee has been the development of several high-level system criteria against which the scheme's performance can be measured and monitored in the years ahead. These criteria relate to scheme affordability and scheme efficiency.

Affordability

An individual motorist's view of the affordability of CTP insurance will depend on a number of factors, including financial status, general attitude to insurance and any previous experience with claiming under the Act (either personally, or by family or acquaintances). Their view may also be influenced by whether they perceive the product as a government tax and whether they consciously separate the cost of CTP from the cost of registration.

In the market research, there was a wide range of responses regarding the cost of CTP for a private vehicle. 44% of respondents thought it was below $230; 24% thought it was above $287 and 16% could not respond. This seemed rather surprising as there was a considerable amount of media publicity prior to and at the time the 1999/2000 premium increase was announced. Also, the premium has not been below $230 since September 1998.

A partial explanation could be that only a small proportion of motorists would have received their 1999/2000 renewal notices at the time the survey was undertaken. More likely though is that motorists have difficulty separating CTP insurance from the registration process and see vehicle registration fees and CTP premium as one payment to the Government.

When informed of the current CTP premium, respondents were then asked to rate it on a value for money scale. 31% considered that the premium was about right, 42% considered it was good value for money and 17% said it was poor value for money. 10% of the sample did not respond to the question.

Maintaining appropriate affordability that is acceptable to the general motoring public is critical to the long-term viability of the scheme. The ownership of motor vehicles extends widely through the community and the cost of CTP needs to be appropriate but restrained so as not to become a burden on those on lower and fixed incomes. Affordability is also a key in maintaining a high proportion of insured and registered vehicles, without which the scheme itself would fail.

From an overall perspective, the scheme is judged to be approaching the limits of affordability as a result of the 1999/2000 premium rise. Structures therefore need to be put in place to moderate further premium rises to levels more in keeping with increases in capacity to pay. The Committee considers that an affordability index needs to be devised and adopted as a serious indicator and trigger for future action in relation to the scheme.

The suggested indicative index is the proportion that the Class 1 premium is of Queensland Average Weekly Earnings (adult full-time ordinary time basis). Class 1 includes private and business cars. The current affordability ratios on equivalent bases for the various schemes in Australia are shown in a graph earlier in this Report. The specific affordability upper limit can be developed as the Committee's recommendations are implemented. It will also need to take into account the goods and services tax (GST). The relevant premium indicator in a competitive model will also need to be chosen e.g. average of Class 1 premiums charged by insurers.

Other components were considered (for example, the fortnightly pension rate). For simplicity, it was decided to target one income measure only. Average Weekly Earnings (AWE) is

considered a relatively broad-based measure of capacity to pay. In any case, it would be expected that, over time, alternative measures would move in a consistent manner to AWE.

The intent of the proposed affordability index is that if the CTP Class 1 premiums submitted by insurers to be approved by MAIC are likely to result in the affordability upper limit being exceeded, mechanisms would be triggered including review and redesign of the scheme, to ensure that the prescribed affordability upper limit is complied with. However, it is not the intention to cap premiums at an artificial level during any transitional period.

The index also has the benefit of providing a clear signal to parties (lawyers, insurers, etc) involved with the scheme of the need for its continued sustainability and their need to participate in measures to correct any future emerging imbalance.

Recommendations

1.1 An appropriate affordability index, based on the percentage that Class 1 premiums represent of average weekly earnings, and an upper limit be established and prescribed in legislation.

1.2 If at any time the insurers' Class 1 CTP premiums submitted for approval by MAIC are likely to result in the prescribed affordability upper limit being exceeded, the legislation should incorporate appropriate mechanisms, including review and redesign of the scheme, to ensure that the prescribed affordability upper limit is complied with.

Efficiency

The cost of delivery of benefits to injured parties is an important part of the affordability of the scheme. Delivery costs include legal and associated costs, insurer expense and profit allowances and administrative levies. In the 1999/2000 CTP premium, the proportion of the premium which is expected to be paid to injured parties is assessed at 67%, with the corresponding cost of delivery assessed at 33%. Over the past five years the premium efficiency has averaged around 63%. (The prospective efficiency for 1999/2000 is higher because expense allowances have not risen at the same rate as the cost of claims. In addition, the premium included a reduction from 8.5% to 6% in the insurers' profit allowance.)

The Committee is of the view that the current efficiency of the scheme is too low. The recommendations of this Report include a range of suggestions in relation to claims management efficiencies, legal costs and insurer competition which if implemented in full are expected to improve the efficiency by 5% to 72%. Ideally, the Committee sees 75% as an appropriate longer-term target, although it will not be easy to achieve, particularly given the GST effect on delivery costs.

A second aspect of scheme efficiency is the relative proportion of claim payments made in respect of serious injuries and minor injuries. The recent increases in minor claims, many with little or no merit, have dissipated funds disproportionately. Further work needs to be done on the coding and categorisation of claims to arrive at an agreed measure of serious and minor claims, so that an appropriate target ratio can be developed and monitored. A number of the recommendations of this Report are directed at containing the frequency and cost of minor claims, which by definition would lead to an improvement in the ratio of payments made in respect of serious claims.

Further consideration will need to be given to whether the proposed target rates of efficiency should be based on the Class 1 premium, the average premium or some other measure and to the timeliness of using accident year payments (the more accurate measure) versus the earlier availability of payment year data.

Further aspects of scheme efficiency and effectiveness include the speed of delivery and effectiveness of rehabilitation, the time taken for determination of liability by insurers and the time taken to achieve final settlement of claims. Recommendations on these matters are made elsewhere in this Report.

Recommendations

1.3 Long-term target rates of efficiency be established, expressing as a proportion of the premium -

a) payments made to injured parties generally; *and*

b) payments made in respect of serious and other injury claims.

1.4 Necessary improvements be made to claims data collection, especially in terms of injury severity coding, in order to establish the long-term target rates in 1.3(b).

1.5 MAIC to consider whether the rate of efficiency proposed in 1.3 should be based on Class 1 or all classes and on accident year or payment year data.

COMPETITION AND NATIONAL COMPETITION POLICY ISSUES

Current Position

The scheme is common law based and covers liability for personal injury arising from motor vehicle accidents, with the policy of insurance indemnifying an owner or driver of a motor vehicle who is found liable, in whole or in part, for the cause of the accident.

As is the case for all Australian jurisdictions as well as most jurisdictions in the world, CTP insurance in Queensland is compulsory for all motor vehicles.

The scheme is underwritten by the insurance industry and has operated on that basis since 1936. The policy of insurance is prescribed in legislation and there is no opportunity for the insurer or the motor vehicle owner to vary the terms of cover, although owners can independently take out other supplementary cover, e.g. personal accident insurance, but not as part of the CTP policy. The premium is fixed by regulation and differs only by vehicle class. With multiple insurers involved in delivery of the product, an insurer cannot refuse to underwrite or decline to renew a policy for a motor vehicle owner. Individual risk rating is not a feature of the scheme.

The Nominal Defendant, as a Government instrumentality, is the insurer of last resort, carrying the risk for unidentified and uninsured vehicles as well as the costs associated with claims should an insurer become insolvent.

Insurers wishing to participate in the Queensland scheme must be licensed with MAIC and, as licensed insurers, are subject to ongoing prudential supervision.

Premiums are determined by Government following a quite prescriptive legislative process. The legislation requires a recommendation from the Insurance Commissioner, having first obtained actuarial advice and having taken submissions from insurers and organisations representing motor vehicle owners.

Since inception of the revised scheme in 1994, the expertise of independent actuaries have featured strongly in the premium setting process. The objective is to provide a fully funded premium that covers the insurers' risk and allowances for administrative costs and profit.

Following withdrawal by insurers from the scheme in the late sixties and early seventies, the business was left to a duopoly of Suncorp and FAI. With the re-entry of a number of insurers in the early nineties and despite efforts by the new entrants to gain market share, the scheme has remained very much dominated by Suncorp and FAI. The combined market share of the two insurers at June 1999 was 83%. With more insurers entering the market, the motor vehicle owner arguably has benefited through relationship marketing activity. Through this activity, motor vehicle owners have been able to obtain discounts on other insurance products purchased from their CTP insurer.

The scheme, apart from the more recent years, has enjoyed relative stability and premiums have compared favourably with other jurisdictions.

Problems/Concerns

Appropriate compensation for injuries caused by negligence arising out of motor vehicle accidents needs to be available. Without compulsory cover there would be some uncertainty about the capacity of owners/drivers to meet the cost of compensation and some risk of increase in unfunded public health demand for medical and hospital services, as well as other Government services.

There is competition between insurers for market share, but with fixed premiums the benefits to the consumer are limited. The NCP review undertaken by Argyle Capital and Ernst &

Young has established that the current scheme does not meet the Public Benefit Test set down under NCP principles and guidelines. According to the report, there are provisions of the legislation which impact on insurers and as such operate as barriers to market entry. These include -

- insurers to obtain and hold a minimum market share (5% in five years);
- if a licence is withdrawn the insurer cannot re-enter the scheme for a period of five years; *and*
- constraints on the level of commissions payable.

The Committee, having independently concluded that the Queensland community is not appropriately served by current arrangements, concurs with the views of the NCP consultants. The Committee is further of the view that price competition in the scheme could deliver a better result for the motor vehicle owner.

Under current arrangements, premium calculations are based on industry wide averages, which can provide increased profit margins to insurers with economies of scale and reduced margins for insurers with small CTP Queensland market shares and limited business of similar type elsewhere. The premium process does not take account of any excess profit or funding shortfalls relating to past years' premium assessments.

The Committee acknowledges that MAIC's role is a difficult one in maintaining a balance between the needs of underwriting insurers and the paying motor vehicle owner. For Government though, the current premium setting process can result in sharper upward adjustments to premiums than could be possible under a Government run monopoly (with long-term funding and fluctuating reserve mechanisms), or in a deregulated market.

A major concern with the current premium setting process is that it can be a "cost plus" exercise. The system, under current rating methodology, can actually reward overall scheme inefficiencies. The premium is based on industry wide averages and poor performance can result in higher claims cost. These costs are the primary driver in the premium calculation.

The examination of various alternative schemes has highlighted the advantage of a Government monopoly with economies of scale, the capacity to take a longer-term view in premium setting and the capacity to reserve in profitable periods. However, a Government run monopoly brings a range of issues including the shift of risk to the Government balance sheet and the risk that a future Government could resist adjusting premiums at the appropriate time and to the appropriate level. Also, the track record of government in some other jurisdictions has not been a good one, with undue involvement in the premium determination process and poorly directed use of assets set aside to cover future liabilities which have compromised the integrity of the schemes and brought additional cost burdens to motor vehicle owners to restore the scheme to financial viability.

The Committee also considered a tender process for future scheme underwriting, but this concept received no community or insurance industry support and on the basis that it could severely impact on the ongoing management of the scheme, the concept (unless undertaken in small tranches) was not considered worth pursuing.

Submissions/Arguments

The compulsory nature of the scheme has been widely supported in submissions and it is regarded as essential to the continuation of an orderly, financially stable and fair third party insurance scheme. Only one submission suggested that it be non-compulsory.

Submissions generally supported the existing scheme and advocated no change to the premium setting process. There were calls for a change to a "file & write" system from

some insurers. The change of insurer aspect also created a level of comment, in the main seeking greater flexibility.

The Committee in its examination of the scheme, closely assessed the various models operating in Australia and also considered some of the overseas models. In most States the product is delivered by a Government run monopoly with a single insurer monopoly in the ACT. Queensland and NSW are the only States with multiple insurers.

In the present scheme, lack of price competition is a major barrier to insurers gaining market share and in the Committee's view, this is compounded by the impediments currently affecting the motor vehicle owner's capacity to transfer to a different insurer on renewal. The most obvious current barrier relates to the motor vehicle owner who chooses to pay via Bpay facility, credit card or Australia Post, under which change of insurer is not possible.

As mentioned earlier, the NCP report has shown that the current Queensland scheme does not pass the NCP Public Benefit Test. Accepting that there should be greater competition in the scheme, the Committee has considered various options including the "greenslip" concept of NSW and linking of CTP with motor vehicle property damage insurance. It was of particular note that both systems are well placed to provide rewards for good driving.

The Committee is also conscious of the likely added scheme costs that could ensue with individual underwriting and is particularly attuned to the relatively low costs associated with the product being delivered through the Queensland Transport motor vehicle registration system. The Queensland Transport system also has the major benefit of directly linking CTP and registration and this combats the level of uninsured vehicles. Furthermore, this system is much more convenient for customers than many other alternatives.

Proposals

The Committee is of the opinion that motor vehicle owners would benefit by the introduction of a price competitive model that maintains the lower delivery costs and convenience achievable through the Queensland Transport registration system.

The system envisaged is a Vehicle Class Filing model with each insurer required to file a premium every six months for all classes of vehicles which would apply to all new business and renewals from the effective date.

This concept would require MAIC to undertake an actuarial analysis of the scheme and establish floor and ceiling premiums as well as the appropriate class relativities. This regulatory function is seen as necessary to maintain a level of stability and ensure that insurers in pursuit of market share do not go below a reasonable "full funding" level. Each insurer would make its own judgement on its premium rates which would be filed with MAIC on a six monthly basis. Providing the rates were within the floor and ceiling ranges, the rates would be approved and set into the Queensland Transport registration system.

All notices issued subsequent to the effective date would show the new rate applicable for the current insurer. It is envisaged that the registration notice would be explicit in identifying the CTP insurance costs and levies and indicate that insurers offer differing rates for CTP. It is not envisaged that premium rates filed by each insurer would be shown on the renewal notice. The Committee would prefer that any dissemination of premium rates is left to the insurers as part of their marketing strategies.

It is realised that any change from the fixed premium structure for Queensland Transport will create additional costs. Preliminary assessment by Queensland Transport indicates that there would be about $232,000 development costs and ongoing additional costs of $1.4m per annum (which equates to approximately 60 cents per policy per annum) for the Vehicle

Class Filing model. The most significant impact relates to Queensland Transport Customer Service Centres.

A cost analysis of the model based on a fixed risk premium component indicates that the average CTP premium across all classes could be delivered in a range of $278 to $296, i.e. no greater than the currently approved premium. On this basis, the Class 1 premium could be in the range of $267 to $284 (currently $286).

The scheme actuary has advised that a more optimistic approach to assumed investment returns, required levels of super-imposed inflation and claims outcomes could result in the following reductions in an insurer's required risk premium component.

Variable	*Impact on Risk Premium $ increase/(decrease)*
For each 1% increase in discount rate	(8.20)
For each 1% reduction in super-imposed inflation	(9.40)
For each 5% reduction in claims frequency or claims size	(10.70)

Optimistic assumptions are shown here because views have generally been expressed that the current centrally set basis tends to be conservative. It is of course possible for particular insurers to hold a contrary view.

The cost ranges per policy per annum for insurers for specific activities are at least as wide as follows -

	Width of Range $
Acquisition	12
Claims handling	7
Reinsurance	5

When all the options are combined, it highlights the point that insurers have a range of variables to consider in setting their competitive position and this should benefit the motor vehicle owner. Further, the proposal removes the Government from setting fixed prices (although overall control on scheme affordability and viability will be exercised through MAIC).

The detailed NCP issues are now discussed.

Competition and premiums fixed by Government (Areas of Concern 3, 17, 28 and 29)

A compulsory scheme can be highly efficient. It enables the spread of risk and provides lower premiums to the motor vehicle owner than would be the case if individuals sought such insurance independently.

The NCP review examined various models for the delivery of the product and to the degree it was possible, quantitative analyses have been undertaken testing each option. The Committee, in expressing a concern with the overall efficiency of the scheme, does recognise the cost efficiencies associated with the renewal process linked to the Queensland Transport registration system. The Committee noted comment in the NCP report that policyholders are able to obtain cross benefits on other insurance products (reductions in premiums on comprehensive car insurance and home insurance). However, in the Committee's view, the

consumer is not getting the full benefit of competition, which should result from private sector involvement. The lack of competition primarily stems from the fixed premiums which apply under the scheme.

In many other jurisdictions, the insurance is delivered by a monopoly, in most cases by a government owned enterprise. There are distinct benefits in a monopoly insurer including cost savings compared to the present Queensland scheme. In addition, there are advantages such as the capacity to take a more conservative approach to premium adjustments and the ability to smooth premium increases.

On balance, the Committee recognises the value of private sector underwriting, especially with the scheme carrying outstanding claims liabilities in the order of $2 billion. Further, a change from the current arrangement potentially would come at a cost to the economy and, consequently, the Committee favours continuation of a scheme that retains private sector involvement.

The NCP review evaluated the introduction of a NSW type "file & write" scheme for Queensland. Such a scheme is recognised as the closest model to a "free market" operating in Australia and has the capacity to deliver limited individual rating for motor vehicle owners. The evaluation also highlighted the delivery costs and the overall inefficiency of that type of scheme in terms of the percentage of premium which is paid to claimants. By comparison to Queensland's assessed 62.8% of premium paid to claimants over the last five years, the NSW scheme delivered 57.2%. The Committee is strongly of the view that adoption of a NSW style "file & write" model for Queensland could come at significant overall cost and inconvenience to the motor vehicle owner. The analysis indicates that such a system in Queensland would result in an overall increase of premiums, with potentially large increases for some motorists, including younger drivers and those with poorer driving records.

Individual risk rating would also bring a range of problems as has become apparent in the NSW scheme. Anecdotal evidence indicates that strategies extend to avoidance of risks from certain socio-economic groups.

The NCP report suggests that if the current scheme design was retained and percentage allowances in respect of insurers' acquisition, policy and claims handling costs were revised, some savings could be made on future premium assessments. However, the Committee is inclined to the view that the present scheme does not provide sufficient inducements through competitive premium pricing to attain scheme efficiencies.

Modelling the proposed Vehicle Class Filing system on current premium figures suggests introduction of such a system could mean a saving in the order of $20 on the average premium (around $45 million to Queensland motor vehicle owners). However, with the dynamics of competition, the Committee believes that the premium offerings and/or other benefits will represent even greater savings/advantages over the current highly regulated model.

The Committee is confident that the Vehicle Class Filing model will introduce a greater level of competition to the scheme and will further encourage the development of marketing relationships (e.g. other benefits such as no-fault options) that will be to the benefit of motor vehicle owners. However, the Committee also recognises that the model does have a level of risk in scheme instability if premium rates and market shares fluctuate widely. The role of MAIC will be crucial in maintaining an appropriate level of stability through the setting of well chosen floor and ceiling rates. Also in the interests of stability of the scheme, new insurers will be restricted from commencing to write business other than from the beginning of premium filing periods.

Recommendation

2.1 The current system of government approved premium rates be replaced by a competitive premium determination process. It is proposed that insurers file premium rates six monthly by vehicle class which will be approved by MAIC subject to a floor and ceiling pricing range as determined from time to time. The model should retain the features of the Queensland Transport motor vehicle registration system.

Licensing Insurers (Area of Concern 4)

The *Motor Accident Insurance Act 1994* allows a body corporate carrying on the business of general insurance to apply to MAIC for a licence to issue policies for CTP insurance.

Sections 62, 63 and 64 of the Act set out the provisions for the licensing of insurers and the conditions of the licence.

Section 10 of the Act, which outlines MAIC's functions, requires MAIC to establish and revise prudential standards with which licensed insurers must comply.

The applicant for a licence must be carrying on the business of general insurance in Queensland and must have executed the Industry Deed prior to granting of the licence.

Under Commonwealth legislation, insurers writing business in Australia must be licensed with the Australian Prudential Regulation Authority (APRA). APRA undertakes extensive analysis of an insurer's solvency and capacity to meet ultimate claims cost. However, information pertaining to an insurer's financial capacity is not currently shared with the State jurisdiction other than in terms of copies of appropriate insurers' returns to APRA that are regularly provided to MAIC.

It would not be the intention of the Committee that MAIC set up and resource a facility to effectively duplicate the work of APRA. However, MAIC should explore with APRA greater opportunity for sharing information. This process is currently underway with the drafting of a memorandum of understanding that will be signed by APRA and MAIC.

Under the Act an insurer is required to prepare and keep up to date a business plan for its CTP business and adhere to the plan. An important role for MAIC is to monitor the CTP business plan of an insurer to ensure that the plan, and the insurer's CTP operations, remain appropriate for the financial strength of the insurer.

The CTP scheme attracts a large annual premium income (estimated at $685 million for 1999/2000) with an outstanding claims liability estimated to be in the order of $2 billion. As the Nominal Defendant is insurer of last resort, this is a very high exposure for the Government should an insurer not have the capacity to meet its claims liabilities.

Licensing of insurers controls market access and potentially inhibits the number of insurers involved in the scheme. It could be argued that this increases the exposure for the Government should an insurer become insolvent. Conversely, a smaller number of licensed insurers provides a basis for more efficient control and supervision.

Imposition of standards (including an Industry Deed) by the regulator ensures that an appropriate Queensland presence, operating structure and staff are maintained by insurers. It also encourages serious and appropriately structured insurers which are less likely to fail. The long tail nature of claims requires that only those insurers prepared to make long term commitment should be permitted to participate.

Licensing and prudential supervision is in the best interests of the Queensland community. The Committee is of the view that there could be a linking of continuation of licensing to compliance with Commonwealth legislation, combined where appropriate with a pre-set standard in claims payment rating by a recognised international credit rating organisation.

The recommendation from the NCP review was that licensing of insurers should continue as it is seen to be in the best interest of the CTP scheme. It was also recommended that the Act be amended to strengthen provisions in regard to insurers leaving the scheme to ensure that insurers maintain effective, local claims management procedures and resources during their claims run off period. The Committee concurs with both these recommendations.

Recommendations

2.2 Licensing of insurers participating in CTP business in Queensland should continue, subject to the insurer's continuing compliance with the relevant Commonwealth Legislation and with the *Motor Accident Insurance Act 1994*.

2.3 Claims payment ratings by recognised, international credit rating organisations (e.g. a Standard & Poor's Insurer Financial Strength Rating) be included as a component of MAIC's overall supervision activities.

2.4 MAIC to continue and enhance its supervision activities in regard to licensed insurers, in particular through close monitoring of adherence to business plans, and the commissioning of inspections, audits or actuarial investigations as and when appropriate.

2.5 MAIC should pursue greater cooperation and exchange of information with APRA in the carrying out of MAIC's responsibilities in terms of the Act for prudential supervision of licensing insurers.

Five Year Restriction on Being Reinstated if Insurer Withdraws
(Area of Concern 5)

Section 62 of the legislation places a five year restriction on an insurer re-entering the scheme following withdrawal of a licence. The provision ensures that insurers cannot come and go from the scheme to meet their own strategic objectives. However, it also limits market re-entry where there have been exceptional circumstances, e.g. a takeover of an insurer, which may have caused a temporary withdrawal to meet new owners' requirements at that time.

The matter was considered in the NCP review with the recommendation that the period of restriction be reduced to one year and discretion given to the regulator to permit an insurer to re-enter, where it can be demonstrated that such action would be in the best interest of the scheme.

In submissions made to the Committee there was very little comment on this aspect, but some submissions did favour removal of the provision, or at least a discretion for MAIC. The Committee ideally favours a greater level of competition. In moving toward the Vehicle Class Filing model it is the Committee's view that this five year barrier to re-entry should be removed entirely.

Removal of this restriction should be accompanied by a strengthening of MAIC's powers to require and enforce a sufficient presence in the State to manage all outstanding claims to finality. The degree to which the insurer meets this requirement should be taken into account should the insurer wish to re-enter the market in the future.

Recommendation

2.6 The present five-year restriction on an insurer's re-entry to the scheme following withdrawal of a licence should be removed. However, MAIC's powers need to be appropriately strengthened to ensure that an insurer ceasing to write business in Queensland maintains a sufficient presence to manage all outstanding claims to finality and the degree to which an insurer has met this requirement should be taken into account if that insurer seeks a licence in the future.

Industry Deed Prescribing Means Of Sharing Claim Costs Between Insurers (Area of Concern 6)

All insurers sign an Industry Deed at the time of licensing. The Deed sets out the requirements for the management of CTP business and the basis for insurers transacting business between one another.

The Industry Deed does provide for licensed insurers to have sharing agreements but where more than one insurer is involved in an accident and where disputes exist after two months, the Deed sets out the basis for cost sharing and resolving disputes.

The concept of an Industry Deed is seen as necessary where the market has multiple insurers. To do otherwise leaves the injured party exposed to lengthy litigation simply to resolve liability between insurers.

The NCP report, having examined the issues, favours the retention of the Industry Deed because of its conformity with a clear objective of the legislation and its overall benefit to injured parties through timely resolution of claims in circumstances where multiple insurers are involved. The Committee supports the NCP report conclusion.

Recommendation

2.7 The Industry Deed should be retained.

Nominal Defendant as Only Insurer of Uninsured and Unidentified Vehicles (Area of Concern 8)

The Nominal Defendant has operated under Government control since its introduction in 1961.

The Nominal Defendant is the deemed insurer for uninsured and unidentified vehicles and provides gratuitous insurance in special circumstances, e.g. wheelchairs, trailers. It is the insurer of last resort for claims unpaid by an insolvent licensed insurer.

As evidenced in the NCP report, unless the Government was persuaded to a sole insurance operation, there is little to be gained by private sector involvement in this aspect of the business.

Under the NSW scheme Nominal Defendant claims are distributed to licensed insurers and costs shared according to market share. An analysis of claims costs in both jurisdictions demonstrated that on average in NSW, Nominal Defendant claims exceeded the industry average by 33%, whereas in Queensland the Nominal Defendant is achieving results on a par with the industry. The specialised operation is also able to maintain stronger relationships with Queensland Transport in efforts to minimise the incidence of uninsured motor vehicles on the road. There is a suggestion that there could be a conflict for insurers in handling claims involving unidentified motor vehicles.

There was very little call in the public submissions for change from the current system.

Recommendation

2.8 The current Nominal Defendant model should be retained.

Impediments to Change of Insurers (Area of Concern 18)

Vehicle owners renew their registration by several alternative payment methods, including -

- by personal attendance at a Queensland Transport Customer Service Centre;
- by bank authority or Bpay facilities;
- by telephone using a credit card;
- through Australia Post or other agencies; *or*
- by mail.

Queensland Transport will not accept a request for a change of CTP insurer other than by mail or with the insured signing an authority at an office of Queensland Transport.

To ensure continuation of policy coverage where payment is not effected by the due date, the legislation imposes on the insurer an obligation to provide a 30 day period of grace. Consequently, to avoid disputes over liability, any change of insurer must be completed before the due date.

As detailed in the NCP report, there are many barriers to an insurer gaining market share with a significant number of submissions to the Committee suggesting that the process is too restrictive and should be improved to allow more flexibility.

The NCP report recommended that changes be made to the present system to promote choice for the motor vehicle owner at all times during the year with effect at renewal. The process should also be made easier.

Given the Committee's proposed direction encompassing a competitive Vehicle Class Filing model, it is recommended that the renewal process be conducive to the consumer having a clear choice and a relatively easy process for change. The Queensland Transport system should be expanded to allow a change of insurer during the policy year by written advance notification, but only to take effect at renewal.

Recommendation

2.9 The current impediments to change of insurer by motor vehicle owners on renewal be removed as far as practicable, but only on the basis that the registration renewal date and the CTP insurance renewal date remain linked.

Minimum Market Share Requirements (Area of Concern 19)

Section 64 of the *Motor Accident Insurance Act* and Section 14 of the *Motor Accident Insurance Regulation* prescribe that a CTP insurer must have a market share equal to or greater than 5% at the end of the financial year following the fifth anniversary of the granting of the licence. Otherwise MAIC must withdraw the licence.

However, MAIC need not withdraw the licence if in the next or subsequent year the licensed insurer has a share of the market of at least 4.5% and the insurer had been at a level of at least 5% in the previous financial year.

The imposition of a minimum market share is contrary to a free and open market and limits the number of insurers available to the motor vehicle owner. This is clearly a barrier to entry to the scheme.

Conversely, a minimum market share ensures that insurers are substantial participants and committed to the market and provides the necessary economies of scale in respect of operating the scheme.

The NCP report has highlighted that the present 5% market share within five years is a barrier to entry but it also recognises that the long tail nature of the claims warrants a long-term commitment. This is unlikely to occur unless an insurer achieves a reasonable market share. The report also suggests that insurers with a small market share are only likely to support the Queensland scheme whilst they have a participation in the NSW market.

The NCP report made a recommendation that the market share requirement be lowered to 2% within five years with discretion given to the MAIC to waive compliance. The Committee, in recommending a move to a more competitive system, is of the view that the minimum market share condition be removed all together. However, competition should bring with it a level of responsibility and any insurer entering the scheme must be fully committed to the scheme and ensure claimants are not disadvantaged by a small operation. The insurer must adhere to the provisions of the Industry Deed, in particular the requirement to maintain an office in Queensland with competent staff to manage claims. The Committee sees that the requirements of the Industry Deed need to be strengthened in respect of an insurer withdrawing from the scheme, as set out in recommendation 2.6.

Recommendation

2.10 The current minimum market share requirement for a licensed insurer as set down in Section 64 in the Act and Section 14 of the Regulation be removed.

Optional Cover v Standard Cover (Area of Concern 20)

The current scheme has the same standard of coverage for all motor vehicles.

The person insured under the policy is the owner, driver or other person whose wrongful act or omission in respect of the insured vehicle causes injury to someone else and any person who is vicariously liable for the wrongful act or omission.

The policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia subject to the scope of cover expressed under Section Five of the *Motor Accident Insurance Act*, which in essence restricts the cover to the driving of a motor vehicle.

The policy does not insure a person against injury, damage or loss that either arises independently of any wrongful act or omission or is attributable to the injured person's own wrongful act or omission.

Submissions generally supported the concept of standard cover in the interest of injured parties. The NCP report recommended retention of standard cover as a minimum on the basis that it is in the best interest of the community.

The Committee concurs with this recommendation but would like to see the underwriting insurers offer optional broader cover for "at fault" drivers, acknowledging that such a policy would have an add-on cost. The envisaged cover must be meaningful and clearly in the interests of the paying consumer. Further comment on optional cover is made later in this Report.

(Refer to recommendations 5.3, 5.4 and 5.5).

Insurers Unable to Decline (Area of Concern 21)

A CTP insurance policy under the Act is binding on the licensed insurer who cannot repudiate or decline to issue or renew a CTP insurance policy.

Insurers being unable to decline business is a central part of the scheme, which ensures that all registered vehicles have access to CTP cover and hence compensation for those injured.

There is full support for the current system. The compulsory nature of this insurance means that every vehicle owner must be able to purchase an insurance policy.

Retention of the current requirement would be in the public interest.

Recommendation

2.11 The compulsory acceptance by insurers of requests for CTP insurance cover by motor vehicle owners be retained.

Premium Relativity (Area of Concern 35)

Currently, individual premiums for all vehicle classes are set annually on the recommendation of MAIC and approved by the Queensland Government. The premium relativities are intended to reflect the individual claims experience for the particular class.

There were a number of submissions seeking the subsuming of higher risk groups, such as taxis and hire vehicles, into Class 1. Such a move, in the Committee's judgement, is inconsistent with the principle of classes bearing their own costs.

The Committee is more inclined to a move in the opposite direction, which would see a broadening of classifications. In recommending the move to the competitive model, the Committee envisages that over time MAIC could increase the rating classifications to provide greater opportunity for differential premiums that could, for instance, cater for remote area vehicles.

Under the proposed competitive model, MAIC would still need to undertake on actuarial analysis of the scheme in order to determine the appropriate class relativities. The Committee is concerned that if relativities were left to the market to determine, some classifications may not be treated fairly. To allow the insurer some scope in its pricing of different classes, the Committee is of the view that relativities could be set as a range, expressed in dollar terms or as relativities to Class 1.

Further comments on premium relativities for taxis, trucks and motor cycles are provided under Supplementary Issues later in this Report.

Commissions (Area of Concern 36)

Section 96 of the Act prohibits the payment of commissions to business originators of more than 2% of the gross premium for new vehicles or those being re-registered, and 1% of the gross premium for any other CTP insurance policy.

There is a persuasive argument that commissions should not be paid on a compulsory product when the cost is ultimately borne by the motor vehicle owner (particularly in a price regulated model).

The NCP report suggests that, if the scheme design was to alter to the Vehicle Class Filing model, commissions be retained, but consideration be given to raising the commission level caps to facilitate greater competition for motor vehicle owners and insurers. The disadvantage of permitting higher commission levels is that the cost will ultimately be borne by the motor vehicle owner.

There is quite clear evidence that insurers, while complying technically with the legislation, use various means to circumvent the intent of it. In the current competitive environment control of commissions serves no useful purpose and represents another source of frustration to some insurers.

Under the Vehicle Class Filing model, the Committee accepts the need for commissions in order for insurers to gain and hold market share. However, the level of commissions should be left to individual insurers to determine within the overall premium revenue available and the current restrictions should be removed.

There is a risk that some insurers might adopt short-term strategies, such as high commissions on CTP insurance of new motor vehicles, in an effort to select risk and gain market share. The Committee considers that there are a number of factors which will control the situation, including competition factors and the premium ceiling.

If the Government was not to support the Vehicle Class Filing model favoured by the Committee, then the Committee suggests that the legislation be amended to allow a greater level of commission and, concurrently, greater power for MAIC to eliminate practices which seek to get around the restrictions on commissions. Also, MAIC should not allow for commission payments in premium calculations. This would recognise the differing approaches of insurers to gaining market share, but the costs would need to be offset against profit margins.

Recommendation

2.12 Under a price competitive model, there should be no restrictions on insurers in relation to the payment of commissions, provided that commissions are paid out of insurers' profit margins, giving them the opportunity and discretion to determine their own basis of commission.

Provision of Cover in the First Instance for Negligence of Manufacturers

(Area of Concern 44)

Under the present scheme insurers are required to meet claim costs, notwithstanding that the cause of the accident may have been related to a vehicle defect caused by negligence of a manufacturer or repairer and would have ordinarily necessitated legal action directly against the manufacturer or repairer. Generally the claim would have been the province of other forms of liability insurance.

The policy of insurance extends indemnity to the manufacturer and repairer but affords the insurer a subsequent right of recovery (Section 58). This requirement is viewed as an important part of the present scheme and insurers have supported its retention.

The NCP report concluded that the provision should remain in the interests of the community.

Recommendation

2.13 The current "first instance" cover for manufacturers' negligence be retained, recognising that it is in the interests of the community.

CLAIMS

Current Position

The *Motor Accident Insurance Act 1994* sets maximum timeframes for various steps towards the resolution of a claim.

The following procedures are the essential components of the claims process up until the determination of liability -

- An intending claimant is required to notify an insurer within one month (Section 34) of contact with a legal practitioner and to provide basic information to enable the insurer to consider preliminary investigation or rehabilitation initiatives.
- So that an insurer is fully aware of all the facts on which to make an informed judgment on a claim, the claimant is required to lodge a formal Notice of Claim within nine months of injury or the date the symptoms first became apparent (three months from date of accident in respect of an unidentified vehicle) (Section 37).
- The Notice of Claim is comprehensive in detail and must contain an offer of settlement or a statement of reasons why an offer cannot yet be made. Also, the Notice provides written permission allowing the insurer access to records about the claimant, relevant to the claim, from a wide range of instrumentalities and persons.
- The Act requires, where a claim involves two or more insurers, for one insurer to act as claim manager (Section 38). The Industry Deed, which forms part of the Regulation, outlines the process to be followed
- An insurer upon receipt of a Notice of Claim has an obligation to make a fair and reasonable offer to settle the claim as soon as practicable.
- A claimant cannot issue proceedings until liability has been denied by the insurer or until the expiry of six months from the date of receipt by the insurer of a complying Notice of Claim. Irrespective of the complexity of a claim, the insurer must make a determination on liability at this stage (Section 41).
- Once liability is admitted in whole or in part, the insurer is obligated to make rehabilitation services available to the claimant on the insurer's own initiative or at the claimant's request (Section 51).

Without including the complexities of multiple insurers and other complicated aspects of the claims processes covered by the legislation, the flowchart overleaf is seen as a representation of the existing claims process.

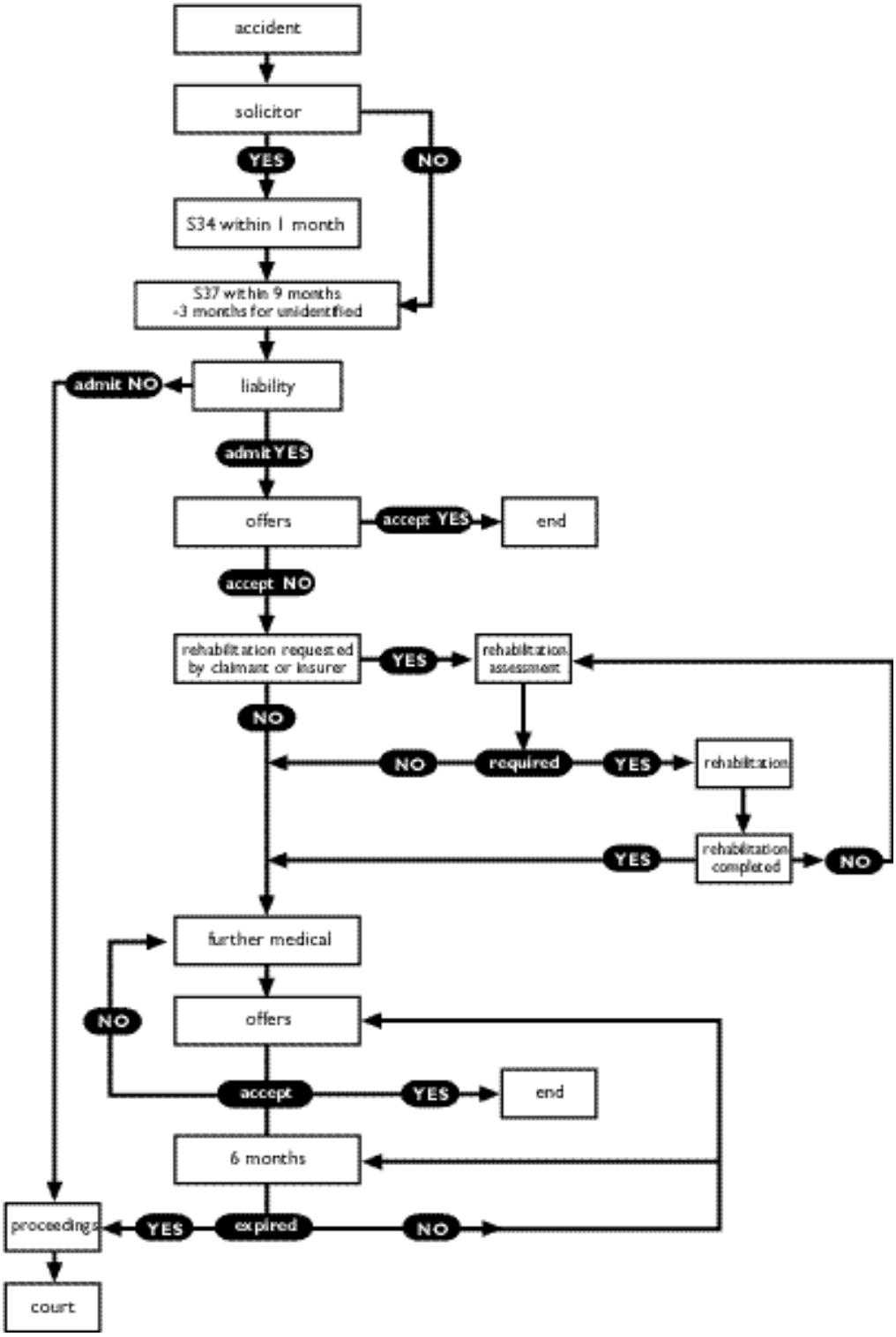
Problems/Concerns

There has been an increase in claims frequency from 3.13 per 1,000 vehicles in 1993/94 to 4.6 per 1,000 vehicles in 1998/99, and an assumed rate of 4.4 per 1,000 vehicles in the 1999/2000 premium calculation.

There is evidence that a significant part of this increase is in small claims. This can be illustrated by the increase in claims from 123% of hospital admissions in June 1995 to 180% of hospital admissions in December 1998. Much of this increase is attributed to the practice of touting by tow-truck operators (and others) on behalf of some sections of the legal profession and aggressive advertising by solicitors.

The former legislation *(Motor Vehicles Insurance Act 1936)* prohibited soliciting for motor vehicle accident personal injury claims. There is broad support, including from the legal profession, for a ban on touting for business in respect of CTP claims.

EXISTING CLAIM PROCESS



Lawyer advertising on a "no-win/no-fee" basis can encourage people to lodge claims who otherwise would not have done so. On the other hand, lawyer advertising serves the public interest as it helps to inform the public of its legal rights. However, much of the current advertising is directed at attracting business rather than educating the public.

It appears that the "Notice of Accident" form and the current claims process encourages claimants to consult solicitors, in some cases unnecessarily. For claimants wishing to handle their own claims, without legal advice, there is little information available and improved communication in the form of a brochure and/or call centre would assist in facilitating direct claims if the claimant chooses to proceed this way.

There is a suggestion that the issue of legal fees be addressed under the legislation, particularly in respect of plaintiff costs in cases of minor injury. Legal and associated costs in the scheme have remained stable at around 15% of claim payments. However, overall efficiencies achieved in Court processes have not been reflected in a reduction in legal costs associated with the scheme. This could be attributed to the growth in lower end claims in which legal and associated costs are in the order of 25% of overall claims costs, contrasting with claims over $100,000 in which legal and associated costs are approximately 9%.

High proportions of the payments for small claims relate to general damages and legal and associated costs. For example, general damages represent 66% and legal and associated costs 25% of claim payments under $10,000. There are concerns that the current distribution of claim monies is inequitable and that the cost of small claims is out of proportion to their relative importance.

There is support for the retention of the principle of unlimited access to common law on the basis that caps and thresholds in other States have not generally been proven to result in lower insurance premiums. Others argue that thresholds will eliminate the smaller claims and caps on damages payments will help to keep the scheme affordable.

Rehabilitation is an important feature of the Queensland scheme with clear benefits to claimants. On the other hand, there may be increases in scheme costs because the rehabilitation leads to a better quality of life without a corresponding reduction in future economic loss, or because rehabilitation could possibly be misused as a tool to increase damages. It is difficult to quantify these various impacts.

The provision of rehabilitation is often delayed because of claims liability issues and where claimants take the full timeframe of nine months allowed for notification of a claim. Other delays arise in arranging appropriate rehabilitation because the adversarial nature of the process means that contacts between claimants and insurers are generally through the claimant's solicitor.

The claimant and the insurer have recourse to the Courts when disagreements occur over the provision of rehabilitation. This is confrontational and expensive and a mediation process may be more effective.

There is concern expressed that awards are being made under the headings of loss of personal comfort/employee's services (consortium/servitium) for comparatively minor/temporary injuries, resulting in some cases receiving more than what is arguably fair and reasonable compensation. As with awards for economic loss, there is some concern about escalation in awards for loss of employee's services (loss of servitium).

Furthermore, there are concerns in respect of the cost associated with Griffiths v Kerkemeyer gratuitous care awards. However, it has been submitted that such care awards, taken as a whole, are not adding significantly to the cost of the scheme.

A significant proportion of the "legal and associated cost" component is taken up by medico-legal costs. "Doctor shopping" (where the plaintiff and the insurer pursue practitioners' opinions that improve their side of the argument) not only has its own cost, but it also increases the scope for dispute.

It is suggested that there is a need for a mediation step in the claims management process to assist both insurer and claimant to resolve issues in dispute before they become part of litigation. Also, it is indicated that there is a need for genuine offers of settlement to be made before the issue of proceedings. Pre-proceedings conferences are seen as an effective means to overcome these problems.

The NSW scheme requires that reporting of an accident to Police by or on behalf of the claimant, is a prerequisite to making a claim for injuries sustained in a motor vehicle accident. This requirement is said to be working well with benefits in combating fraud, and is of some long-term benefit in accident prevention.

Submissions/Arguments

There was, in general, strong support for the retention of a common law based system, even though some changes may be required to contain small end claims.

The Committee explored whether medical assessment tribunals (MAT) could improve small claims management, by identifying minor claims through appropriate definition of the injury and level of impairment. Whilst the MAT concept received no support in submissions, there was some support from the market research which was undertaken. Generally medical assessment tribunals are able to define injury and level of impairment, although some submissions suggested that they are historically low in their assessments, favouring the defendant rather than the plaintiff. They also concentrate on impairment rather than disability. Other disadvantages included cost, particularly in small claims and the fact that a small level of impairment did not always equate to a small claim. On balance the Committee is not recommending the medical assessment tribunals process at this time.

Comments on a range of methods considered by the Committee for reducing claims costs, particularly for small claims, are as follows -

- Submissions regarding thresholds were mixed with particular recognition that thresholds could become less effective as scheme participants devised ways to get around them.
- Support was generally in favour of capping economic loss.
- The Committee pursued at some length the use of a point scale as a method of determining general damages. South Australia introduced a 0-60 scale in 1987. A new scale could be designed so as to limit amounts at the lower end but responding appropriately to serious injuries and be continuous, thereby avoiding a stepped threshold. There was no support in the submissions for such a scale. There was a view that the problems of the scheme were not serious enough to tamper with the existing system, which had existed for decades. The Committee sees the point scale as having a number of advantages and although it is not recommending its implementation at this stage, if other recommendations do not arrest the serious claims cost pressures, the Committee strongly recommends that this should be a priority in any further scheme amendments.
- It was proposed that a well-tested alternative to medical assessment tribunals and the proposed points scale is the operation of the "Guidelines for the Assessment of General Damages in Personal Injuries Cases" compiled by the Judicial Studies

Board (UK) and used in the Courts in the United Kingdom since 1992. It was submitted that the preparation of such a booklet in a form adapted for all Queensland jurisdictions would have a similar effect to the points scale without the need for the creation of specialist medical assessment arrangements. However, the guidelines are expressed in impairment terms, rather than disability, and the money ranges are very wide. There is a concern in the United Kingdom that after four years of operation, there is already some overstatement through adding subjective elements. The Committee was not prepared to recommend the adoption of the guidelines as described above.

- Proposals were received, mainly from the legal profession, to abolish the costs indemnity rule for claims that are resolved for less than $20,000 or $50,000. One legal firm submitted that this proposal was unnecessary and unfair. A further submission offered qualified support for the proposal, but indicated that event costing should also be considered.
- Submissions regarding the abolition or restriction of loss of personal comfort/ employee's services (consortium/servitium) claims were mixed, for and against.
- One submission called for regulations to be introduced which would govern medico-legal examinations and reporting. It was submitted that a significant proportion of the "legal and associated costs" related to the gathering of medico-legal evidence and that restrictions on the number of medico-legal reports would save costs and reduce the scope for dispute. One proposal suggested that if parties cannot agree on an appropriate specialist(s) a selection be made from a list of approved specialists administered by MAIC. This list would be agreed in consultation between relevant parties including the professional bodies and the ICA. Rights would remain for application to a Court should parties consider they had been unfairly disadvantaged by the process.
- Pre-proceedings compulsory conferences should be introduced as a genuine attempt to settle the claims. If the claim is not resolved at the conference, then the offers should be recorded with cost penalties to apply, depending on the final outcome. Pre-proceedings conferences received a level of support from the legal profession.

It has been suggested that the initial claims form should be simplified so that a claimant can complete it, unaided, if they desire. The current claim form is 24 pages and presents as a complex and intimidating document, albeit that it covers all relevant matters comprehensively. Unfortunately while the intent of the form is good, many legal practitioners pay lip service to key elements.

Other comments include -

- the current process is "unfriendly" and difficult for the claimant; *and*
- a central advisor/assistance facility should be provided to assist claimants in the lodgement of claims including the identification of the responsible insurer.

Submissions suggest that the goal of any changes should be to keep minor claims away from the current adversarial/solicitor/Court system by providing a more administrative and less litigious approach to managing these claims. One submission recommends a key performance measure for the scheme should be 30% of claims resolved on a direct basis. The Committee has some doubts that this is achievable, even in the longer term, unless there were moves to eliminate general damages for smaller claims, which is the situation in NSW.

Most submissions received in response to the Issues Paper, including a submission from the Queensland Police, support the reporting of accidents to Police before claimants were eligible to lodge a claim. Two submissions suggested the report must be in writing. Benefits were seen as a deterrent to fraud, advancing claim investigations and accident prevention in the long term.

All submissions, without exception, support proposals to ban or restrict the practice of touting for CTP claims.

There is a view expressed in submissions that lawyer advertising has increased the number of claims. Other submissions do not agree, while some submissions submit that advertising assists claimants to become aware of their rights. Overall the submissions support restricting advertising or at least setting advertising standards. The Committee has sympathy with the view that lawyer advertising has caused or contributed to an increase in claims frequency. The Committee's view is that advertising standards are a matter for the relevant professional body, which should be provided with the appropriate statutory powers to enforce standards.

The Committee commissioned some analysis of the average claim size of the new cohort of claims produced from touting and the extremes of advertising to test the assumptions used for these claims in the premium calculation for 1999/2000. It appears that while some of these claims are settling quite quickly for small amounts, most claims are following normal settlement patterns. It is still too early to be definitive on the cost experience for these claims.

Proposals

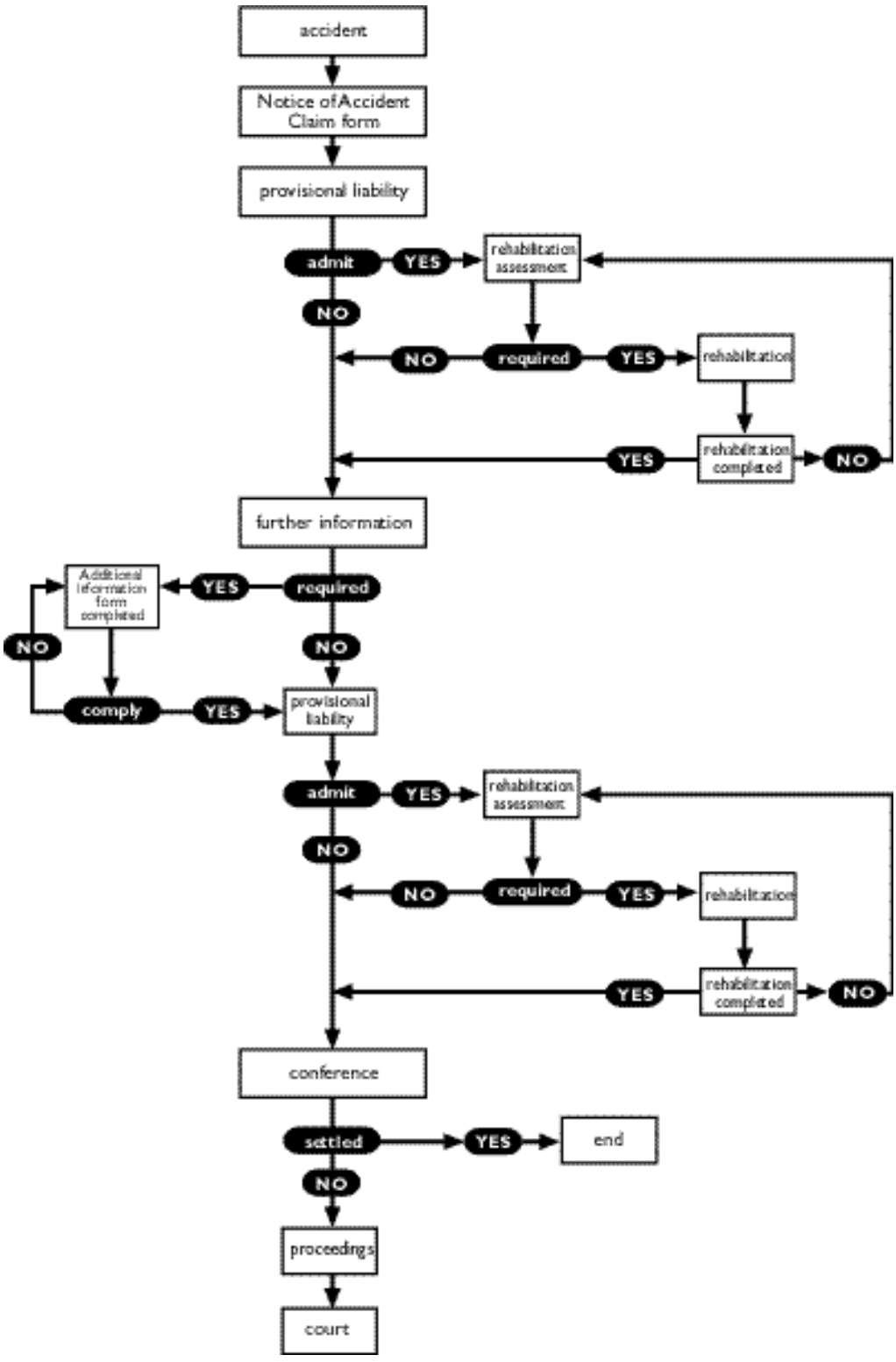
The Committee is proposing significant modifications to the existing claims process, as represented by the flowchart overleaf.

The key features of the new process are a relatively brief Notification of Accident Claim (NOAC) form to replace the present requirement under Section 34, provisional determination of liability to facilitate rehabilitation; an Additional Information Form pursuant to Section 37 for more detailed information for claim management purposes; and compulsory pre-proceeding conferences.

Other initiatives are the removal of the costs indemnity rule for a certain category of claims, a joint medico legal report system, banning of lawyer touting, control of standards for advertising and a number of claimant assistance initiatives. Some limits are introduced on common law rights in terms of an upper limit for recovery of economic loss, and restrictions on awards for loss of personal comfort/loss of employee's services, and gratuitous care. Further initiatives in relation to the rehabilitation aspect of claims management are addressed in a separate section later in this Report. A number of miscellaneous claims management issues are also addressed later in the Report.

Based on an analysis of two samples of 500 recently settled claims, the Committee has assessed the savings from the initiatives relating to legal costs will be above 2% of premiums. The combination of the remaining claims initiatives should yield at least another 1% (in addition to the saving from the legislation banning touting which will save a further 3% of premiums if fully effective in halting the practice). More importantly, the cultural signals to lawyers, practitioners who prepare medico legal reports and insurers are critical to the future of the scheme.

MODIFIED CLAIM PROCESS



The detailed recommendations are as follows -

Lawyer Touting (Area of Concern 14)

The *Motor Accident Insurance Act 1994* currently places no restrictions on agents/intermediaries for legal firms approaching potential claimants to encourage the person to seek advice from a particular lawyer.

There is broad support, including from the legal profession, for a ban on touting for business by lawyers in respect of CTP claims. There is concern that the current alleged practice of tow-truck operators and others receiving commissions from some solicitors for recommending potential claimants is contributing to an increase in the incidence of claims, particularly at the lower end of the spectrum.

The former legislation *(Motor Vehicles Insurance Act 1936)* prohibited soliciting instructions for motor vehicle accident personal injury claims.

Cabinet, after considering advice from the Committee, has approved the drafting of appropriate legislative changes to limit this practice. The drafting process has taken some time because it has been necessary to ensure that the legislation does not have unintended consequences.

Recommendation

3.1 The Act be amended to ban touting.

Lawyer Advertising (Area of Concern 13)

There are no restrictions on lawyer advertising in the *Motor Accident Insurance Act 1994*.

There has been a significant increase in lawyer advertising relating to personal injury claims, particularly on a "no-win/no-fee" basis.

Some sections of the legal profession argue that lawyer advertising is not the cause of an increase in the number of claims because there was no significant increase in 1994/95 as a result of the lifting of restrictions on lawyer advertising in 1994. This is difficult to test because claims frequency did substantially shift following the introduction of the new Act in September 1994, i.e. from 3.13 claims per 1,000 vehicles in 1993/94 to four claims per 1,000 vehicles by December 1995.

Lawyer advertising on a "no-win/no-fee" basis can encourage people to lodge claims who otherwise would not have done so.

On the other hand, lawyer advertising serves the public interest as it helps to inform the public of its legal rights. However, much of the advertising is directed at attracting business rather than educating the public.

The Committee has sympathy with the public perception that lawyer advertising has caused or contributed to an increase in claim frequency. However, the Committee is unable to conclusively link the increase to advertising, albeit that there was a significant rise in claim frequency, because the introduction of the 1994 Act coincided with the relaxation of constraints on lawyer advertising.

It is acknowledged that injured parties are entitled to know their rights and equally lawyers, like any business, have a right to advertise.

There is substantial support from the legal profession for the provision of appropriate legislative powers to the Queensland Law Society to regulate and control lawyer advertising. The issue is much broader than the compulsory third party scheme as it has an impact on

workers' compensation and other areas of insurance. The Committee endorses such powers being given to the relevant authority.

The Committee noted the clear evidence that the major down sizing and/or changes to defendant legal panels by the two largest insurers has caused a number of legal to take a very aggressive attitude to obtaining and managing claims particularly ones where the relevant insurer is involved.

Recommendation

3.2 The concept of standards being set for advertising by the legal profession is supported. The control of advertising standards is a matter for the relevant authority to exercise appropriate control.

Reporting of Accidents to Police (Area of Concern 16)

There is no provision in the *Motor Accident Insurance Act* which requires a party involved in a motor vehicle accident to report the accident to police. However, there is a requirement under the *Traffic Act 1949* for the owner or driver to report all accidents resulting in personal injury.

Most accidents involving injury are reported to the Police with appropriate data collected and available through the Traffic Incident Reporting System. Information relevant to an accident is available to insurers and is often used as a quick reference to determine liability.

Some submissions suggest that reporting of an accident to Police by or on behalf of the claimant, be a prerequisite to making a claim for injuries sustained in a motor vehicle accident. A similar requirement exists under the NSW scheme and is said to work well.

Reporting to Police also has benefits in combating fraud, but more importantly is of long-term benefit in accident prevention. The Queensland Police Service is supportive of compulsory reporting for these reasons.

Whilst the Committee recognises that placing an obligation on an injured party to report an accident not otherwise reported by the owner or driver is an imposition, the overall benefit is clear. The formal recording of the report to the Queensland Police Service will provide the record that the requirement has been met.

Recommendation

3.3 The Act be amended to make reporting the accident to Police a prerequisite to a claim.

Early Notice of Injury/Notice of Claim (Areas of Concern 39 & 40)

Section 34(1)(b) requires the injured party to notify the insurer within one month of consulting a lawyer with regard to a claim. The notice contains minimal information pertaining to the injury.

The Notice to be given by the claimant before bringing an action for damages is specified in Section 37 of the Act. The Notice must be given within nine months after the motor vehicle accident or the first appearance of symptoms of the injury.

There are suggestions that the notice requirements of the Act work well.

Other comments include -

- current claim notices (Section 34 and Section 37) do not provide for appropriately timed medical diagnosis for rehabilitation purposes;

- the current process is "unfriendly" and difficult for the claimant;
- appropriate support for claimants for initial claim filing should be available, e.g. call centre; *and*
- the initial claim form should be simplified so that the claimant can complete it unaided should they desire. The current claim form is 24 pages and presents as a complex and intimidating document.

The Committee is of the view that -

- the Section 37 claim notice is too complex for most claimants to complete without legal advice;
- a simple "Notice of Accident Claim" (NOAC) form should initiate the claim process;
- the NOAC form should be supplied as soon as possible, so that rehabilitation services could be provided. To preserve the existing timely notification to insurers in accordance with Section 34, the NOAC form must be supplied within one month of consulting a lawyer. In circumstances of a claimant not consulting a lawyer the existing maximum timeframe for the Section 37 notice applies to the NOAC form.
- the NOAC form would include an appropriate level of information relating to the injury and an authority for the insurer to obtain medical information relevant to the injury;
- provisional liability should be decided by the insurer within 14 days. The liability would not be binding on the insurer other than for authorised payments;
- the existing Section 37 notice would be renamed the "Additional Information Form" (AIF) and modified to exclude information already supplied in the NOAC form;
- the insurer can request the completion of an AIF which must be supplied by the claimant within 30 days;
- a call centre should be established, supervised by MAIC, which would provide information to injured persons and perform the following functions -
    - confirm if the accident has been reported to Police. If not, notify of the requirement;
    - establish the insurer and advise injured person;
    - advise the insurer of prospective claimant's details;
    - provide Police report to insurer; *and*
    - send brochures in response to general enquiries.

The proposed call centre would under no circumstances provide advice of a legal nature to claimants or potential claimants and care will need to be exercised in the training of call centre staff to ensure that factual information only is provided.

The insurance industry advocated that the call centre should be operated by the ICA. The Committee believes that MAIC should operate the call centre because of the links with Queensland Transport and the fact that potential claimants would feel more comfortable dealing with an independent agency.

Recommendations

3.4 The claim advice currently required under Section 34 of the Act be replaced with a standard "Notification of Accident Claim" (NOAC) form that includes a medical certificate and an authority to obtain medical information.

3.5 The NOAC form should be received by the insurer as soon as practicable after the accident, but no later than the requirements currently prescribed for the Section 37 notice (see Recommendation 6.19). If a lawyer is consulted, the NOAC must be submitted within one month of the date of the consultation.

3.6 The insurer is required, within 14 days of receipt of a complying NOAC form, to make provisional determination of liability.

3.7 An Additional Information Form (AIF) similar to the current Section 37 notice be supplied by the claimant within one month, if requested by the insurer. This form which is to be in a prescribed format is to supplement the information already supplied in the NOAC form.

3.8 The establishment of a CTP call centre, supervised by MAIC, is strongly supported. Sufficient emphasis would need to be placed on the information available and knowledge levels of the staff of the centre to enable claimants to receive the information they require on all aspects of the scheme, including the rehabilitation process.

Unlimited Access to Common Law (Area of Concern 9)

Unlike most States, Queensland's CTP scheme allows unlimited access to common law. For example, there is no statutory limit on maximum payment of benefits (caps) nor any minimum degree of incapacity which has to have been sustained as a result of injury (threshold) before common law entitlements can be accessed.

A high proportion of the claim payments for small claims relate to general damages and legal and associated costs. For example, the data provided by insurers indicates general damages represent 66% and legal and associated costs 25% of claim payments under $10,000.

The Committee shares the concern expressed in submissions that the current distribution of claim monies is inequitable and that the cost of administering small claims is out of proportion to their relative importance.

There is general support for the retention of unlimited access to common law on the basis that caps and thresholds in other States have not been proven to result in lower insurance premiums.

Some submissions suggest a threshold of (say) 10% permanent impairment before common law may be accessed and/or an upper limit on benefits awarded under particular heads of damage. It is argued that thresholds will eliminate the smaller claims and caps on damages payments will help to keep the scheme affordable.

The Committee does not favour the introduction of thresholds on general access to common law nor caps on general damages assessments at this stage, but the issues do need to be kept under review.

Recommendation

3.9 The recommendations in respect of the claims process in this Report should be given time to take effect and be evaluated before any further consideration is given to the implementation of caps and thresholds in respect of damages awards, other than the caps and thresholds proposed for loss of consortium/ servitium and in respect of economic loss.

Medical Assessment Tribunals

The Committee agrees that the determination of impairment is an important part of the claim process, and the Committee investigated the utilisation of medical assessment tribunals as a method of determining impairment levels which can then be used in the process of determining general damages. The investigation revealed both advantages and disadvantages.

Advantages -

- determines the injury;
- determines the level of impairment; *and*
- non-adversarial and less intimidating than Court.

Disadvantages -

- high cost if only used to define minor claims;
- only the level of impairment is determined not the disability from the impairment;
- could be seen to be not truly independent (members nominated and paid by the scheme); *and*
- could be seen as giving very conservative assessments (based on alleged WorkCover experience).

Medical assessment tribunals received little support in submissions and the Committee on balance is not persuaded to their introduction in the scheme at this time.

Medico-legal reports

Currently, the number of medical reports obtained by all parties when preparing personal injuries claims can be excessive and can add considerably to the cost of the claim, particularly in small claims. It is common for the plaintiff to obtain reports from the treating specialist and one or more medico-legal reports from other specialists that may or may not be in the same field of medicine. In addition, defendants frequently obtain check medico-legal reports in an attempt to counter the plaintiff's medical evidence.

The Insurance Council of Australia (ICA) in its submission called for the introduction of a new regime relating to medico-legal examinations and reporting. The ICA further submitted that a significant proportion of the "legal" costs component is taken up by medical reports and regulations should be introduced to govern the gathering of medico-legal evidence.

Unquestionably there are advantages in having only one expert medical witness in each case such as:

- the unnecessary duplication of witnesses; *and*
- the perception of the impartiality of the expert witness.

The Committee acknowledges that the claimant should be entitled to obtain reports from treating doctors/specialists. However, in the Committee's view, further medical reports should only be obtained under the following arrangements:

- the specialist is agreed by all parties or is selected from a panel of approved specialists administered by MAIC (panel nominated following agreement between ICA, QLS and APLA); *and*
- limited to one report from each field of medicine.

The cost of any medical report(s) so obtained is to be met by the insurer.

The ultimate power of the Court to allow further evidence should be preserved in cases where there has been a failure by the expert to consider relevant medical or other evidence, or where other special circumstances exist. However, these could be expected to be rare.

Recommendations

3.10 The Act be amended to provide that, if the parties in the claims process cannot agree on an appropriate medical specialist(s) other than the treating specialist(s) to provide a medical report(s) to be admitted in evidence to determine those issues related to disability and impairment, a selection is to be made from a list of approved specialists agreed between relevant parties including the relevant professional bodies and the ICA. This list is to be administered by MAIC and the insurer will meet the cost of the medical report(s) so obtained.

3.11 An application to the Court should be available in special circumstances where one of the parties considers they are disadvantaged in relation to medical reports.

Compulsory Conferences

The Committee has considered the proposal to introduce compulsory conferences before proceedings may be issued.

The advantages are:

- it provides parties with a chance to negotiate meaningfully for early resolution of the claim;
- it reduces legal costs in claims that settle as a result of the process; *and*
- it can be used to incorporate cost penalties for not settling in a timely manner.

The disadvantages are:

- it adds costs to claims which do not settle at the conference; *and*
- injuries must have stabilised prior to the conference in order for the disability to be assessed.

Pre-proceedings conferences received a level of support from the legal profession.

It is the Committee's view that the conference process should include the following requirements -

- that it be initiated by any party;
- required before proceedings are issued (may be waived by agreement of both parties);
- must be attended by the claimant or legal guardian and agent of the insurer who has authority to settle;
- written offers to be made by both parties;
- defendant's final offer and the claimant's final offer recorded;
- offers are open for 14 days after the conference;
- if intending to issue, the claimant must issue and serve proceedings within 60 days after the conference or within a further period ordered by the Court on the claimant's application; *and*

- the following cost penalties result from any subsequent judgement if the claim is not settled at the conference -
  - if the claimant does not exceed the defendant's offer, the claimant pays the defendant's costs on a party and party basis;
  - if the claimant exceeds the defendant's offer, the defendant pays the claimant's costs on a party and party basis; *and*
  - if the claimant equals or exceeds his or her own offer, the defendant pays the claimant's costs on a party and party basis up until the date of conference and thenceforth on an indemnity basis.

The Committee sees that compulsory conferences incorporating the above procedures will assist in the early resolution of claims, particularly minor claims, and reduce the escalation of damages and costs.

Recommendation

3.12 The Act should be amended to require compulsory conferences to be called by any party prior to the issue of Court proceedings. The conference process should conclude with final offers recorded and costs penalties applying from any subsequent judgement if the claim is not settled at the conference.

General Damages

The Committee has also considered the option of assessing general damages awards by reference to a point scale based on the level of disability resulting from a motor vehicle accident injury. South Australia has had such a scale operating since 1987 and it has been seen to limit awards for general damages with very little discernable bracket creep. There is some debate, however, as to whether the awards under other heads of damage have inflated following introduction of the scale to "compensate" for the limits imposed by the scale.

The Committee envisages that a scale of (say) 0-60 points disability could be legislated with specific reference to the South Australian model. The scale would be continuous with the lower end of the continuum rising much more slowly. The upper end of the scale would equate with the current levels of general damages awards.

The advantages of such a scale are:

- arguably more equitable than subjective methods of assessment;
- assist in the early settlement of claims because the scale provides a common point of reference for both parties;
- minor injuries attract small general damages awards; *and*
- acts as a mechanism to prevent rapid inflation of awards (although there is little evidence of this in the Queensland Courts at present).

The disadvantages of a points scale are:

- uncertainty as to the consistency of decisions in determining the point on the scale for each level of disability;
- potential risk of Courts "inflating" other heads of damage because of the relative inflexibility of a scale compared to current methods of assessment of general damages; *and*
- the comparatively low level of awards for minor disability may induce claimants to maximise symptoms in order to progress up the scale.

On balance, the Committee is not recommending the points scale at this time. Developments in the scheme in relation to the level of general damages awards will need to be closely monitored and an initiative to limit general damages awards should remain firmly on the agenda should the cost of general damages continue to escalate.

Recommendations

3.13 The assessment of general damages at common law should remain unchanged at present.

3.14 If the affordability of the scheme comes under pressure and payments in respect of general damages are identified as a significant contributing factor, then further consideration will need to be given to the early implementation of a disability points scale similar to the South Australian model.

Economic Loss

There is some concern about an escalation in awards for economic loss particularly following the Blake case in South Australia. It would be opportune to take early action to limit contagion effects by introducing an upper limit on economic loss (say $2,000 net per week). Any formula would need to be indexed. Those on high incomes could reasonably be expected to arrange separate income protection and should not look to the scheme to maximise the level of protection. Market research results indicate a high level of public support for this initiative.

Recommendation

3.15 The upper limit for recovery of economic loss claims to be $2,000 net of tax per week (indexed).

Legal Costs (Area of Concern 12)

An overall concern of the Committee is that lower end claims are having a major impact on the affordability of the scheme. There would be a number of ways to address this issue, for example:

- implementation of caps and thresholds in respect of damages awards (see section on Unlimited Access to Common Law);
- implementation of a disability points scale (see section on General Damages); *and*
- limitations on recoverable legal and associated costs, such as abolition of the costs indemnity rule or introduction of recoverable cost limits.

There were several submissions advocating abolition of the costs indemnity rule for claims that are resolved for less than $20,000 or $50,000. This suggestion would effectively mean that each party would pay its own legal costs in claims which are resolved under the nominated limit.

Some implications of the proposal are:

- damages might tend to inflate to include a buffer for costs so that the claimant is not disadvantaged;
- because it operates on a dollar value of the claim, it could be seen to advantage the high income earner whose claim will more easily exceed the limit; *and*
- it may simply cause a cost shift from the scheme to the injured party (whether or not they can afford it).

The Queensland Law Society and the Australian Plaintiff Lawyers Association were in favour of the abolition of the costs indemnity rule for some claims in the interests of overall scheme sustainability.

Other submissions to the Review opposed the abolition of the costs indemnity rule for any claims, because it has the potential to be unfair. The concern was also expressed that such an amendment would limit the current discretion of the Court to award costs and have an impact on the capacity of the Court to impose cost penalties for non-compliance with court procedure.

On balance the Committee considers that the abolition of the costs indemnity rule for lower end claims is the most appropriate mechanism at this stage to provide a disincentive to the raising of false expectations in claims which involve minor and/or temporary injuries.

The Committee considers that a limit of $50,000 is probably too harsh and a limit of $20,000 is too low. The Committee accordingly recommends that the costs indemnity rule be removed for claims with total payments less than $30,000.

For claims with total payments between $30,000 and $50,000, the Committee recommends a set maximum recoverable amount of $2,500 for legal and associated costs.

Costs penalties should apply where subsequent judgements are no less favourable than final offers made at the settlement conference stage.

For claims with total payments of $50,000 or more, the normal appropriate scale would apply.

Recommendation

3.16 The Act be amended to abolish the costs indemnity rule (including outlays) for claims where the total damages recovered are under $30,000, and to prescribe that maximum recoverable costs including all professional costs are $2,500 for claims not less than $30,000 but less than $50,000. However, costs penalties shall apply in accordance with part 5 of the Uniform Civil Procedure Rules to take effect from the commencement of the proceedings only where either party obtains a judgement no less favourable than its final offer to settle made prior to the commencement of proceedings.

Loss of Personal Comfort / Loss of an Employee's Services (Consortium / Servitium) (Area of Concern 10)

There is considerable support for limiting or eliminating access to damages for loss of personal comfort to the injured person, loss of an employer's profit as a result of injury to an employee (loss of services) and claims for future care provided free to the injured person. However, there is some suggestion of caution in restricting right of access to particular heads of damage on the basis that awards under other heads of damage may inflate to compensate for such loss of access.

The scheme does not have any limitations applying to claims brought by associated parties. In compensation schemes in other jurisdictions, such claims have been removed or restricted.

There is concern expressed that awards are being made under these headings for comparatively minor/temporary injuries, resulting in some cases in claimants receiving more than what is arguably fair and reasonable compensation.

Loss of consortium/servitium claims in many respects are simply scheme add-ons. The Committee's inclination is to restrict these claims to top end claims where there might be quite substantive justification.

As with economic loss, the Committee considers there is potential for an escalation in awards for loss of servitium and it should take the opportunity now to introduce an upper limit. For

consistency the limit should correspond with the limit for economic loss, i.e. $2,000.00 net per week.

A threshold specified in terms of general damages is recommended to remove the bias towards high income claimants for whom economic loss payments can quickly add up to more than the threshold.

Recommendations

3.17 Claims for loss of consortium and/or loss of servitium to be restricted to claims where the assessed general damages component of the injury claim, before contribution for liability, is in excess of $30,000.

3.18 The upper limit for recovery of loss of servitium claims to be $2,000 net of tax per week (indexed) consistent with the limit proposed for economic loss claims.

Awards for Care (provided free to the injured person) (Area of Concern 11)

Gratuitous care (Griffiths & Kerkemeyer) as a head of damage has increased in cost over recent years. Although some other States have eliminated or introduced restrictions on entitlements, Queensland has maintained unrestricted entitlement.

There are concerns in respect of the cost associated with gratuitous care awards. However, it has been submitted that such care awards, taken as a whole, are not adding significantly to the cost of the scheme.

Nevertheless, the Committee is of the view that gratuitous care awards should apply where claimants are able to demonstrate:

- that the activities now being provided gratuitously were activities previously undertaken by the injured party; *and*
- that the provider has suffered a loss of income.

The rate to apply is the rate of lost income or the commercial rate, whichever is the lesser.

In larger claims it is considered that gratuitous care awards should be available even if the provider has not suffered a loss of income.

Recommendation

3.19 The Act be amended to stipulate that claims for gratuitous care should only apply:

- **where it can be demonstrated that the activities now being provided gratuitously were activities previously undertaken by the injured party; *and***
- **if the assessed general damages component of the injury claim, before contribution for liability, is less than $30,000, the provider has suffered loss of income.**

The rate at which such services shall be assessed is the commercial rate for such services or, in the event of the provider earning income, the rate of lost income or the commercial rate whichever is the lesser.

SUCCESSFUL REHABILITATION OUTCOMES

(Area of Concern 47)

Current Position

Rehabilitation is a principal feature of the *Motor Accident Insurance Act 1994*. One of the objectives of the Act is "to promote, and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents". The Act requires CTP insurers to ensure that reasonable rehabilitation services are made available to the claimant and progressively fund such services once liability has been admitted on a claim. In many cases, particularly where the injury is serious in nature, the insurer may choose to make rehabilitation services available to the claimant prior to the admission of liability, although this cannot be taken as an admission of liability.

Under previous legislation, there was no specific encouragement or choice for the injured person to access rehabilitation support. Whilst awaiting settlement, the cost of injury in most instances was borne directly by the individual and their family and by the health care and social security systems.

Introducing rehabilitation into the CTP scheme was seen to have two distinct benefits - a quality of life benefit and a potential cost containment benefit. By actively encouraging and adopting rehabilitation programs, CTP insurers and injured persons benefit from optimum recovery of the injured person and a speedier claim settlement. The community benefits from the reduced reliance on community-funded hospital and emergency services, Medicare and Social Security payments, particularly where injured persons have ongoing disabilities which diminish their ability to care for themselves or to earn an income.

A crucial feature of a successful rehabilitation outcome is early intervention. It is widely recognised that if rehabilitation is needed, it must be provided as soon as possible after the injury, and preferably in accordance with a rehabilitation plan prepared by a medical practitioner or a rehabilitation provider.

Problems/Concerns

In the Queensland scheme and other similar common law schemes, rehabilitation has emerged as an uncomfortable fit with the adversarial nature of common law. Timeframes for claims lodgment and ongoing liability issues can mean delays in accessing rehabilitation support. Insurers are often reluctant to agree to meet any rehabilitation costs prior to admitting liability for the claim. The complexity of the current claims process also leaves many claimants feeling intimidated and there is a general lack of knowledge of what services are available and how progressive funding can be accessed. On the other hand, rehabilitation services might be misused as a tool to increase damages.

Submissions/Arguments

The submissions supported the continuation of the provision of rehabilitation in the scheme. Some amendments were suggested to the process to ensure that rehabilitation costs met by the scheme are appropriate to the needs of injured persons, without being excessive.

It has been suggested that the most effective way to overcome the problems caused by the common law framework would be to detach the provision of rehabilitation from the common law process, by the establishment of a centralised rehabilitation unit funded by a levy on the existing premium pool. Although this would remove the adversarial aspect from the claim and ensure immediate payment of medical and rehabilitation costs, it would most likely create its own set of problems, e.g. where liability was a significant issue. In many respects rehabilitation is integral to claims management processes. It is essential to link rehabilitation

costs to claims outcomes. Without this linkage, the CTP insurer would lose management over aspects of the claim which may influence and/or cause cost implications. Disputes over treatment rights could develop and complications arise with the settlement of common law claims in respect of future medical treatment and rehabilitation.

A related suggestion was to suspend litigation during the period a person is undergoing active rehabilitation, so that the injured person and the insurer's rehabilitation staff have no dealings with solicitors over this time. The major concern with this suggestion is that the common law process could be suspended for quite some time, leading to an elongation of settlement of the claim. The present practice of concurrent activities should be maintained.

Proposals

The Committee recommends the adoption of strategies within the existing framework that make the claims process more accessible to claimants by providing information and promote a balance between successful rehabilitation outcomes for claimants and cost containment within the scheme.

A range of strategies is addressed below. There is some overlap with items relating to the claims process which have been discussed in an earlier section of this Report.

Information Packages / Community Awareness

Currently, an explanatory brochure for the scheme is sent out with every motor vehicle registration renewal notice. The information in the brochure is primarily directed at motor vehicle owners/drivers. MAIC has a toll-free number to provide information and assistance in respect of general CTP inquiries by the public, but this number is not well publicised.

There is no written information describing the process for injured persons to access rehabilitation or in fact describing the whole claiming process. Such brochures are available in some other jurisdictions. Claimants are not always aware of the entitlement to reasonable and necessary rehabilitation and may not optimise their access to rehabilitation for this reason.

Information packages were widely supported in the responses to the Issues Paper. There was also support for community education processes regarding the CTP scheme and its benefits. Information packages should -

- contain details on the general conduct of claims and the rights and responsibilities of claimants, legal and medical advisers and MAIC;
- facilitate direct access between claimant and insurer and perhaps reduce the need for legal involvement;
- provide a step by step guide to the claims process as specified in the Act;
- encourage early notification of a claim and highlight the advantage of early access to funded treatment and rehabilitation; *and*
- be distributed and accessed through a variety of settings and systems, using a variety of formal and informal media and communication channels.

The channels of communication could include -

- brochures distributed with registration renewal and driver(s) licences and made available at offices of CTP insurers, Queensland Transport offices, motorist organisations, Union offices, doctors' surgeries, hospitals and rehabilitation provider premises;
- information packages sent out to claimants upon request via the call centre;

- MAIC web-page where users can find the answers to most frequently asked questions about the scheme; *and*
- E-mail access to MAIC to address specific queries.

Recommendation

4.1 Information packages be developed by MAIC and made available to claimants and other interested parties to explain the claims and rehabilitation processes, to encourage early notification of claim and to highlight the advantage of early access to funded treatment.

Central Advisory / Assistance Facility

The strategy in relation to a central assistance facility is discussed in the previous section of this Report. It is important that this facility provides sufficient emphasis on rehabilitation issues in conjunction with general claim process issues.

Improved Information Channels for Service Providers

MAIC rehabilitation guidelines currently exist for CTP insurers, legal practitioners and rehabilitation providers. The guidelines for insurers and legal practitioners are currently being revised and are being extended to include guidelines for medical practitioners. When requested, MAIC staff to provide training presentations to stakeholder groups on aspects of CTP.

There is widespread support for MAIC to adopt a greater educational role in respect of medical practitioners, rehabilitation providers and solicitors to enhance their understanding of the CTP process and rehabilitation issues.

There is significant insurer support for a comprehensive education program on the CTP legislation for General Practitioners (GPs) in particular, with emphasis on the reasonable and necessary rehabilitation provision. GPs play a significant role in the clinical management of CTP claimants, but have difficulties at times in fulfilling this role due to their general lack of exposure to the scheme on a regular basis.

Information channels to assist this initiative are -

- MAIC web page;
- articles in newsletters of relevant associations;
- MAIC presentations to relevant undergraduate and post-graduate training programs; *and*
- introduction of a specific CTP medical certificate which forms part of the Notification of Accident Claim form with appropriate information on the scheme, in particular rehabilitation, on the reverse of the form.

Recommendation

4.2 That appropriate initiatives for improved information flow for medical and rehabilitation service providers be implemented.

CTP Medical Certificate and Authority for Insurer to Contact Treating Medical Practitioner

No medical certificate or authority to obtain information is currently required with the Section 34 notice. An authority is required with the Section 37 claim form, but a formal medical certificate is not required.

The timeframe for the Section 34 notice is linked to consultation with a lawyer, not with the date of the accident. It should be noted that the original intention of the Section 34 provision

was to place the insurer and the plaintiff lawyer on an equal footing in terms of investigating a claim. With the evolution of experience with the 1994 Act, insurers have looked for information which would assist in the provision of reasonable and necessary rehabilitation at the Section 34 notice stage. The Committee is of the view that the Section 34 requirement should be replaced with a Notification of Accident Claim form. In this way, early intervention for treatment of injuries or payment of reasonable costs can be facilitated through the availability of early medical information.

A pre-printed form which has standard everyday wording, similar to the NSW Motor Accident Authority form, could be used. The form would contain brief information about the claimant and the accident (sufficient for provisional determination of liability) and a medical certificate and an authority.

The authority would allow the insurer to contact any doctor, hospital or health service provider, police or workers' compensation insurer and obtain information relevant to the claim. It should lead to more open dialogue with the doctor at an earlier stage post-injury.

The medical certificate would give a diagnosis and extent of injuries and may indicate proposed treatment. Completion of the medical certificate would be a pre-requisite for the insurer to consider funding treatment expenses and/or settlement of claim.

The timeframe for lodgment of the Notification of Accident Claim form would be linked to date of accident. Within 14 days of receipt of a complying NOAC form, the insurer would be required to make provisional determination of liability and make contact with the claimant to arrange early intervention for the purpose of paying medical and allied health treatment costs. Although the legislative requirement for lodgment of the Notification would be nine months from the accident, the information provided to claimants about the scheme would emphasise that early lodgment of this form leads to early access to progressive payment of rehabilitation costs.

(For details on recommendations regarding the Notification of Accident Claim form, the Additional Information Form and the call centre, please refer to sections 3.4 to 3.8).

Protocols for Direct Contact Between Insurers and Claimants

Delays frequently arise in arranging appropriate rehabilitation because contact between claimants and insurers is generally through the claimant's solicitor.

The tradition of legal representation needs to be recognised, but protocols for insurers to contact claimants directly could facilitate timely rehabilitation intervention and generally assist with facilitating the claims process.

No formal protocols exist at present in relation to the CTP scheme. A set of protocols was drafted and agreed to by the CTP insurers and representatives of the Queensland Law Society and the Australian Plaintiff Lawyers Association in 1998. The Committee is of the view that these protocols should be finalised and implemented. The basis of the protocols are -

- when investigating the need to provide rehabilitation, the classification of rehabilitation requirements and the establishment of rehabilitation treatment, licensed insurers shall not directly contact injured persons who are legally represented without first giving reasonable notice to the legal practitioner by letter, phone, fax or e-mail; *and*
- the insurer shall provide the injured person's solicitor with a copy of any correspondence or record of oral communication conducted under an authority to obtain information and of any reply received.

It is also suggested that, in addition to the above, the protocols include the option for insurers to forward to the claimant a copy of any correspondence sent to his/her solicitor. This would ensure the claimant is kept informed and communication delays do not impede the progress of the claim and rehabilitation matters.

Recommendations

4.3 Protocols should be implemented which enable insurers to contact claimants directly with respect to rehabilitation, provided the claimant's solicitor is kept informed of the nature and content of any communications.

4.4 Insurers should have the option of forwarding to the claimant, copies of correspondence between the insurer and solicitor, so that all parties to the claims process are informed.

Claimant's Obligation to Mitigate Damages

Under common law, claimants have an obligation to mitigate their damages.

Section 54 of the Act outlines steps the insurer may take if the claimant is not seen to be mitigating his/her damages by such action as -

- undergoing medical treatment;
- returning to work or taking specified steps to obtain employment; *or*
- undergoing rehabilitation therapy or rehabilitation programs.

Current interpretation of Section 54 is that the insurer has to prove that the claimant has mitigated their injury circumstances. The claimant does not have a responsibility under this provision to prove that he or she is mitigating their injury experience.

The obligation of a claimant to mitigate his/her damages should be clearly stated in the legislation and highlighted in any information package.

Recommendation

4.5 Section 54 of the Act be amended to place a greater obligation on the claimant in respect of mitigating injury.

Benchmarks for Speed of Delivery and Effectiveness of Rehabilitation

In identifying what the legislation intends to achieve from CTP rehabilitation, measurement criteria for effectiveness and/or performance are required. The specified processes in the legislation should lead to appropriate identification of the need for rehabilitation. Some examples of elements which could be incorporated in an evaluation of rehabilitation in the CTP scheme are -

- outcomes for rehabilitation programs;
- outcomes for identifying criteria for rehabilitation referrals; *and*
- outcomes for comparison of rehabilitation between CTP insurers.

The submissions indicate that there is support for strategies, such as benchmarking, to identify and record the effectiveness and the efficiency of the CTP scheme.

Benchmarks for rehabilitation would need to address both qualitative measures and quantitative measures -

- quantitative - reduction in economic loss and general damages due to rehabilitation involvement, including a comparison to delivery costs; *and*

- qualitative - quality of life issues particularly for those who are unable to return to work or gain employment due to their injury.

The development of benchmarks must allow for scheme design and characteristics. Benchmarks developed for a no-fault scheme are not generally appropriate for comparison with a common law scheme.

A number of possible benchmarks for rehabilitation are -

- monitoring the percentage of rehabilitation payments to total payments and the percentage of medical payments to total payments;
- number of days from claim report that rehabilitation is first provided or a rehabilitation plan is agreed upon; *and*
- percentage of claimants who return to work after rehabilitation.

MAIC engaged a consultancy team in 1998 to examine the operation of rehabilitation in the scheme. A number of interesting themes and issues were identified, but the inherent difficulties with undertaking quantitative analysis in this area were highlighted. The Committee is of the view that further efforts should be made to address the quantitative data issue.

Recommendation

4.6 MAIC should develop benchmarks and performance standards by which the speed of delivery and effectiveness of rehabilitation can be measured and monitored on an ongoing basis. The benchmarks and performance standards should be related to the scheme overall and to individual insurers.

Mediation to Resolve Disputes about Rehabilitation Issues

Although the scheme encourages solicitors and insurers to negotiate on rehabilitation issues, this rarely occurs. Rehabilitation is sometimes delayed because of disputes over payment of treatment and/or rehabilitation expenses. In some situations the claimant can commence legal proceedings in accordance with Section 51 of the Act, as to whether or not "reasonable and necessary" rehabilitation services are being provided.

The Committee believes there is a need for a specific mechanism to assist in resolving potential disputes on rehabilitation, other than proceeding to Court determination.

The process would be available to all claimants but would particularly benefit those injured persons who choose to claim direct on the insurer without legal representation.

This mechanism would need to be non-intimidating for claimants, need not necessarily require a solicitor and be seen as impartial. A mediation process can reduce the potential for relationships to become unnecessarily adversarial.

This suggested mediation opportunity should occur when the insurer and the claimant are unable to agree on rehabilitation issues. The ultimate recourse would remain with Section 51 action in the Courts.

Recommendation

4.7 Mediation should be made available to assist both claimant and insurer to resolve potentially disputable rehabilitation issues. The mediation process should be facilitated by MAIC acting as an independent third party.

Clinical Practice Guidelines and Treatment Outcome Standards

The medical and rehabilitation professions are moving towards evidence-based medicine and associated development of clinical practice guidelines and treatment outcome standards.

As Governments continue to move to output-based budgeting, these initiatives will also increase in importance. Best practice treatment and rehabilitation would naturally be of assistance in the CTP scheme, leading to the best possible use of resources.

The development, dissemination, implementation and evaluation of clinical practice guidelines is, however, a lengthy, systematic process and needs to involve a multi-disciplinary approach with broad level consultation. This type of guideline is actively encouraged at a national level, with a lead role in defining the process being taken by the National Health and Medical Research Council. The NSW scheme has recently placed a high priority on the development of clinical practice guidelines for the treatment of whiplash associated disorders. MAIC has provided funding and analytical input for the development of guidelines for the management of anxiety associated with motor vehicle accidents. Neither of these guidelines is yet at the implementation stage.

Treatment outcome standards are regarded as an even more difficult area to define and manage. The Committee is of the view that significant developments in this area are some time into the future.

Recommendation

4.8 While the Committee acknowledges the difficulties of developing appropriate clinical practice guidelines, they are seen as important and continued development should be encouraged and supported. Once a set of guidelines has been developed, it should be adopted wherever possible, if necessary with legislative backing.

Schedule of Fees for Treatment and Medical Reports

At present, insurers need to pay the fees that are charged by medical providers. There is some discontent that providers sometimes seem to have one general rate and a specific higher rate for compensable matters. It was suggested that a schedule of fees for treatment and medical reports in relation to CTP be devised and implemented.

The Committee is of the view that such a schedule would be difficult to implement and may simply shift the cost gap from the insurer onto the claimant.

There is wide-spread support, particularly among insurers, for CTP claimants to be charged at a level which is the same or lower than fees charged for non-compensable patients. It is therefore suggested that the Insurance Council of Australia (ICA) negotiate with health provider associations to determine what would be acceptable fees for the insurance industry.

Recommendation

4.9 Insurers, direct or through the ICA, should negotiate with health provider associations on acceptable fees for treatment and the provision of medical reports in relation to CTP matters. Legislative control and prescription of such fees for CTP purposes is not supported.

Proposal for a $300 payment without admission of liability

The Committee's suggestion of a $300 provision for payment of medical and rehabilitation costs without admission of liability by the insurer received support in the market research (81% of respondents found the initiative appealing). However, it received little support from insurers, solicitors and service providers.

The problems associated with such an arrangement are seen to be -

- the figure is of insufficient benefit to significant/serious injuries;

- the provision would be expensive to administer;
- it would be susceptible to fraud, particularly over-servicing; *and*
- it has the potential to increase claims costs without any offsetting reductions in other components of claim payments.

The Committee accepts that these issues could impede the success of such an arrangement. The overall problem that the initiative was designed to solve (early access to appropriate rehabilitation) is addressed by a number of Committee recommendations, including the call centre facility, the Notification of Accident Claim form incorporating a medical certificate, the requirement for insurers to decide provisional liability within 14 days and the improved information channels to service providers.

The proposal for a $300 payment for treatment costs, etc without admission of liability is not to be further pursued at this time.

EVENT COVERAGE (NO-FAULT V COMMON LAW SCHEME)

(Area of Concern 2)

Current Position

The present scheme covers liability for personal injury arising out of motor vehicle accidents and indemnifies an owner or driver of a vehicle who is found to be liable, in whole or in part, for the cause of the accident.

While the Queensland scheme has full access to common law, in some other States there is a mixture of common law and no-fault.

Although the Queensland CTP scheme has been fault-based since 1936, there is still a degree of misunderstanding about event coverage. In the market research, only 57% of respondents were aware that they would not receive compensation if they were an at-fault driver; 32% considered that they would be covered; and 11% did not know whether they would be covered or not. This result confirms the anecdotal evidence that a significant number of people are not aware that they, or other drivers in their family, are not covered in such situations.

Problems/Concerns

In a common law scheme, access to rehabilitation as soon as the needs are known is not as easily achieved as it would be under a no-fault scheme.

There are some significant problems in relation to at-fault driver events. These include -

- a significant lack of awareness by the motoring population that no compensation will be payable if there is no negligent party for the injured person to sue;
- the potential financial impact on a person with a *moderate* injury who, for example, suffers loss of earnings for some period of time, plus private medical bills, etc; *and*
- the major financial and emotional impact on a person and their family when a *catastrophic* injury occurs, such as quadriplegia, paraplegia or serious acquired brain injury. In this situation the injured person will need to rely on the immediate family and the public system for long term care and support.

Submissions/Arguments

There is support, particularly from the legal profession, for the retention of access to common law on the grounds that the current scheme works well and delivers appropriate benefits to injured parties.

There is also a level of support for the introduction of a compensation scheme providing a scale of benefits (medical, rehabilitation and care costs, loss of wages, etc.) on a no-fault basis. This would cover persons (including drivers) injured in motor vehicle accidents, irrespective of fault.

The no-fault concept could be broadened to allow access to common law with or without limitation, such as the Victorian or Tasmanian models.

There are, however, potential difficulties in attempting to operate a no-fault component within a predominantly common law scheme. For example, there would be inconsistencies if the common law component provided lump sum benefits and the no-fault component provided income benefits. Common law benefits also take longer to deliver than no-fault benefits.

Proposals

The Committee examined two possible no-fault systems to address the issues -

- a no-fault component in the existing common law scheme to provide benefits to catastrophically injured persons; *and*
- an optional first party policy which could be purchased at the time of purchasing the compulsory third party policy.

Details of the analysis are as follows -

No-fault Long Term Care Component

Tasmania has implemented a scheme whereby injured persons in need of at least two hours of care per day are entirely supported by long term care arrangements from the Motor Accidents Insurance Board. At present, 50 persons are covered by these arrangements. The associated premium for Tasmania's CTP has remained affordable.

As part of its no-fault scheme, Victoria provides a degree of support to at-fault drivers, although the greater level of benefits is provided to those who meet the 30% whole person impairment "gateway" into the common law scheme.

In NSW, analysis has been undertaken on the potential design and cost of a similar style scheme to Tasmania. As yet no action has been taken due to the anticipated high level of cost, especially in a State where CTP premiums are already expensive. The NSW proposal would cover both at-fault and common law claimants, giving them a high standard of long term care.

In all of these frameworks, a crucial factor is the "gateway" to the no-fault and long term care benefits. Schemes could quickly become unaffordable if the benefits become available to a much broader range of injured persons.

In the current Queensland common law scheme, the premium analysis indicates that approximately $45 per policy is provided for an estimated 67 persons per annum with very serious injury. These persons are identified as those with claim payments over $500,000, which includes past and future economic loss and general damages.

There would be good arguments for defined, income-based benefits to be provided to at-fault drivers suffering serious injury, but to introduce such benefits to a small group of claimants per annum would present considerable difficulties. They would be more complex to administer and would raise issues of equity between fault-based and no-fault claimants.

Accordingly, some analysis has been conducted for the Queensland scheme on the basis of no-fault claimants being entitled to the same benefits as fault-based claimants. It is estimated that there would be between 30 and 40 per annum seriously injured no-fault claimants who should arguably be covered by an accident compensation scheme, but are not covered by the current scheme. To provide cover for these persons would cost of the order of $25 per policy if they were paid the same benefits as fault-based claimants. However the "gateway" to these benefits would need to be very strictly managed.

In the submissions in response to the Issues Paper, there was a mixed reaction to the suggestion to introduce a combination of a common law/no-fault scheme. Those in favour of the proposal said that it would remove some of the burden on the public system and provide better health outcomes. Those opposed to the proposal mainly concentrated on the potential expense of such a system and that the provision of no-fault benefits might induce persons to be less careful on the roads.

Whilst the Committee is very supportive of some form of no-fault cover, the difficulties and potential inequities are acknowledged and on balance, the Committee is not inclined to recommend such an option at this time. However, the matter should be kept under review.

Recommendations

5.1 The Queensland scheme should remain a fault-based common law scheme.

5.2 The introduction of a no-fault component for catastrophically injured persons not proceed at this time, but the matter be kept under review by MAIC.

Optional First Party Cover

In the NSW scheme and in the early stages of Queensland's 1994 Act, some private insurers provided, free of charge, an At-Fault Driver Cover with every CTP policy. This cover was a defined benefit for very particular injuries, e.g. quadriplegia ($250,000), amputation of both hands or both feet ($50,000), total loss of eyesight ($100,000) or hearing ($50,000). The events covered by these policies would not be very common and the cover is rendered invalid if the driver was under the influence of alcohol or drugs. In essence, such cover would appear to be at minimal cost with minimal real benefit.

The Committee has analysed the possibility of establishing an optional first party policy which would be offered by insurers at the time of vehicle registration or renewal. Because one of the objectives would be to raise the awareness of the motoring population that CTP did not cover at-fault driver situations, it was seen as preferable for such a product to be added onto the CTP premium, unless the motorist chose to opt out of the arrangement.

The cover would need to be meaningful, and an indicative cost was thought to be $30 or $40 per year. Benefits might include medical, rehabilitation and long term care costs and loss of wages up to a specified maximum dollar value and maximum duration. For those with common law rights, benefits could be provided immediately under this policy, with offset if appropriate on any future common law payment.

There would be a number of operational issues to be resolved, but most of these were thought to be capable of resolution. One particular difficulty arose because the cover would, by necessity, follow the vehicle (since it was sold with CTP). This may leave a prudent person unwittingly exposed if he or she borrowed a car from a person who had opted out of the first party cover.

Such a product would probably need to be legislated to ensure standardised cover and therefore would come under Government control. Delivery by the insurance industry would be subject to negotiation. One of the advantages of a standardised product would be critical mass for the premium pool. The best result might be achieved if all insurers agreed to provide the product. Alternatively, the product might be a suitable candidate for a tender process to select the underwriter.

A general description of the nature and cost ($40) of the product was provided to market research participants. Of the sample, 30% said that they would be very likely to purchase such a policy and a further 32% said that they would be quite likely to purchase such a policy. Based on marketing experience, this would indicate an initial take-up of around 15%. As the product became more clearly defined and established, this take-up would probably increase.

The Committee has taken the view that, while it has some attraction, the introduction of such a product in the near future is probably not feasible in the context of other changes proposed to the CTP Scheme. The possibility should, however, remain high on the future agenda. As an initial step, the insurance industry should be encouraged to design and promote meaningful

first party policies and the industry, along with MAIC, should take steps to explain to the motoring public why such policies are important.

Recommendations

5.3 MAIC should take steps to inform the motoring public that compensation is not payable unless fault can be established and that individuals, particularly drivers, should consider some form of personal accident insurance policy to cover this and other potential accident situations.

5.4 The insurance industry should be encouraged to develop and promote meaningful first party policies.

5.5 MAIC should keep under review (subject to 5.4) the possibility of a legislated product to provide standardised first party cover, delivered with CTP, on an optional basis.

SUPPLEMENTARY ISSUES

Nominal Defendant (Area of Concern 7)

Uninsured motor vehicles cost the paying motor vehicle owners approximately $10 million per annum ($4 per vehicle). The Nominal Defendant often experiences difficulty in tracing owners/drivers of uninsured motor vehicles who are primarily liable for damages awarded to injured parties.

An amendment to the *Motor Accident Insurance Act* has been suggested to allow the Nominal Defendant to access information which will facilitate the tracing of these debtors so that attempts can be made to recover, in whole or part, sums paid by the Nominal Defendant on behalf of these motorists. This suggestion was strongly supported in the submissions.

Given the large cost of claims from uninsured motor vehicles, it is appropriate that the Nominal Defendant have stronger powers to access information to trace debtors and recover the cost of claims, thus minimising the cost to other law-abiding motorists.

Recommendation

6.1 The Nominal Defendant should have statutory powers to access information which will facilitate tracing debtors resulting from personal injury claims arising out of the driving of uninsured motor vehicles.

Quality of Data (Area of Concern 15)

Quality of data is essential in the management of a scheme and the current Queensland scheme is structured to collect a wide range of information to assist in premium setting and fraud prevention, as well as research initiatives in the area of rehabilitation and accident prevention.

There is some criticism that insurers do not fully comply with standards, especially in the area of claims coding. It was evident to the Committee in examining claims costs data that the information was not of an acceptable standard. The Committee believes that this standard must be improved and, to ensure appropriate standards are achieved, the frequency of auditing by MAIC should substantially increase.

The proposition was put to the Committee that the MAIC supervised call centre could be the means for collecting initial claims information. This would be forwarded electronically to the insurer, appending the Police report obtained via the Traffic Incident Reporting System (TIRS) and registration details via CITEC. The advantage of this system is that the Traffic Incident Number and make of vehicle and class particulars are recorded and, more importantly, accurately recorded. The concept would also reduce costs associated with duplicate requests for the same information by the various parties. The Committee believes there is merit in the concept and, with technological developments, it should be explored further.

MAIC provides insurers with aggregate information on claim lodgments and settlement payments, as well as quarterly-monitoring reports prepared by actuaries. Insurers have expressed a desire for more detailed claim by claim records so that they can reach a better understanding of the market. This is not considered appropriate in a community rated scheme where insurers are not permitted to refuse business.

Recommendations

6.2 MAIC needs to establish standards to ensure both quality and consistency of scheme data. There should be increased auditing by MAIC to ensure standards are achieved and legislated sanctions should be considered for non-compliance

e.g. cost recovery for work involved in achieving compliance. For persistent and serious non-compliance, suspension of a licence may need to be considered.

6.3 The scheme should be transparent to all stakeholders and MAIC should continue to provide all pertinent information on at least a quarterly basis.

Structured Settlements (Area of Concern 22)

Currently, all settlements of common law claims in Queensland are paid as a "one-off" lump sum. Situations arise where these compensation funds are poorly managed by recipients, such that the Government health and social welfare system has to provide ongoing support to the injured person.

A system of structured settlements would include the progressive payment of monies awarded for future medical/hospital treatment, rehabilitation, future economic loss and future care on an "as required" or periodic basis, rather than as an up-front lump sum payment.

There is support for a system of structured settlements to ensure that monies paid are used for the benefit of the injured party and for the purposes intended.

Under the current taxation regime, if a claimant chose a structured settlement, with the insurer purchasing an annuity on the claimant's behalf, the lump sum used to purchase the annuity would be treated as capital and tax-free. However, the interest component of each annuity payment would be treated as income and therefore taxable.

There is essentially no difference between this situation and the claimant receiving a lump sum payment, investing it and being taxed on the interest earned at the claimant's marginal rate. However, there is a perception that a lump sum is tax free and a structured settlement is taxable from the first payment. For this and other reasons, there is no incentive from the claimant's perspective to seek structured settlements rather than lump sum payments.

Some parties are advocating that structured settlements should be granted preferential tax treatment (i.e. the interest component become non-taxable) to provide an incentive for a claimant to choose a structured settlement. Any change in respect of taxation is a matter for the Commonwealth Government to consider.

The Committee sees merit in structured settlements. MAIC should continue to promote the option of structured settlements.

Recommendation

6.4 MAIC should continue to promote the option of structured settlements.

Policy Coverage (Area of Concern 24)

Liability for Workplace Accidents

It has been suggested that in recent months, insurers have seen a number of claims resulting from long distance truck drivers who have been involved in accidents through fatigue and sleep deprivation. These drivers have sued their employers alleging a failure to establish, maintain and enforce safe methods and systems for the drivers to carry out their employment and, in particular, the failure of the employer to provide adequate rest breaks.

As well, insurers have received CTP claims which involve injuries that result from the use of motor vehicles, not from a single incident but which occur over a period of time, e.g. a truck driver suffering a back injury over a period of time as a result of a poor seat.

In both of the above situations employers may seek indemnity from the CTP insurers.

It is suggested in one submission that the *Motor Accident Insurance Act* ought be amended to ensure that damages payable by an employer to an employee arising out of an injury involving a motor vehicle and in respect of which statutory workers' compensation benefits are payable, is excluded from the cover provided under the CTP policy to the extent that the injury is the result of an unsafe system of work.

In the first situation, it is the Committee's view that these matters should be left to the Courts to decide if the claim is one which should be paid under a CTP policy.

In regard to the second situation, the Committee considers that the *Motor Accident Insurance Act* should only cover injuries resulting from "single events" and that injuries resulting over a period of time should be outside the scope of a CTP policy.

Recommendation

6.5 The Act be amended to restrict claims to injuries arising from a single event and not conditions that have developed over a period of time.

Inevitable Accident

The scheme covers liability for personal injury arising out of negligence. "Inevitable accident" is a defence at common law. Such defence is rare but may arise in circumstances where a driver has suffered a medical condition, without warning, which results in an accident.

The issue of "inevitable accident" has been raised in the context that there appears to be an expectation within the community that an innocent person injured in such an incident should be covered by CTP insurance.

A defence such as "inevitable accident" is no more than a plea of "no negligence".

The Act applies only where personal injury arising out of a motor vehicle accident is caused wholly or partly by wrongful act or omission in respect of a motor vehicle by someone other than the injured person.

The Courts closely and critically examine the conduct of a driver before making a finding of "no negligence" and it is an accepted view that it is only in the clearest cases that this defence will be successful.

The question must also be raised as to why persons injured without negligence on the part of anyone should recover damages or other compensation simply because of the incidental involvement of a motor vehicle.

Having regard to the fact that the defence of "inevitable accident" or "no negligence" is rarely if ever successful in the motor vehicle area, no action should be taken to remove that defence. To disallow such a defence would be contrary to the intent of the Act which is based on fault.

Recommendation

6.6 No action be taken to amend the Act to remove "inevitable accident" as common law defence in respect of liability.

Definition of Collision

The policy covers claims for injury as a result of a collision or action taken to avoid a collision. However, the term "collision" is not defined.

A dictionary definition of "collision " is "violent striking of a moving body against another or against a fixed object".

The concern in this matter arises out of a view that the meaning of "collision" should be defined to ensure that a wider interpretation is not placed upon the term by the Courts.

In the context of this concern, it is suggested that the answer may be in limiting the events which would be covered by the Act, rather than defining the word "collision". Section 5 of the Act could be amended so that it reflects the more restrictive provisions in other States, to achieve some further certainty as to types of claims which fall within the Act. However, this could mean that deserving claimants, although having a right of action against some party, may not be able to recover damages if the vehicle is not compulsorily insured.

In these circumstances it is considered that it is more appropriate to leave interpretation of the word "collision' and Section 5 to the Courts. There is no information on the number of cases each year in which the problem is raised, but it is suspected to be few and precedents of the Court will soon clarify the issue.

Recommendation

6.7 No action be taken to include a definition of the term "collision" in the Act.

Trailers

Prior to 1988, trailers were separately insured and were subject to a premium charge. In 1988 Queensland adopted the system that was already in place in Victoria and NSW, in which the liability in respect of a trailer was covered under the policy of insurance on the hauling vehicle and premiums on trailers were discontinued.

In 1994, in recognition of the gaps in cover (in particular, liability arising from an unattached trailer), the legislation provided for gratuitous insurance by the Nominal Defendant, but limited the cover to accidents in Queensland. There still remained problems outside of Queensland in which a Queensland registered trailer was unattached, or hauled by a vehicle registered in another State that did not have the trailer extension on the vehicle's policy of insurance.

The Committee notes the past work undertaken by the MAIC in endeavouring to gain uniformity between the States, to ensure the gaps are removed. Whilst the risk is relatively small, the Committee feels changes need to be implemented to eliminate the exposure for Queensland motor vehicle owners travelling interstate.

Given the higher risk for the trailers of heavier vehicles, in particular semi trailers, it is the Committee's view that the cover should be optional rather than gratuitous. Transport operators should be given the option of broader insurance cover using the existing Class 24 (Trailers registered under the *Interstate Road Transport Act 1985*). Such cover would not be necessary for travel within Queensland. A complementary amendment recommended by the Committee is that any cover in respect of trailers is limited to Queensland registered trailers.

Recommendation

6.8 The existing Nominal Defendant cover in respect of trailers should be broadened to include accidents outside of Queensland, in respect of liability attaching to Queensland registered trailers with a gross vehicle mass of less than 4.5 tonnes, and not otherwise indemnified under a policy of insurance on the hauling vehicle. For large trailers, broader insurance cover should be implemented, using the existing Class 24.

Enforcement (Area of Concern 25)

Currently, Penalty Infringement Notices (PINS) are issued by the Queensland Police Service and also by Queensland Transport Officers who are charged with the responsibility of enforcement of provisions of the legislation dealing with uninsured motor vehicles and vehicles insured in the wrong class.

There are suggestions that uninsured vehicles comprise up to 5% of the vehicle population in Queensland. Consequently, there is strong support in the submissions for a greater emphasis on the detection and prosecution of uninsured and incorrectly insured vehicles.

For rental vehicles, it is necessary to detect a person in possession of a vehicle the person has hired before a prosecution can be launched.

There has been a recommendation to amend the *Motor Accident Insurance Act* to allow Queensland Transport inspectors to prosecute car rental firms on the basis of offer of a car for rental where the CTP insurance category is incorrect.

The motoring trade and the car rental industry have submitted that the current penalties for knowingly insuring a vehicle in the incorrect insurance category are inadequate and do not act as a deterrent.

The current premium for rental cars of $972 is significantly greater than the Class 1 premium of $286. The penalty for the offence is set at $360. Some operators are willing to risk detection because the size of the penalty is less than the gain to be made.

Queensland Transport has called for improved systematic identification of problem areas for claims involving unregistered/uninsured vehicles and more funding to target and enhance enforcement and educative programs.

Recommendations

6.9 Continued funding through the "Administration Fee" to Queensland Transport for enforcement activity is supported provided that appropriate performance benchmarks and monitoring arrangements are in place.

6.10 Amendment to the legislation be made to define the term "hire vehicle" so as to encompass a vehicle *offered* for hire.

6.11 An increase in the penalty under the Justices Regulation 1993 provision should be implemented for vehicles knowingly insured in the wrong class.

Premium Raising (Area of Concern 30)

Premiums for CTP insurance are due with motor vehicle registration.

There are some suggestions that CTP premiums be raised through a levy on fuel, although there is an acknowledgment that there would need to be national agreement for such a scheme to take effect.

The Committee has received advice that this approach would be un-constitutional at a State level.

Another suggestion is to attach the CTP premium to drivers' licences rather than motor vehicle registration. The concept of collecting all or part of the premium pool on drivers' licences would facilitate rebates directly linked to the driving record.

Given the disproportionate relativity of the CTP premium to the cost of renewal of a driver's licence and other fundamental problems relating to the status of a licence at any particular time, the Committee doubts the practicality of this suggestion.

Recommendation

6.12 CTP cover should continue to be funded as an insurance premium and remain integrated with motor vehicle registration.

Premium Collection (Area of Concern 31)

Renewal of CTP premiums are collected by Queensland Transport.

There is support from insurers for the current method of collection through Queensland Transport because it is "efficient, effective and logical".

There is strong support for allowing payment of CTP premiums at six-monthly intervals to reflect the flexibility of motor vehicle registration payment options.

Recommendation

6.13 The Committee strongly endorses the continued collection of CTP premiums by Queensland Transport, including six-monthly renewal.

Premium Relativity (Area of Concern 35)

Taxis

The current premium relativity for taxis is 5.5 times Class 1, although claims experience would indicate that a higher relativity should apply. It is recognised that the taxi industry is making efforts to improve its road safety record, but the claims experience will tend to be relatively high because of the time spent on the road.

The taxi industry put forward the view that taxis are a small class of vehicle and since other high-road-use vehicles (e.g. courier vehicles, police vehicles) are included in Class 1, then taxis should be as well. The industry also argues that it warrants concessional CTP treatment because of its important role in the broad public transport system. If large increases in CTP premiums are simply passed onto the community, taxi fares become less affordable and usage may drop.

The Committee is of the view that, wherever reasonably possible, premiums should reflect the risk associated with each class of vehicle. The Committee does not favour the introduction of a large number of new classes, although a few additional classes may be possible over time after the proposed Vehicle Class Filing model has been introduced.

The high accident experience for taxis presents a particular set of problems to CTP insurers, the Commission and the Government. Special strategies may need to be developed over time to address the situation. A particular anomaly is emerging in relation to maxi-cabs which at present are insured under Class 10 (buses). The Committee considers that this situation should be addressed.

The broader issue of the public transport system is outside the terms of reference of this Review.

Recommendation

6.14 The premium relativity for taxis should be closely monitored and incremented gradually to a level consistent with their assessed class risk rating. The taxi industry should continue to be encouraged to implement strategies designed to improve driver accident records and claims experience and hence reduce the current risk relativity loading.

Trucks

Suggestions have been made that another relativity class should be introduced for trucks, specifically to cater for mid-size trucks.

Under the Queensland scheme, two classes exist for premium rates applying to trucks. These generally conform with the approach in other jurisdictions, although South Australia and Victoria have a three class system.

Queensland Transport registration figures indicate that there are approximately 392,000 trucks with a gross vehicle mass of less than 4.5 tonne (Class 6) and 48,000 trucks with a gross vehicle mass of 4.5 tonne or greater (Class 7). The first group currently attracts the same premium rate as Class 1 vehicles whereas heavier trucks have a premium equal to three times Class 1 ($858). Both premium levels have been actuarially determined and reflect the claims experience.

The Committee does not support broadening the existing classifications given the current scheme design and the nationally determined standard. However, if the proposed Vehicle Class Filing model was introduced, over time there would be opportunity for insurers to consider a third class of truck.

Recommendation

6.15 There should be no change at this stage to the current classification of trucks, which is consistent with nationally determined standards.

Motorcycles

In consultations with the Committee, arguments were put forward that the system for rating motorcycles should revert to the pre 1994 situation which rated on engine capacity. On examination the Committee has established that the change from engine capacity to seating as the rating factor in fact took place in 1988.

The engine capacity would have greater value as a rating factor in a no-fault scheme in which cover would be extended to the rider of the motorcycle. However, the Queensland scheme is fault based and the claims emanating from the fault of a motorcycle in most instances would involve a pillion passenger. Consequently the Committee does not support a change in the rating methodology.

Recommendation

6.16 The existing rating method for motorcycles should remain unchanged.

Levies (Area of Concern 37)

The following levies are provided for in the legislation -

- Hospital & Emergency Services 1.677%
- Administration Fee (Queensland Transport) 1.272%
- Statutory levy (MAIC) 0.335%
- Nominal Defendant 4.16%

The Act currently states that the hospital and emergency services levy must cover a fair proportion of the estimated cost of providing public hospital and public emergency services having regard to the burden placed on the services by motor vehicle accidents.

There is insufficient data to determine the actual costs relating to compensable personal injuries arising from motor vehicle accidents, although data sources are improving.

In any event, the proportion of such services that should be met through the CTP premium is a matter for Government consideration.

The Department of Emergency Services' preferred position is that the full cost of the services it provides in respect of road accidents be recouped from the CTP scheme. Queensland Health's primary concern is that it is obligated by the Government Financial Standard to seek recovery of the full cost of providing services to patients injured in motor vehicle accidents.

Queensland Transport sees a need for review of the administration fee paid from the scheme to more realistically reflect the cost of administration, enforcement and road safety activities it undertakes because of the benefit to the scheme's objectives of these activities.

There is support from sections of the legal profession for levies as an effective and efficient method of raising the necessary funds, without resort to cumbersome processes such as recovery on an individual claim basis.

The Nominal Defendant levy is assessed annually by actuaries to ensure that the Nominal Defendant scheme remains fully funded.

The Committee's view is that the CTP scheme is an indemnity scheme, not a tax on the community. Any increase in the levies would have to be considered on the basis of benefit to the scheme as a whole and in the context of Government funding for health and emergency services.

A new approach to specification of the levies will be required with the Vehicle Class Filing model, e.g. they will need to be specified in dollar amounts per premium rather than as a percentage of premium.

The Committee considers that there could be advantages in terms of motorist awareness if the levy component of the premium was separately identified on the renewal notice underneath the CTP premium amount.

Recommendation

6.17 The Act should be amended to remove the existing provision regarding the hospital and emergency services levy, and to provide that the Treasurer shall determine from time to time the contribution towards hospital and emergency services costs which should be funded from the CTP premium.

Early Notice of Injury (Area of Concern 39)

Section 34(1)(a) of the *Motor Accident Insurance Act* stipulates that, if personal injury arises from a motor vehicle accident, the driver, person in charge or owner of the motor vehicle must give written notice to the insurer within one month after the accident.

There is a suggestion that Section 34(1)(a) is superfluous to the operation of the scheme as it is seldom complied with.

Insurers have electronic access to Police accident reports and if all claims are reported to the Police as proposed under Recommendation 3.3, there is little need for Section 34(1)(a).

Recommendation

6.18 The requirement pursuant to Section 34(1)(a) of the Act that the driver or owner of the motor vehicle give written notice to the insurer within 1 month after the accident, should be deleted.

Notice of Claim Details (Area of Concern 40)

Under the present scheme, a Section 37 Notice of Claim is the first step in the claims process even though there is a requirement under Section 34 for notice to be given to the insurer within a month of consulting a lawyer. As it currently stands the Section 37 Notice is to be given by the claimant before bringing an action for damages. The Notice must be given within nine months after the motor vehicle accident or the first appearance of symptoms of the injury.

If the Notice is not given within the fixed time, the obligation to give notice continues and the Notice, when given, must contain an explanation for the delay. The greatest percentage

of claims are lodged within the required timeframe but, with rehabilitation and early resolution of claims key objectives of the scheme, it is essential that proper attention is given to the legislative requirement.

The Committee's proposal is that a new Notice of Accident Claim (NOAC) form should be introduced and lodged as soon as practicable after an accident but no later than the present timeframe applying to the Section 37 Notice. Further, the Committee is of the view that a claim lodged outside the stipulated period should be accompanied by a satisfactory explanation.

The additional information incorporated in the present Section 37 Notice will remain a feature of the scheme but will only be necessary, if requested by the insurer to support a claim.

In respect of claims involving an unidentified vehicle, the claimant must give a Section 37 Notice to the Nominal Defendant within three months of the accident. If notice is not given within nine months, the claim is barred. The Committee similarly envisages the NOAC form to supercede the current requirement but the timeframe should align to that which currently applies under Section 37 for claims involving unidentified vehicles.

There was a level of criticism from a few solicitors concerning the provision barring Nominal Defendant claims for unidentified vehicles after nine months.

The Committee has considered the Nominal Defendant time limit for giving notice in respect of unidentified vehicles and is of the opinion that due to the nature of these claims and the potential for fraud, the time limit is appropriate and reflects the more cautious approach that should be adopted in these claims.

Recommendation

6.19 The Act should be amended to strengthen the requirement that a "satisfactory" explanation be provided if the claim is lodged outside the nine month prescribed period (three months for the Nominal Defendant).

6.20 The existing time limits for giving notice to the Nominal Defendant in respect of unidentified vehicles should be retained.

Time Limit for Insurers to Resolve Liability under the Industry Deed (Area of Concern 41)

The Industry Deed is a key feature of a scheme involving multiple insurers and avoids litigation and general delays in claim settlements where liability between insurers is an issue.

The Industry Deed requires the question of cost sharing between insurers to be resolved within two months after the Notice of Claim is given. It has been suggested that there would be no detriment to extending from two months to six months the period allowed for insurers to resolve between themselves disputes about liability, because one of the insurers would have been acting as claims manager from the day the claimant served the Notice.

The Committee's view is that the existing period of two months is adequate. Where a matter cannot be resolved it must be referred to MAIC to consider appointment of a referee to decide on the issue of liability and the basis upon which costs are to be shared.

The Committee believes that there is no reason to suppose that it will be easier to determine such questions within 6, rather than two months. There is no doubt that a claim manager who is liable on a claim will manage that claim better than one who is merely appointed because it was first served with the Notice of Claim.

In any case, the Committee is strongly of the view that the claims resolution process needs to be speeded up, not providing opportunities for delay while insurers resolve disputes about liability between themselves.

Recommendation

6.21 There should be no change to the current requirement for insurers to resolve disputes between themselves in regard to liability within two months.

Disclosure of Information (Area of Concern 42)

The legislation currently places an obligation on the insurer to disclose information to the claimant whether or not the claimant requests it. The claimant is obliged to provide certain information to the insurer only when and if the insurer requests it.

There is a recommendation that the *Motor Accident Insurance Act* be amended to make the obligation to disclose information equal for both the insurer and claimant. This will alleviate the necessity for insurers to continually place requests with claimants to ensure that all of the relevant documents have been disclosed to the insurer.

The Committee is of the view that statutory obligations to disclose information should be equal for both claimant and insurer on an on-going basis.

Recommendation

6.22 The Act be amended to make the obligation to disclose information equal for the insurer and the claimant.

Alcohol/Drugs (Area of Concern 43)

The insurer's right of recourse in respect of recovery of a debt from a motor vehicle driver whose blood alcohol content exceeds 0.05g per 100ml of blood, is set out in Section 58 of the Act.

The blood alcohol content referred to in Section 58 is not in line with the limit specified in the *Traffic Act 1949*, which stipulates that it is an offence to have a blood alcohol level equal to or greater than 0.05.

Some submissions suggest that driving under the influence of drugs (other than alcohol) should also be included in Section 58 as an avenue for recovery by insurers.

The Committee supports an amendment to the Act to mirror the wording of the *Traffic Act*.

Recommendation

6.23 Section 58 of the Act should be amended to align with the wording of the *Traffic Act 1949* in respect of alcohol and drugs.

Fraud (Area of Concern 45)

The *Motor Accident Insurance Act* does not provide a time frame for prosecuting offences under the Act. In the absence of a specific provision, the *Justices Act* applies which provides a one-year limit from the date of the offence.

Sections 93 and 94 of the Act cover misleading statements or documents or interfering with certain documents. These could be treated as fraud if a person did any of the above to obtain money or a benefit or to avoid liability. However, there is no specific provision in the Act to prosecute or deal with persons who defraud or attempt to defraud the scheme.

Insurers have indicated that they would support amendment to the Act to enhance the prosecution powers of fraudulent claims by MAIC. *The WorkCover Act, The Motor Accidents*

Compensation Act (NSW) and the *Transport Accident Act (Vic)* have such provisions. In the latter jurisdictions, a time limit for prosecution is set at two years from the date of offence.

Fraud is a serious issue in personal injury compensation schemes and the appropriate mechanism to prosecute is in the interest of the community.

Recommendation

6.24 The Act should be amended to facilitate the prosecution of fraud through improved investigative powers for MAIC and the establishment of a two year time limit for prosecutions.

Statute of Limitations (Area of Concern 46)

Sections 34 and 37 of the *Motor Accident Insurance Act* place time limits on the lodgement of claims.

The *Limitations of Action Act* limits the filing of common law actions to a period of three years from the date of accident or from attaining the age of majority.

The Queensland Law Reform Commission Report of September 1998 recommended the introduction of a general limitation period, which should be the lesser of:

- three years after the date on which the Plaintiff first knew, or in the circumstances, ought to have known:
  - that the injury had occurred;
  - that the injury was attributed to the conduct of some other person; *and*
  - that the injury, assuming liability on the part of some other person, warranted bringing a proceeding.
- ten years after the date on which the conduct, act or omission giving rise to the claim occurred.

These recommended periods would not commence for minors or Plaintiffs suffering a disability until they reach their majority or their disability is stabilised.

There is a suggestion from some parties that there be no time limits imposed on those seeking fair and just compensation.

There is also resistance to any change to limitations from the current situation to the limitation period recommended by the Queensland Law Reform Report, on the grounds that the change would lead to:

- broadening the claim opportunity for personal injuries, e.g. change from an actual base (date of accident) to a discovery base (date the Plaintiff first knew or ought to have known of the injury);
- increased legal costs because what was previously a reasonably clear cause of action will now become a subjective cause of action (date the Plaintiff first knew or ought to have known); *and*
- increased opportunity for fraud (destroyed records, untraceable witnesses and deterioration of memory).

The Committee would argue that the present system, although not perfect, has worked well for personal injuries matters and already offers special consideration in meritorious cases to preserve fairness, e.g. application to Court for extension of the statute period in the case of latent injury.

However, perhaps the most significant point is that the present legislation provides a degree of certainty in the number of claims received for an accident year. The proposed recommendations would not provide the same certainty and would in all probability be treated conservatively by actuaries resulting, more than likely, in increased premiums.

The Committee would be concerned with any changes to legislation which had the potential to increase the exposure for insurers and impact on the scheme as a whole.

Recommendation

6.25 The current time limits for filing of common law actions in respect of CTP claims are considered appropriate and should not be changed.

Summary Judgement (Interlocutory Judgement) (Area of Concern 51)

The Rules of Court allow a claimant to apply for summary judgement once liability for a claim has been admitted. The *Motor Accident Insurance Act* is structured to encourage early admission of liability prior to the determination of quantum and allowing a claimant to apply for summary judgement would be detrimental to the insurer's claim management.

The Committee's view is that action should be taken to prevent interlocutory judgements. The Act should be amended at Section 41(1) similar to the provision in the WorkCover legislation to prevent the Court process being circumvented by applications for summary judgement (interlocutory judgement) once liability for the accident is admitted.

Recommendation

6.26 The Act should be amended so that summary judgements (interlocutory judgements) in CTP damages claims are prevented.

Court Discount Rate (Area of Concern 52)

Future claim allowances take into account future expected earnings on the amount paid in damages. This is known as the discount rate.

Services rendered by a claimant's family members are presently adjusted at a rate of 3% while commercial services are adjusted at a rate of 5%.

Dependency claims for loss of earnings in a claim by a widow are calculated on 3% tables, while claims for future economic loss in the case of living plaintiffs are calculated on 5% tables.

The Bar Association believes that the inconsistencies in application of the discount rate should be addressed.

The discount rate varies between jurisdictions (e.g. Tasmania 7%).

The Committee's view is that a consistent discount rate should apply to all heads of damage.

Recommendation

6.27 The Act should be amended to fix a discount rate of 5% for all components of the damages award.

Interest on Damages (Area of Concern 53)

The interest rate used by the Courts for the calculation of interest on damages for incurred expenses is in excess of current market rates. The Committee's view is that the interest rate used should be tied to a tightly defined market rate, e.g. 10 year Treasury Bond, which will respond to changing economic circumstances. It should be noted that in the application of the rate, adjustments are made to reflect the period of time over which the expenditure was incurred.

Recommendation

6.28 The Act should be amended to tie interest rates on all CTP damages to the ten year Treasury Bond rate.

Accident Prevention/Rehabilitation Grants (Area of Concern 55)

MAIC has developed a role in funding research and initiatives in the areas of accident prevention and rehabilitation to contain costs in the scheme and to improve the health outcome for injured persons. Many of the rehabilitation initiatives funded to date have wider application than the motor accident victim population and therefore have spin-offs for the general health system. This was particularly important in the early stages of the new Act, when the rehabilitation service infrastructure in Queensland was in need of some emphasis so that services would be available for motor accident victims. In future years, the linkages between general government funding and MAIC grants will need to be closely examined and coordinated.

The two research centres (CONROD and CARRS-Q) established by MAIC should continue to develop, including through the attainment of additional external funding. From time to time MAIC is likely to continue to fund competitive grant schemes to support a range of researchers in the accident prevention and rehabilitation areas.

It is vital that the initiatives which are approved for funding demonstrate significant potential benefit for the scheme.

With the increase in applications for funds and the diverse nature of the projects for which funds are sought, there would be merit in MAIC having assistance from a small expert advisory group, with multi-disciplinary backgrounds, in determining priorities and the appropriate monitoring processes and outcomes.

Recommendation

6.29 MAIC should continue to fund appropriately targeted accident prevention and rehabilitation research projects and initiatives. The Committee considers that MAIC would benefit from broad-based input via, say, an advisory committee to assist with deciding priorities.

Governance (Area of Concern 56)

Under the recommendations of this Report, MAIC will continue as a regulatory body, with some changes in responsibilities associated with the competitive model and an increased monitoring role. Although MAIC is not a large commercial operation, the Committee sees some advantages in a broader governance basis than the existing corporation sole model. The options are for a corporate board to replace the corporation sole, or for a permanent advisory committee or committees to support the corporation sole.

In either model it would be important for the appointees to be independent of Government and to be from multi-disciplinary backgrounds. The Committee is of the view that the members must be non-representative of sectional interests, although sufficiently familiar with the business of CTP to be able to make a meaningful contribution. In several of the submissions in response to the Issues Paper, the practicality of appointing persons non-representative of sectional interests was challenged.

The major responsibilities that would be carried out by a board or advisory committee in the proposed model would be oversight of scheme actuarial analysis, assessment of premium filings, allocation of funding priorities to grants and perhaps some assistance with MAIC's investment strategy.

Section 11 of the *Motor Accident Insurance Act* provides for the establishment of an Advisory Committee with persons appointed by the Minister on the Commission's nomination. As more than one advisory committee could be necessary for different aspects of MAIC's role, the Act should be amended to make it clear that more than one advisory committee can be appointed.

Recommendation

6.30 Section 11 of the Act be amended to allow for more than one advisory committee to be appointed.

Claims Process Benchmarks

MAIC undertakes a quarterly actuarial assessment of the scheme and also on a quarterly basis collates claims data to facilitate benchmarking of insurer performance.

Some mechanisms should be put in place to evaluate scheme efficiency and effectiveness. Suggested measures that could be used include the time taken for a decision on liability and the time taken for resolution of the claim.

Using current data and after consultation with insurers the following benchmarks were developed for a decision on liability, to apply to the scheme as a whole -

- 1 month = 55% of claims to have liability decided
- 3 months = 75% of claims to have liability decided
- 6 months = 100% of claims to have liability decided (to comply with Section 41)

The same basis was used to obtain benchmarks for the resolution of claims -

- 6 months = 45% of claims resolved
- 12 months = 70% of claims resolved
- 18 months = 80% of claims resolved
- 24 months = 90% of claims resolved

It is recognised that these benchmarks cannot be adopted until the proposed revised claim process is finalised and may need to be reviewed at a later date.

Recommendation

6.31 Benchmarks need to be developed for the time taken to decide on liability and resolve claims with the benchmarks to be reviewed after the revised claims process outlined in this Report is finalised.

Obligation to Provide Rehabilitation Services (Area of Concern 47)

Clarification of Section 51(4)

Section 51(4) requires that the insurer must, before providing rehabilitation services for the claimant, give the claimant a written estimate of the cost of the rehabilitation services and a statement of how, and the extent to which, the assessment of damages is likely to be affected by the provision of the rehabilitation services.

The rationale for the inclusion of the provision was a concern that the claimant should be fully informed as to any costs associated with the provision of rehabilitation and whether those costs would in any way affect the final settlement eg a reduction because of contributory negligence.

Problems occurred with the interpretation of the provision resulting in MAIC issuing Commission Guideline No 1. Despite the Guideline, a recent rehabilitation research project

undertaken by the Queensland University of Technology found that compliance with Section 51(4) was rare and that almost all of the legal practitioners consulted were unaware of the guideline's existence or its content.

There is an argument that the provisions only need to apply if an insurer seeks reimbursement or partial reimbursement of any rehabilitation expenses paid as this is the only time there would be an impact on the claimant.

It is recommended that the provision is amended to remove the mandatory requirement and introduce a requirement that the notification is a pre-requisite to the insurer seeking any recovery of expenses paid.

Reasonable and Appropriate

Section 51(3) uses the terminology "reasonable" when referring to rehabilitation while Section 51(5) refers to rehabilitation services that in the circumstances of the case are "reasonable and appropriate."

Whilst to some extent the words might be interchangeable, it is considered that it would be preferable to use the words "reasonable and appropriate" in sub sections 3 and 5 to ensure that the same criteria are being used by the court and the insurer in the consideration of these sections.

Clarification of Section 51(9)

Commission Guideline No 1 issued by MAIC makes it clear that the intent of the Commission is that the only circumstances in which the insurer would be expecting to recover any part of rehabilitation expenses paid would be when contributory negligence is established.

The decision in *Walker v Floyd* concluded that rehabilitation expenses properly paid pursuant to Section 51 are to be added to and then deducted from damages otherwise assessed, so as in the result they have no net effect on the assessment. The only exception recognised in that case relates to payments made by the insurer under Section 51 that are ultimately not regarded as "rehabilitation" under the Act. In this instance the payments should be deducted from damages otherwise assessed.

Taken together, it may be said that Section 51 (9) should be interpreted on the following principles:

- payments under Section 51 for "rehabilitation services" which fall within the definition in the Act are to be added to and deducted from the damages otherwise assessed, so that in the result they have no net effect on the assessment;
- if there is contributory negligence on the part of the claimant and the insurer has advised the claimant beforehand that it will be seeking recovery of rehabilitation expenses proportionate to the determination of liability, there will be a deduction from damages otherwise awarded; *and*
- any amounts paid by the insurer under Section 51 which are not ultimately regarded as falling within "rehabilitation" under the Act are to be deducted from damages otherwise assessed.

Recommendations

6.32 The Act be amended to provide that, where there is a likelihood of contributory negligence, notification of the estimated cost and impact of the rehabilitation services to the claimant prior to the provision of rehabilitation be a pre-requisite for an insurer seeking any recovery of expenses paid.

6.33 The Act be amended to clarify references to "reasonable and appropriate" rehabilitation and deductions from damages of amounts paid by the insurer.

APPENDIX 1

ORGANISATIONS CONSULTED

RACQ (Motorists Association)

Motor Trades Association of Queensland

Australian Taxi Industry Association

Queensland Bus Industry Council

Australian Pensioners & Superannuants League

Queensland Law Society

Australian Plaintiff Lawyers Association

Bar Association of Queensland

Insurance Council of Australia

Suncorp-Metway Insurance

HIH/FAI Insurance

MMI Insurance Group

AAMI Insurance

QBE Insurance

RACQ-GIO Insurance

Australian Medical Association (QLD Branch)

Queensland Transport

Department of Justice

Department of Emergency Services

Queensland Health

APPENDIX 2

MARKET RESEARCH RESULTS

The Committee was of the view that there was not a wide appreciation or understanding of the CTP scheme within the community. To better gauge this, the Committee engaged a market research agency Market & Communications Research (MCR) to conduct a survey of community expectations, understanding of, and attitudes towards the operation of the scheme in Queensland.

Method

The survey method was two-phased, using quantitative and qualitative methods in order to meet the study objectives.

Objectives

The key information objectives to be met through the market research were:

1. Ascertain the public's awareness of and understanding of CTP.
2. Determine people's awareness of what they are covered for in the event of injury from a motor vehicle accident.
3. Determine people's expectations of WHO is covered in the event of injury from a motor vehicle accident (passengers, the driver if not at fault, the driver if at fault?) and what they should be covered for.
4. Ascertain the public's awareness of the current cost of CTP and whether the public believes that it is value for money.
5. Whether there is a perceived need for the scheme to change in any way to better meet the needs of the Queensland public. If so, in what way?
6. Understand the public's preference in relation to the value and structure of the payment to the injured person (assessing factors such as capped annual payments for loss of income).
7. Ascertain the relative support for a restricted CTP scheme associated with a lower premium versus an unrestricted scheme at a higher premium.
8. Ascertain public awareness of lawyers advertising for CTP business.
9. Ascertain public attitude towards the legal profession touting for CTP business (particularly in the situations where the injured party does not have to pay a fee if the claim is not successful).
10. Ascertain who the public believes would benefit from this activity (genuine cases of severe or profound personal injury or those with minor ambit claims)
11. Ascertain what effect (if any) the public believes that this activity has on the cost of CTP premiums.

CTP Awareness

91% of respondents are aware of the CTP scheme.

CTP Knowledge

Only 8% of those surveyed rate their understanding of Queensland's CTP scheme as *very good*; 45% rate their understanding as *quite good*; 35% say they do not have a very good understanding; whilst 11% say they have no understanding of the scheme at all.

Instances covered by CTP

Those surveyed were most likely to feel that people's injuries are covered by the CTP scheme in the following instances:

- if they are a driver injured in an accident where the driver of another vehicle was at fault (86%);
- if they are a passenger injured in an accident (80%); *and*
- if they are a pedestrian injured by a motor vehicle (76%).

One in three Queenslanders is likely to feel that injuries would be covered in the following instances under CTP:

- if they are a driver injured in an accident that they have caused (32%); *and*
- if they are a driver injured in a crash where there is no other car involved (31%).

Coverage

Respondents were asked to rate the degree of the importance of the following factors being covered by CTP Insurance - ambulance, hospital and medical costs; rehabilitation and loss of income during the recovery period; loss of potential income if unable to return to one's previous job; cost of long term care; compensation for pain and suffering; and legal costs.

The majority of those surveyed rate all factors tested as important in terms of being covered by CTP. All but one of the factors tested is rated as important by at least nine in ten respondents. Compensation for pain and suffering, whilst still deemed important by 85% of respondents, is the only factor to receive an importance rating lower than 90%. Those who have personally made a claim or received compensation under CTP insurance (97%) appear more likely than those who have not (84%) to rate compensation for pain and suffering as an important factor for coverage under CTP.

The following factors receive the highest ratings in terms of being very important:

- ambulance, hospital and medical costs (74% rate as very important);
- loss of income during recovery period (65% rate as very important); *and*
- the cost of long-term care (65% rate as very important).

Cost of CTP

On average (using the median), those surveyed perceived the annual cost per vehicle for CTP cover to be $204. 59% of respondents perceived the cost of CTP to be *below* the actual current cost of private vehicles ($286), whilst 24% estimate a *higher* cost than the actual cost.

After being told the actual cost of CTP insurance ($286), four in ten drivers (42%) rate the value for money as *good*. 31% consider the value for money neither good nor bad, rating it as *about right*, whilst 17% say the value for money is *poor*.

Respondents most commonly mentioned a *busier road system and thus more claims (65%)* as the reason for increased premium costs for CTP insurance. The next most commonly mentioned reason for increases in premiums is that *people exploit the system (28%)*. Examples of exploitation include - lawyers/solicitors encouraging people to make a claim / lawyer advertising (9%), people cheating the system (10%) and people making unnecessary claims (9%). *Increasing costs* generally, (26%) is another reason given for increased CTP premiums.

Legal Actions

When prompted, 60% of those surveyed are aware of the advent of lawyers encouraging people to make claims under CTP. Advertising, either via newspaper (40%) or television (32%) is the most commonly mentioned way lawyers are perceived to encourage people with minor injuries to claim. Advertising via the radio (14%) is also mentioned.

More than one half of those surveyed (55%) oppose the encouragement of people with minor injuries to make claims under CTP. 40% say they support such encouragement.

CTP Initiatives

Most appealing is the initiative - *"For claims for minor injuries, medical assessment tribunals would be used to determine the extent of physical impairment rather than the courts"*. This initiative is considered appealing by 88% of those surveyed.

Around eight in ten respondents consider the following initiatives to be appealing:

- *"A progressive payment of up to $300 for minor injuries to cover early medical and rehabilitation costs" (81%).*
- *"For claims for MINOR injuries, payment to compensate the injured party for pain and suffering would be determined by reference to a point scale based on degree of impairment" (80%).*

Whilst still supported by the majority of respondents, the initiative - *"Loss of income payments for people who earn over $104,000 per year at the time of their accident would be no more than $104,000 per year"* receives the lowest level of support with 72% rating this initiative as appealing.

Optional Cover

(Respondents were read the following question) "At present in Queensland, drivers at fault who are injured in an accident are not covered by CTP. An initiative is being considered whereby drivers at fault who are injured can receive limited cover for rehabilitation and some loss of income by paying an OPTIONAL $40 on top of the cost of their CTP. If this option was available, how likely would you be to take it up."

62% of respondents say they *would* be likely to take up the optional at-fault component of CTP if it was offered. 30% say they are *very* likely and 32% say they are *quite* likely to take up such an offer. 19% say that they are *not very* likely, and 17% say they are *not at all* likely to take up such an option.

Payout limits to reduce premiums

(Respondents were asked) "How strongly would you support or oppose a limit being put on the level of pay-outs on minor claims, in order to reduce CTP premiums by $50".

The majority (87%) of respondents supported the introduction of limits being put on the level of pay-outs on *minor* claims in order to reduce CTP premiums by $50. 11% are opposed to such an initiative.

Pay-outs limits to cover drivers at fault

(Respondents were asked) "How strongly would you support or oppose a limit being put on the level of pay-outs on minor claims, in order to cover injured drivers at fault in an accident, for rehabilitation and some loss of income".

Three quarters (74%) of respondents supported the initiative to put a limit on the level of pay-outs on minor claims in order to cover drivers at fault for rehabilitation and some loss of

income. 23% are opposed to such an initiative, with 14% slightly opposed and 9% strongly opposed.

Those who rate the value for money provided by the scheme as *poor* (36%) are the only group more likely than average to be opposed to this initiative.

Suggested improvements to the CTP scheme

37% of respondents were able to make suggestions for improvement to the CTP scheme. Responses are varied, the most common being related to *containing costs (8%)* or *improving the claims process (7%). Education* of the public about the scheme (5%) is another common suggestion for improvement.

43% of respondents were unable to offer any suggestions for improvement to Queensland's CTP scheme. 20% say that there are no improvements needed.

Conclusion

Whilst awareness of the CTP scheme was much higher than the Committee anticipated, understanding of the scheme is limited with close to one half of Queensland drivers surveyed saying they have a limited understanding or no understanding at all.

Most drivers surveyed understand that they are not covered by CTP if they are at fault, or if they are the only vehicle involved in the accident. However, around 30% believe they would be covered in these instances.

Those who rate their understanding of the CTP scheme as *not very good or who claim to have no understanding at all* are more likely than average to rate the value for money received from CTP as *poor*. Further, those with a poor understanding are more likely than average to fall into the following categories:

- those who estimate a higher than average cost for CTP premiums;
- those who support lawyers encouraging CTP claimants;
- those who are unaware that passengers are covered if injured in an accident;
- those unaware that pedestrians are covered if injured in an accident; *and*
- those likely to take up an optional at-fault component under CTP.

A general education campaign may be beneficial to increase general awareness and knowledge of the scheme. Whilst making people aware of what they are actually covered for under the policy, such a campaign may also increase support for the cost of the scheme.

Whilst all the factors covered by CTP are rated as highly important, the following are seen as most important - ambulance, hospital and medical costs; loss of income during the recovery period and the cost of long term care.

Those who rate the value for money provided by CTP insurance as good (97%) are more likely than average (94%) to consider the cost of long term care to be an important factor to be covered by CTP. Of benefit in any education campaign would be an emphasis on long term care as a key component of CTP to help improve perceptions of its value for money.

All initiatives tested receive wide support. The initiatives of medical assessment tribunals, the progressive $300 payment and the pain and suffering point scale receive the strongest support - with at least eight in ten respondents rating each of these initiatives as appealing.

The cap on loss of income payment at $104,000 per year, whilst still receiving majority support, received lower appeal ratings (72%). However, coupled with an explanation that

this initiative will assist in containing the costs of premiums, it is anticipated that this initiative would also be well accepted.

Whilst 87% of respondents support the initiative of pay-out limits on *minor* claims to reduce CTP premiums by $50, a lower proportion (74%) support pay-out limits on *minor* claims for the purpose of covering at-fault drivers under CTP. Evidence from the focus groups suggests that opposition to this latter initiative is due to drivers not wanting to fund compensation for "poor" drivers. Should this initiative be implemented there is therefore the potential for some public opposition.

The optional cover for at-fault drivers by payment of an additional $40 receives the lowest level of support, with 62% stating that they are likely to take up such an offer. However, it is concluded that this initiative would still be valuable to a sizeable segment of the population and would aid general awareness that CTP does *not* cover those drivers who are at-fault.

APPENDIX 3

COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN QUEENSLAND

NATIONAL COMPETITION POLICY REVIEW

Prepared by:

Argyle Capital for the
Queensland Government
CTP Review Committee

CONTENTS

COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN QUEENSLAND

NATIONAL COMPETITION POLICY REVIEW

Executive Summary

1. This paper identifies the objectives and possible restrictions on competition in the Motor Accident Insurance Act 1994 and the Motor Accident Insurance Regulation 1994. It also sets out the conclusions from the review which are detailed in Section 14 and which are recommended for consideration by the Queensland Compulsory Third Party (CTP) Scheme Review Committee. Because the National Competition Policy (NCP) review is part of a wider scheme review being conducted by the Review Committee it has not contemplated all issues in the scheme and it has therefore not been in a position to conclude on matters outside the scope of the NCP Review and which are the province of the Review Committee.

2. This paper has been prepared by Argyle Capital in consultation with Ernst & Young who have been responsible for the quality control review, financial efficiency analysis and the alternative model evaluation.

3. It has been drafted having regard to the Competition Policy Reform Act 1995 and the related inter-government agreements.

4. It includes work undertaken in accordance with a Public Benefit Test Plan dated 4 August 1999, which was approved by Queensland Treasury and it has considered the objectives underpinning the legislation and their relevance now and in the future. Those objectives relate to the provision and maintenance of a CTP insurance scheme which is able to service the community through providing prompt medical and rehabilitation services to persons injured in motor vehicle accidents with cover that is accessible and premiums which are affordable and provide for a fully funded scheme.

5. The present legislation contains restrictions which are anti-competitive and these have been considered individually. The evaluation approach has been quantitative where possible and otherwise qualitative.

6. The existing scheme was evaluated in comparison with the following existing or hybrid scheme examples:

   - a state run monopoly;
   - a vehicle class filing scheme; *and*
   - a File and Write Scheme.

7. The objective of the comparison has been to consider outcomes for the motor vehicle owner and the insurer under different scheme alternatives and to examine the advantages and disadvantages of each scheme.

8. The paper defines the current Queensland CTP Model and compares its structure and performance with other states where this information has been available.

9. The Review Committee completed an issues paper in August 1999 containing 56 issues in relation to the Queensland CTP Scheme. 17 of these issues were NCP related because they were considered to be relevant to the matter of competition. They have been examined in this paper but the NCP review has not looked in detail at the other issues, which have been subject to consideration by the Review

Committee in its wider review of the scheme and the alternatives.

10. We believe that the File and Write Scheme and the state run monopoly are unsuitable alternatives for adoption in this case, having regard to present conditions, the NSW precedent and the history of the development of the CTP scheme in Queensland and should not be considered further.

11. It is our view that if the existing scheme is to be retained, it requires some significant legislation and scheme design changes to satisfy the requirements of National Competition Policy notwithstanding the Public benefits which arise under some issues which have been identified and which may justify their retention.

12. Having considered the NCP Issues in the existing Scheme, we recommend the following:

Licensing of Insurers - 4

- That the Motor Accident Insurance Commission (MAIC) should liaise with the Australian Prudential Regulation Authority (APRA) with a view to achieving a more appropriate sharing of information so that as far as reasonably possible duplication of prudential information requirements is reduced.

Five year restriction on being re-instated if Insurer Withdraws - 5

- That the five year restriction on being re-instated if an insurer withdraws be reduced to one year
- a discretion be granted to the Commission to vary this requirement in extenuating circumstances

Competition amongst Insurers - 17

- That amendments be made to the present scheme where practical to improve the competitive position of insurers including the removal of impediments for motor vehicle owners to change insurers and changing the five year restriction on re-instatement of insurers and the minimum market share requirements.

Impediments to Changing Insurer - 18

- That changes be made to the present system to promote choice for the motor vehicle owner and to do so at times during the year other than at renewal.
- That Queensland Transport's system be altered to make changing of insurers easier for Motor Vehicle owners at the time of payment of premiums.

Minimum Market Share Requirements - 19

- That the 5% minimum market share requirement within 5 years be reduced to a new minimum market share of 2%.
- That the Commission have the discretion to waive compliance in circumstances where the market share requirement has not been met but in its judgement a substantial effort has been made and the insurer is likely to reach the Market share requirement in the future.

Optional Cover Versus Standard Cover - 20

- Standard policy cover to be retained as a minimum in the best interests of the community.
- Insurers should be encouraged to promote no-fault optional cover as an enhancement to standard cover which would provide benefits, particularly in

single vehicle accidents.

Premium Relativity - 35

- The current basis for premium relativity is appropriate for the existing scheme in our view because it provides community rating which results in affordable premiums for most motor vehicle owners.
- Under a price competitive model there would be scope for the Commission to increase the rating classifications over time to provide greater opportunity for differential Premiums.

Commissions - 36

- That restrictions on commissions in respect of the present scheme be removed.
- Under a price competitive model it is suggested that there be no restrictions on insurers in relation to the payment of commissions provided that the commissions are paid out of insurers profits giving them the opportunity and discretion to determine their own basis for commissions.

13. Based on our review we believe it is appropriate to retain the existing legislative provisions for:

    - Compulsory product - 1
    - Government Monopoly versus Insurers - 3
    - Industry deed - 6
    - Nominal Defendant the only insurer of uninsured and unidentified vehicles - 8
    - Insurers unable to decline - 21
    - Provision of cover in the first instance for negligence of manufacturers - 44
    - Rehabilitation - 47

    The reason for this is that the benefits of retaining these restrictions are important to the stability and operation of the scheme and in our view they outweigh the costs of their retention to the community.

14. The Queensland Transport system of delivery is very efficient and should continue.

15. It is our view that consideration should be given to the deregulation of premiums and this relates to the following NCP issues:

    Competition amongst Insurers - 17

    Premiums fixed by Government - 28

    Regulation of Insurers Profit - 29

    Based on information provided by insurers and analysed in Section 10 and Appendix A there is a potential premium saving achievable for the present scheme of $9. This saving relates to reductions in policy and acquisition costs, claims handling and reinsurance and after allowing for a profit margin of 8% which is higher than the existing scheme.

    The answer to the question of whether a scheme which has a regulated pricing structure meets NCP requirements is a matter for judgement and in this case it is finely balanced. A key issue is whether there is a better alternative which would

provide material and sustainable benefits to motor vehicle owners whilst maintaining the stability of the scheme. The Vehicle Class Filing model has the capacity to deliver an estimated $20 reduction compared with the premium for the existing scheme (Refer Table 22) and this has the possibility of being higher depending on the position taken by insurers in determining premiums in a price competitive market. (See Sensitivity Analysis - Page 158)

16. A Vehicle Class Filing scheme has the potential to provide considerable benefit to motor vehicle owners, if the changes are properly managed. We recommended that consideration be given to this as a serious alternative.

17. This scheme would require filing of premiums by insurers for all classes, with MAIC on a half yearly basis. MAIC would have the responsibility to approve the premium within a floor/ceiling range. Provision may need to be made for more regular filings by insurers in circumstances where they need to react to market changes.

18. Queensland Transport would continue to administer the delivery of the Scheme in respect of the collection of premiums and also the election by Motor Vehicle owners of their CTP insurer.

19. Community rated premiums would remain.

20. Some of the benefits of the Vehicle Class Filing Scheme are:

    - introduction of price competition and therefore choice for motor vehicle owners;
    - it would open the market for insurers;
    - it would provide the opportunity for insurers to obtain additional or more market share through price differentiation; *and*
    - it would provide a reduction in premiums assessed against the existing unadjusted scheme of at least $20 taking the average premium cost from $298 to $278. These changes are based on the analysis we have conducted in Section 10 and Appendix A. It should also be recognised that there is scope for an insurer to adopt more optimistic assumptions in respect of claims frequency and average claims cost. This, together with more optimistic assumptions on economic factors affecting the premium calculation may result in a significant further reduction in average premium costs in a price competitive market.

21. Other issues to be considered before adopting such a Scheme include the potential impacts including full funding, possible changes in market share and potentially higher acquisition and policy costs for some insurers.

22. The existing scheme is only able to meet NCP requirements after the scheme changes and legislative amendments referred to earlier and after consideration by the Review Committee of the issue of Price deregulation. On balance, if a scheme can be developed which provides pricing competition (with premium approval within a floor/ceiling range by MAIC) whilst maintaining scheme stability, we believe that would be preferable to the existing scheme.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
Restrictions on Competition in the existing scheme		
	Objective: *That parties injured in motor vehicle accidents have access to compensation and there is early provision of rehabilitation and resolution of claims. That motor vehicle owners have full protection for their legal liability for personal injury arising out of motor vehicle accidents and that the scheme remains fully funded and premiums are affordable. There should be stability and predictability regarding the likely future cost of CTP Insurance. There should be a Nominal Defendant Scheme with a low cost structure.*	
Compulsory Product – 1	In the absence of compulsory insurance there would be many motor vehicle owners who would not insure leaving an injured party with recourse limited to the assets of the negligent party. Significant delays may also arise in the settlement of claims. Clearly the objective of access to compensation and early resolution of claims could not be achieved where insurance cover is voluntary.	Disastrous consequences arise for injured parties through removal of guaranteed access to compensation. Removal of the compulsory nature of this product will increase the cost for those insured motor vehicle owners (smaller insurance pool). Greater burden on government through the public health system. Decline in overall revenues and net profits derived by the current private sector insurers.
Industry Deed – 6	The concept of an Industry Deed is seen as necessary where the market has multiple insurers. To do otherwise leaves the injured party exposed to lengthy litigation simply to resolve liability between insurers. To leave the situation for an injured party to bring an action against multiple defendants will have significant legal costs and lengthen the process.	Obvious and clear impact on insured parties through time delays in receiving compensation as well as the likelihood of increased litigation costs. Cost effective mechanism for allocating costs between insurers.
Insurers unable to decline – 21	Where there is less than full support for the Scheme by insurers some motor vehicle owners particularly perceived high risk groups (e.g. under twenty five and those from lower socio-economic areas) may be denied CTP insurance cover. There would also be time delays in procuring cover associated with underwriting assessments of individual motor vehicle owners. Delays or denial of cover would increase the incidence of uninsured driving and result in a cost shift to other motor vehicle owners (higher Nominal Defendant levy).	High risk groups who might otherwise be denied insurance are provided with CTP insurance cover. As a consequence other groups would pay higher premiums to offset the subsidisation of the high risk groups. Vehicles are insured on a timely basis. Insurers are restricted in the manner in which they can manage underwriting however in their submissions there was general support for the retention.
Provision of cover in first instance for negligence of manufacturers – 44	Without this requirement in the legislation accidents that could be attributed in whole or in part to the negligence of manufacturers or repairers would result in actions involving multiple defendants. Such claims would have significant cost implications for claimants as well as creating delays in settlement of claims.	Injured parties have a guarantee that claims of this nature will be met by their insurer on a timely basis enabling access to appropriate medical and rehabilitation services. Insurers may in the first instance be required to meet claims outlays with a time delay in recovery of those costs. Those costs are not significant but if they were this would be built in to the determination of the risk premium.
Rehabilitation – 47	Rehabilitation is a key feature of any personal injury accident compensation scheme. Without access to rehabilitation support and funding the period for recovery is likely to lengthen with the likelihood of higher average claims costs. The social implications for injured parties not returning to pre-injury states are not inconsequential.	Under this system injured parties are guaranteed access to services which meet their rehabilitation needs on a timely basis and the costs of those services are funded by the insurer. Early rehabilitation ensures optimum recovery and reduces the financial and social costs of injury. Insurers are required to meet the cost of rehabilitation expenses earlier than would otherwise be the case.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		In summary, the restrictions outlined above provide net benefits to injured parties and hence the scheme and therefore the community as a whole. *Any impacts on insurers are relatively immaterial and their submissions have generally supported the retention of this restriction.* *In the absence of the scheme meeting rehabilitation costs those services would still be needed and therefore the possibility exists for an adverse impact on the public health system where an injured party does not have the financial means to pursue a claim.*
Nominal Defendant only insurer of uninsured/ unidentified vehicles - 8	***Objective:*** *In the absence of compulsory insurance there would be many motor vehicle owners who would not insure, leaving an injured party with recourse limited to the assets of the negligent party. Significant delays may also arise in the settlement of claims.* *Clearly the objective of access to compensation and early resolution of claims could not be achieved where insurance cover is voluntary.* *Other objectives include that the Nominal Defendant is funded by an affordable levy and risk to Government is minimised.* The Nominal Defendant is the insurer of last resort for uninsured and unidentified vehicles and in circumstances where an insurer became insolvent.	The current Nominal Defendant levy will raise $28 million in 1999/2000. This equates to 4.16% of premiums and for a Class 1 vehicle is $11.90. Under the current arrangements all but 5% of the levy collected will be returned to the community as claim payments. However there is significant exposure to the Government in the event of insolvency of an insurer albeit that risk is mitigated through Commonwealth licensing and prudential supervision of insurers coupled with the oversight of the MAIC. In 1998/99 there were 269 claims for unidentified vehicles and 155 for uninsured vehicles with an aggregate claims cost of $15.86 million. It would be unreasonable to leave injured parties without a clear path to compensation. Without the Nominal Defendant Scheme there would be adverse social and economic impacts.
	Alternatives: An alternative is to dispense with the Nominal Defendant Scheme. In the absence of this safety net injured parties may be left without access to compensation and with the likelihood of added litigation costs where there is prospect of recovery. Enabling private insurers to assume the underwriting risk and opportunity for new business. This concept currently operates in NSW with costs of claims shared on the basis of market shares. Another alternative is a tender by a single insurer. However this may create some conflicts where that insurer is an underwriter in the Scheme.	In NSW where this alternative is operating it is noted that the claims costs are approximately 33% higher than that states industry average. This contrasts with the Queensland Nominal Defendant Scheme which is consistent with the industry average claims cost. Assuming a similar situation under this alternative the gross income for the Nominal Defendant would need to increase by approximately $9 million. For this alternative to be commercially viable insurers would expect a profit margin to compensate for the risk. This would impact on the levy and based on a 6% profit margin it would increase costs to motor vehicle owners by $2.38 million ($1 per Class 1 vehicle). It would be expected that claims cost would be comparable to the existing scheme however there would need to be a profit margin built into the premium. Applying a similar 6% profit margin assumption the levy pool would have to increase by $1.8 million (76 cents per Class 1 vehicle).

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		Whilst the tender process would result in competitive pricing, the insurers would be inclined to balance this with conservative assumptions in respect of the risk. MAIC would lose its insight into the operation of the scheme through the Nominal Defendant as an insurer (comparative assessments). There would be staffing impacts for MAIC. *In summary, the identified alternatives do not meet the objective and would come at an added net cost to the motor vehicle owner and depending on the alternative could have greater social costs.*
Licensing of insurers – 4	***Objectives:*** *To ensure injured parties have access to compensation which can be many years even decades beyond the premium year. Also that proper claims facilities are readily accessible to injured parties and insurers operate to appropriate standards.*	
	Under the current legislation MAIC licenses insurers and is responsible for prudential supervision. Insurers must for instance: • Carry on the business of general insurance in Queensland; *and* • Have an office in Queensland for dealing with CTP claims with competent staff.	Motor vehicle owners currently contribute a 0.335% levy (96 cents per Class 1 vehicle) to fund the operations of the MAIC covering prudential supervision and monitoring of the scheme. However a large proportion of the levy goes toward accident prevention and rehabilitation initiatives. The cost of running MAIC is approximately $1.5 million per annum. Injured parties have the assurance that the responsible insurer will be in a position to meet future claims and also has facilities readily accessible.
	To some degree the prudential supervision undertaken by MAIC duplicates the broader function adopted by the Australian Prudential Regulation Authority (APRA) whose role is to license and prudentially supervise all insurers writing business in Australia. Its prudential standards require a level of sufficient solvency.	There is a duplication of costs which arises for insurers with the current requirements to report to both APRA and MAIC. Government has greater certainty concerning the capacity of insurers to meet ongoing liabilities and minimises the exposure in the event of failure.
	Alternatives:	
	To remove the requirement for licensing and rely on APRA's licensing and prudential supervision as sufficient assurance as to solvency.	Practical difficulties arise in obtaining information from APRA due to Commonwealth privacy laws. The current scheme has a premium income of $685 million per annum with outstanding claims liabilities estimated to be in the order of $2 billion. With this level of exposure for the Queensland motor vehicle owner and the Government it is prudent to maintain an appropriate level of supervision. Any savings which may arise by removal of duplications are not expected to be significant.
	Third party certification as to the solvency of insurers on an annual basis.	The function undertaken by MAIC includes an overview of each insurer's financial position annually. The costs of this process, incurred by MAIC, are approximately $25,000 per annum. It would not be unreasonable to expect that Third Party Certification would cost approximately $25,000 per insurer each year. (There are currently 6 insurers to whom this process would apply.)
	Introduce a code of conduct in lieu of licensing.	A code of conduct is a degree of self regulation. Adherence to such a code may not be a primary consideration for an insurer facing financial difficulties. The financial exposure for Government in the event of the failure of an insurer is significant. *In summary the benefits of licensing and prudential supervision offer assurance to the Government, motor vehicle owners and in particular injured parties as to the ongoing capacity to meet claim costs. Any costs associated with the current licensing and prudential supervision are far outweighed by the benefits.*

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
Five year restriction on being re-instated if insurer withdraws - 5	***Objective:*** *To ensure any insurer wishing to write the business enters the scheme with a long term commitment to the Queensland CTP Scheme. It prevents an insurer moving in and out of the scheme in response to the changing dynamics of the scheme.*	
	Where a licence is withdrawn the insurer cannot be re-licensed for a period of five years. Such withdrawal of a licence can occur where an insurer has failed to achieve minimum market share.	It assures any insurer writing the business has a full commitment to the scheme and dedicated resources to manage claims which in the end is in the interest of injured parties. This restriction limits the number of insurers willing to participate in the scheme as it reduces their ability to react to changes in market circumstances. Consequently there is less competition and choice and for Government greater exposure in dollar terms to insurer insolvency because of the concentration of the market. This restriction arguably has provided some stability to the scheme through continuity of insurer participation. However the removal of the restriction would enable insurers to more freely re-enter the market with some costs to the scheme for both MAIC and Queensland Transport. These costs are not considered to be particularly significant. From a consumer's perspective, greater freedom in moving in and out of the market, may create some confusion and inconvenience particularly associated with the allocation of new insurers.
	Alternatives: Removal of the restriction.	Less commitment is required by insurers to the possible detriment of injured parties particularly where insurers have a small claims run-off. Consideration would need to be given to the regulatory burden for scheme control and the re-licensing of applicants if such changes became more frequent. Queensland Transport's costs are affected by insurers moving in and out of the scheme.
	Reduction of the period to which the restriction relates.	A shorter period of not less than one year essentially would have the same effect as is achieved under the current five year restriction. This is because the insurer will lose its entire market share and should present as a disincentive for insurers to want to leave and re-enter the market based on short-term changes in market conditions. *In summary, it is recognised that the restriction represents a barrier to market entry. The objective could be achieved with a shorter period, say one year and a level of discretion for MAIC should there be extenuating circumstances relating to the position of an insurer (e.g. takeover or merger which changes previous circumstances).*
Minimum market share requirements - 19	***Objective:*** *To ensure any insurer wishing to write the business enters the scheme with a long term commitment to the Queensland CTP Scheme. It also ensures the insurer is prepared to write a range of risks and is less inclined to niche market.*	
	It is a condition of a licence that an insurer must attain and hold a minimum market share of 5% in five years. Having a target of 5% ensures the insurer is less inclined to target market.	Insurers gaining sufficient market share ensure that injured parties are provided with an appropriate claims management service and demonstrates that the insurer is committed to being an active participant in the scheme.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
	The experience in the scheme since 1994 is that there were 11 at that time and this has moved to six currently (with VACC's licence suspended). The changes have occurred with most insurers leaving the scheme at low levels in market share.	This restriction presents a significant barrier to entry of the CTP market. It is exacerbated by the lack of flexibility in changing insurers. This may have limited the number of insurers participating in the scheme and consequently competition may have been reduced. Insurers who border on the 5% threshold may have to incur significant promotional costs simply to meet the legislative requirement with little benefits to motor vehicle owners or injured parties.
	Alternatives: Removal of the restriction.	The removal of the restriction would potentially enable the entry of insurers with the sole intention of only writing a small portion of the business or niche marketing. In the absence of stringent claims management requirements (e.g. claims operation standards) an injured party could be disadvantaged through a lack of access to appropriately skilled claims management services. Removal of restrictions may attract more insurers and promote a higher level of competition for market share. For the Government there will be less exposure in dollar terms to insurer insolvency because of the higher level of participation in the market. The number of insurers in the scheme impacts directly on the requirements for supervision and licensing by MAIC including factors associated with the provision of claims data. For Queensland Transport there will be some increase in activity with possibly a marginal increase in costs.
	Reduction in the restriction in market share percentage, to say 2%.	The impact on stakeholders will be similar to that of the complete removal of the restriction with the exception that a smaller percentage may still achieve a long term commitment by the insurer and with an appropriate claims management operation. An insurer with the responsibility to achieve a preset market share will be less inclined to niche market. The difference between a market share requirement of 0% and 2% would have little effect on the Government's exposure in the event of insolvency. *In summary, there is a net benefit to stakeholders in retaining a restriction. However, the objective can be achieved through a lowering of the minimum market share requirement to say, 2% in five years. Further, MAIC should have a discretion to waive compliance with the market share requirements where the insurer can demonstrate a substantial effort has been made and the insurer is likely to reach the requirement in the future.*
Optional cover versus standard cover - 20	***Objective:*** *An injured party has an appropriate level of cover and benefits are not reduced as a consequence of a motor vehicle owner taking reduced cover as a trade off for lower premiums.* The current scheme prescribes the same policy of insurance for all motor vehicle owners.	Injured parties and their legal representatives are conversant with the cover under legislation and the scope of cover doesn't vary between insurers. This provides certainty in determination of claims and minimises disputes over entitlement.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		The scheme is better able to respond to changes in scheme developments, in particular maintaining a balance between premiums and benefits. Insurers are unable to use product differentiation in marketing which impacts on competition for market share.
	Alternatives: Leave the market to set policy terms.	The difficulty with CTP insurance is that the insured is generally not the beneficiary of the policy. The trend could be to offer broader benefits but in all probability the market would seek to limit benefits in order to lower premiums in pursuit of market share. The latter has greater attraction to motor vehicle owners but to the detriment of injured parties. The claims outcomes may bring criticism on Government because of a perceived failure to maintain appropriate protection for injured parties. In the extreme there could be a greater burden on the public health system.
	Redefining the current policy to stand as a minimum cover, allowing insurers a discretion to provide add on cover.	By maintaining the existing cover as a minimum, injured parties are not disadvantaged. Scope for an insurer to provide add on cover could see provision of extra benefits to injured parties particularly drivers (e.g. no-fault) The move to variable cover above a minimum has the potential to change CTP insurance from a perceived Government tax to a more identifiable insurance product. Insurers are better able to differentiate their product in the market thereby assisting in achieving increased competition for market share. *In summary the objective can be achieved by an alternative which enables standard cover to be maintained as a minimum and potential enhancements through product add ons driven by competition for market share. The net benefit to injured parties would support the retention of some form of standard cover.*
Premium relativity - 35	***Objective:*** *To maintain a level of premium that is commensurate with the risk for the various classes of motor vehicle.*	
	The current motor vehicle classes are historic in nature and broadly align to classes in other jurisdictions. Their relativity to Class 1 is determined annually on actuarial analysis. The Government can approve or modify the premium recommended by MAIC. There is no opportunity for individual risk rating within a class of motor vehicle.	Not aligning premiums to reflect risk does not provide an incentive to groups to adopt better road safety practices. If premiums do not reflect the actuarially advised relativity an effective cross subsidisation occurs with total pool. This means that some motor vehicle owners would be paying higher premiums. Under current arrangements if relativities are not appropriately set it can have an adverse impact on the profitability of insurers particularly if the insurer has a disproportionate mix of business.
	Alternatives:	
	Absolute community rating with the same premium applying to all motor vehicles.	A total community rating would impact on motor vehicle owners with some winners and some losers. Based on current premiums the Class 1 premium would increase from $286 to $298.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
	Scope for individual risk rating on the motor vehicle owner.	From an insurer's perspective there would be greater incentive to avoid the higher risk groups (e.g. taxis). Total community rating is counter to good road safety practices. NSW operates a limited form of individual risk rating. Theoretically this is the purest methodology for premium setting but based on analysis, it impacts significantly on delivery costs. For the scheme to move in this direction it is estimated that the average premium cost would increase by $15 per policy. This is directly attributable to the higher acquisition and policy costs. Rating akin to the NSW system has an adverse social impact in that premium rating tends to follow age of motor vehicle owner and motor vehicle owners from lower socio-economic groups who are least able to afford higher premium rates. *In summary the current basis for premium relativity is appropriate because it provides a net benefit to motor vehicle owners through the provision of affordable premiums.*
Competition amongst insurers - 17 Impediments to changing insurers - 18 Premiums fixed by government - 28 Regulation of insurer's profit - 29 Commissions - 36 Government Monopoly Versus Insurers - 3	***Objective:*** *A stable scheme with an affordable and fully funded premium which also provides a level of choice in insurer, for motor vehicle owners.* The current scheme has multiple insurers but the premium is fixed annually by Government based on actuarial advice. The premium is derived on a basis which incorporates allowances for acquisition and other administrative costs and a level of profit for insurers. The intention is to set a fully funded premium with the assessment based on industry wide averages. Profitability can vary widely between insurers because of economies of scale. Included in the calculation of acquisition costs account is taken of commissions paid to third parties in gaining business. In the interest of motor vehicle owners Section 96 of the Act places caps on commission levels that can be paid in respect of new and recurring business. A Government monopoly would not provide any choice of insurer for motor vehicle owners although such schemes are run successfully in some other jurisdictions. There is no greater guarantee of full funding under a monopoly.	Complexities exist for injured parties in identifying the at fault vehicle and its insurer to be in a position to bring a claim. Premium rates are set prospectively and tend to err on the conservative to ensure appropriate funding for claims liabilities. However, the process does give assurances that in the long run the premium will be fully funded. A criticism of the scheme is that in the absence of price competition, the motor vehicle owner is paying a higher premium than might otherwise be available. There is no scope for risk rating aligning to the individual's driving records or other factors which may vary the premium for an individual. The Government has a high profile in the current system leading to the perception that the premium is a Government charge rather than an insurance product. This creates political pressures for the Government of the day. For the insurers, there is the potential that the set premium is insufficient to provide an adequate return on capital and may also be deficient to the degree that it does not adequately cover claim liabilities and on costs. In the absence of price competition market share gains are difficult to achieve as is inducing the perceived better risks to insure with a particular insurer. This situation is compounded by the current impediments to changing insurer (e.g. no option to change with credit card payment) and the caps on commission payable. A Government monopoly would adversely impact insurers who now participate in the scheme as the existing business would be taken over by the State who would also assume the risks associated with its operation.
	Alternatives: Total deregulation of premiums (free market).	Total deregulation theoretically, should provide the lowest possible premiums which would clearly be in the interest of motor vehicle owners. However, analysis has indicated that delivery costs will significantly increase because of the need for the insurers' direct

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		involvement in underwriting and risk assessment as opposed to the concept of the greater community rating model delivered through the Queensland Transport new business and renewal process. The concept provides the ultimate level of choice and without any restrictions on insurers in respect of commissions, etc. However, market volatility may lead to unrealistic premium prices and whilst affordable may not be fully funded. This could have an impact on an insurer's capacity to meet long term claim commitments. In turn there would be an adverse effect for injured parties, the Nominal Defendant and Government. For motor vehicle owners there would be an additional requirement to acquire, on an annual basis (or 6 monthly), insurance independent of the Queensland Transport registration system. Individual rating could not be accommodated through Queensland Transport but it would not diminish Queensland Transport's obligation to record insurance particulars. The process for the motor vehicle owner would have added cost but more so significant inconvenience. Queensland Transport systems would be affected in a totally deregulated market. With the necessity for the community to have comfort that all motor vehicles are insured for CTP. The Government through Queensland Transport must link insurance records with registration particulars. From a financial perspective, as demonstrated in Appendix A, this would add considerable cost to Queensland Transport in the delivery of the product. There is also the risk that premiums could fluctuate widely over a short timeframe, creating scheme instability and criticism levelled at Government
	Competitively priced premiums utilising Queensland Transport registration system, operating within floor/ceiling premium limits, removal of restrictions on commissions and improved market access (Vehicle Class Filing Model).	Queensland Transport has an established mechanism for recording of insurance particulars with registration. The system is well recognised by insurers and the legal profession in identifying the insurer of any vehicle involved in an accident. The benefits for injured parties would be maintained. Motor vehicle owners would benefit from the opportunity to acquire discounts under insurance packages and importantly having access to a competitively priced product. There would be the added assurance that prices are controlled within reasonable limits, ensuring scheme stability. That stability would be in the best interest of Government but at the same time will enable the product to be more clearly identified as insurance rather than a Government charge. Conversely, the nature of this concept presents a risk for insurers. Market share shifts are likely to occur based on reasonably small premium differences which could have adverse effects on an insurer's profitability and returns to shareholders. This would have greater impact on insurers currently holding significant market share. From a positive perspective, insurers are able to price products in a way which is more relevant to the structure of their particular portfolio and business costs. Insurers also have the ability to market more freely without restrictions on commissions.

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		Queensland Transport has the capacity to manage a scheme with premiums varied by insurer but not extending to individual underwriting. It is realised that any change from the fixed premium structure for Queensland Transport will create additional costs. Preliminary assessment by Queensland Transport is that there would be about $232,000 in development costs and ongoing additional costs of $1.4m per annum (which equates to approximately 60 cents per policy per annum) *In summary, the current scheme does not afford the motor vehicle owner with an appropriate degree of choice or a level of competition on premiums that can assure the motor vehicle owner of the best available price.* *Premiums have moved to a point where affordability is now questioned and arguably the scheme has experienced a level of instability in recent years. In addition the premium setting process, whilst endeavouring to provide full funding based on the best actuarial advice, there cannot be any guarantees for the insurer that in the long run, this will be the case.* *The fully deregulated market provides the greatest choice and price competition for the motor vehicle owner but with the assessed added delivery cost there is not a net benefit for the community.* *The Vehicle Class Filing alternative based on current Queensland Transport delivery mechanisms with variable premiums offered by insurers would provide the motor vehicle owner with choice and competition. The imposition of a floor/ceiling price should maintain stability in the scheme and as best as possible ensure the premium is fully funded. Competition should be in the best interest of the motor vehicle owner and help to keep premiums at an affordable level.* *On balance, the Vehicle Class Filing model offers the community the greatest net benefits.*
Objective: *To provide a stable CTP scheme with a premium that is affordable and determined on a full funding basis and which provides a high level of access to benefits for injured parties whilst minimising risk exposure for Government.*		
Vehicle Class Filing	The insurance would remain compulsory for all motor vehicle owners and the product delivered by the private insurance industry. An insurer would be free to set its own price having regard to its claims experience and the overall scheme experience. The price would need to fit within a MAIC actuarially determined floor and ceiling range. Although premiums will vary between insurers, in the interests of the broader community there will not be individual risk underwriting and premiums only differing by class of motor vehicle. To facilitate competition, restrictions on commissions would be removed and the opportunity to change insurer would be simplified. The access to benefits by injured parties would be unchanged from the current scheme, as would the capacity for Queensland Transport to deliver the product in conjunction with registration.	Injured parties will not experience any change from the existing scheme in respect of access to benefits. Likewise there would be no change for the legal profession. Motor vehicle owners would have an availability of competitively priced premiums by vehicle class but which does not encompass individual risk rating minimising delivery costs. The convenience of obtaining the insurance through Queensland Transport will be retained. For the Government the product would be more identified as an insurance product rather than a Government charge. By maintaining the involvement of the private insurance sector in the underwriting the exposure for Government is limited to the activities of the Nominal Defendant. Insurers will experience significant change from the existing arrangements. Premium setting will involve their own actuarial assessment taking account of their particular insurance portfolio and business costs with regard to scheme experience. An overriding

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
		requirement will be the need for insurers to take into consideration market conditions and dynamics in arriving at premium prices. Insurers will have less restrictions imposed in respect of acquisition of business such as the removal of commission caps and freeing of the renewal transfer process. Under this scheme an insurer could be exposed to sudden and significant market shifts driven by price.The market shifts could have a material impact on profitability. Depending on the timeframe for rate re-filings the downturn in profitability may be sustained. Given the position of the two insurers with the largest market share, there could be significant swings depending on how they react to pricing. Queensland Transport will have added costs in delivery of this type of scheme and it is anticipated that there will be a significant number of enquires generated particularly in the early years. Preliminary assessments indicate that there would be about $232,000 in development costs and ongoing additional costs of $1.4m per annum. This model has been assessed to produce a reduction in average premium cost from $298 to $278 which represents a reduction in the premium pool of $46 million per annum (based on the analysis in Section 10 and Appendix A). This has the potential to be a greater saving depending upon the assumptions insurers may use in respect of claims frequency and average claims cost and the assumptions adopted in relation to factors which influence premium calculations. *In summary, the Vehicle Filing Model meets the objective and has the potential to deliver material net benefits to Queensland motor vehicle owners.*
State Run Monopoly	A state run monopoly would provide a compulsory product and there would be no change in the benefits for injured parties. The Queensland Transport vehicle registration system would continue to be the basis for delivery of the product. It is envisaged that the vehicle class system for the rating of premiums would remain and that premiums would be determined on the basis of actuarial advice.	There would be no impact on injured parties to the extent that the scheme remained on a fully funded basis. Motor vehicle owners would acquire their CTP insurance in the same way as the present scheme (through the vehicle registration system). There is a scope for an annual premium of $262 which is $36 lower than the existing scheme. This however comes at a considerable cost to insurers who would lose their entire market of $685 million per annum with very significant impact on those businesses, particularly those with larger market shares. This would be likely to result in a significant flow on economic impact, i.e. employment impacts. The State Government would be required to assume the risk of running the scheme and its adoption would represent a move further away from competition. *In summary, this alternative does not satisfy the objective and it would not provide a net benefit to the community.*
File & Write	This scheme would have a compulsory product and private insurers would be able to operate under a deregulated price structure, with the acquisition of insurance by motor vehicle owners through a Green Slip system similar to NSW.	There would be no change to the access to benefits for injured parties provided the scheme remained fully funded. The impact on motor vehicle owners would be substantial. The benefits of competition would be more than offset by the very high acquisition costs of the scheme. We have estimated that the

CTP INSURANCE NCP REVIEW – SUMMARY MATRIX

Issue	Relationship to Objective	Impacts on Stakeholders
	There would be no change to the basis for access to benefits by injured parties however there would be risks rating of premiums consistent with the NSW scheme. The objective of having a fully funded scheme would remain and MAIC would approve premium ranges.	average premium would be $306 which is $8 higher than the existing scheme and $28 higher than the Vehicle Class Filing scheme. Motor vehicle owners would also be required to independently acquire cover (Green Slips) and this would have its own impact on the community including the inconvenience caused by that acquisition and complexities for Queensland Transport. Insurers would incur substantial extra cost in collecting premiums which is now done through Queensland Transport. They would also be required to determine premiums in a very different and potentially changing market with the potential for substantial and sometimes sudden movements in market share. For the Government there are risks of market volatility and reaction to the significant community inconvenience of a Green Slip system. Queensland Transport's role would change as insurers would collect premiums. *In summary, this scheme does not meet the objective and does not provide a net benefit to the community.*

COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN QUEENSLAND

NATIONAL COMPETITION POLICY REVIEW

1. INTRODUCTION AND LEGISLATION REVIEW

1.1 In April 1999 the Queensland Government established a Committee of Review to examine the CTP scheme including scheme design, affordability and National Competition Policy (NCP) Issues. That Committee consists of four independent members including an independent chair.

1.2 Argyle Capital was appointed as adviser to the Review Committee in respect of the NCP Review including a Public Benefit Test. This work was undertaken in conjunction with Ernst & Young who performed a quality assurance role and who provided economic and financial/analytical assistance.

1.3 This report is issued by the Review Committee and it is a segment of a wider report of the Committee on the entire Compulsory Third Party (CTP) scheme. The report sets out the National Competition Policy issues and a Public Benefit Test in relation to the restrictions on competition arising from provisions of the Queensland Motor Accident Insurance Act 1994 and the Motor Accident Insurance Regulation 1994 (the Act). The Public Benefit Test is undertaken in accordance with the Competition Principles Agreement between the Commonwealth of Australia (Commonwealth) and the Australian States and in a manner consistent with the Queensland Treasury Public Benefit Test Guidelines and consistent with National Competition Policy (NCP) review requirements.

1.4 The Act establishes a compulsory third party personal injury insurance scheme for motor vehicles in Queensland. The scheme has the objective of ensuring compensation is available for parties injured in a motor accident where fault can be established. It also provides the mechanisms for rehabilitation of those parties and early resolution of their claims. The scheme is administered by the Motor Accident Insurance Commission (MAIC). The scheme is insuring 2.3 million vehicles at a total estimated premium of $685 million in 1999/2000.

2. National Competition Policy Review and Public Benefit Test Methodology

2.1 The Competition Principles Agreement

In conjunction with the Competition Policy Reform Act (1995) the Commonwealth and State Governments signed several inter-government agreements. These were:

- Competition Principles Agreement (CPA)
- Code of Conduct Agreement; *and*
- Agreement to Implement the National Competition Policy and Related Reforms.

In the Competition Principles Agreement there was a provision that each party to the agreement would develop a timetable to review all legislation that restricts competition and where appropriate reform that legislation by the year 2000. That agreement contained the following important provision:

The guiding principle is that legislation (including Acts, Enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community outweigh the costs; *and*

(b) the objectives of the legislation can only be achieved by restricting competition.

According to the Competition Principles Agreement a review of legislation that restricts competition should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition;

(d) assess and balance the costs and benefits of the restriction;

(e) consider alternative means for achieving the same result including non-legislative approaches;

(f) ensure that any restrictions on competition meet the public benefit principle; *and*

(g) provide for the review of restrictions on competition at least once every ten years to determine if the legislation is still required.

The Queensland Government's process for reviewing restrictions on competition outlined in its Public Benefit Test (PBT) reflects the guiding principle expressed in Clause 5 of the CPA. It is important to note that competitive outcomes are not preferred solely for the sake of competition.

The review process is intended to ensure that:

(a) the cost and benefits of any restrictions on competition are transparent in the context of the objectives of the legislation they serve;

(b) if a restriction on competition is retained, it is justified on the basis either that its benefits outweigh its costs or that there is no alternative and more efficient means to achieve the same or a better result; and

(c) a process exists to regularly review such restrictions to ensure that the public policies or other benefits they promote are not eroded over time.

This approach acknowledges that NCP principles do not overshadow but must be reconciled with social, environmental and other economic policy priorities of Government.

The process of legislation review promotes these policy objectives by subjecting restrictions on competition to a transparent assessment of their costs and benefits.

2.2 The Queensland Treasury Public Benefit Test Guidelines

The above requirements are also contained in the Queensland Treasury Public Benefit Test Guidelines which also sets out a format for preparing a competition impact assessment in the form of a Public Benefit Test for consideration by the Queensland State Cabinet.

The Public Benefit Test Guidelines outline six steps to be undertaken:

Step 1 Identification of "without change" or base state.

Step 2 Identification of "with change" state.

Step 3 Identification of all the major impacts.

Step 4 Valuation of impacts.

Step 5 Detailed assessment of non-valued impacts.

Step 6 Timing, aggregation and presentation of results.

The above requirements are explained in detail in the Guidelines and have been incorporated in the public benefit test for the Act. The rationale for specifying the without change and with change states is to assess and quantify the impact of moving from one state to another as specified in subsequent steps.

It is important to note that, in accordance with the Guidelines, Step 1 is a clarification of the objectives of the legislation, identification of the nature and relevance of the restrictions on competition and a description of the market structure that will prevail under the restrictions. Step 2 includes specification of different scenarios and their impact on market structures.

The quantitative and qualitative analysis undertaken in later sections of this paper have given consideration to the effects of adopting different structures under which the CTP scheme might operate including consideration of a State run monopoly and a competitive market.

It is important to note that this evaluation does not capture the impact of certain effects that cannot be valued including for example, the current restrictions which exist in relation to the fact that the product is compulsory and the arrangement for licensing of insurers. Where applicable qualitative analysis of these restrictions is documented in this report.

2.3 The Public Benefit Test Plan

A Public Benefit Test Plan dated 4 August 1999 was approved by the Legislation Review Committee and submitted to Queensland Treasury for approval. This test has been carried out in accordance with the plan which requires consideration of the nature of restrictions on competition, key affected groups, the basis for economic or qualitative assessment and the consideration of alternative options. It also sets out the basis for consultation with key affected groups and the community to ensure that the Committee receives opinions and views on crucial matters including consideration of alternative structures.

Argyle Capital with the assistance of Ernst & Young has undertaken a Public Benefit Test in relation to the NCP Issues previously identified by the Committee and forming part of a CTP Scheme Issues Paper completed in August 1999.

2.4 Evaluation Approach

The current CTP scheme has been evaluated against existing or hybrid examples of schemes which represent alternatives that are reasonable to consider in this review. The analysis has been performed on the basis of a long term outlook.

The bases for evaluation of those schemes are set out below. The structure of each of the schemes is set out in Section 10 and their advantages and disadvantages are in Section 11.

Existing Scheme

- Current scheme based on 1999/2000 Premium.
- Adjusted 1999/2000 Premium using updated information from the six currently licensed insurers. This model better reflects the delivery costs (using an average for all insurers) whilst the numbers used in the previously mentioned Model are based on the standard premium averaged over all classes and using allocated amounts for key costs other than risk premium including acquisition and policy costs and claims handling costs, etc.

State Run Monopoly

- A statutory monopoly with no profit component based on information in respect of Western Australia and South Australia.
- A statutory monopoly with a profit margin consistent with other comparative schemes in this model.

Vehicle Class Filing

- A large insurer operating in a competitive market.
- A small insurer operating in a competitive market.

File & Write Model

- A large insurer operating under a File and Write scheme.

The objective of these comparisons has been to consider possible outcomes for:

1. Average premium per vehicle
2. Claims costs
3. Acquisition and policy costs
4. Reinsurance
5. Claims handling
6. Department of Transport levy
7. MAIC levy
8. Hospital and Emergency Services levy
9. Nominal Defendant levy
10. Insurer's profit margin

The analysis including assumptions used is set out in detail in Section 10, Appendix A.

We have also considered a considerable number of Public or Social Interest issues associated with the Scheme. These are important in a community context and can not necessarily be measured in economic terms but they are of considerable value to the scheme. Refer Section 13.

The Queensland CTP Scheme performance since 1994 is assessed in Section 5 and a comparison with other states who have provided information for the review and for inclusion in this report is included in Section 6.

3. CTP Policy Objectives

The objectives of the Act administered by the MAIC are to:

- continue and improve the system of CTP motor vehicle insurance and the scheme of statutory insurance for uninsured and unidentified vehicles operating in Queensland.
- provide for the licensing and supervision of insurers providing insurance under policies of CTP motor vehicle insurance.
- encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents.
- promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents.

- establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud.
- promote measures directed at eliminating or reducing causes of motor accidents and mitigating their results.

Broader objectives also include:

- to provide *access* for persons injured in a motor vehicle accident to appropriate medical, rehabilitation and future care needs such that the opportunity is available for all injured persons to return, as close as possible, to their pre-accident condition, having regard for any longer term constraints imposed by the injuries suffered.
- premiums should be *affordable*. The use of a motor vehicle is crucial for many people in our society for both employment and social reasons. Premiums therefore need to be affordable for a large majority of vehicle owners.
- premiums should be *fully funded*. This is important because it significantly increases the likelihood that insurers will have sufficient funds available to pay benefits and they will continue to support the scheme. For most insurers in the scheme their exposure to the Queensland CTP Market is a relatively small component of their total business. It is also noted that scheme failures in the past in other states have had significant community impact in circumstances where there have been substantial funding shortfalls. An example of this is in NSW where from 1989 until relatively recently motor vehicle owners were required to pay a levy of $42 per year to meet a CTP shortfall of $2 billion.
- there should be *stability* and *predictability* regarding the likely future cost of CTP insurance. For the insurer, there must be a level of *certainty* in assessing the future trends in costs, otherwise the uncertainty reflects in premium costs. The consequence for the motor vehicle owner is a volatility in premium charges and for governments criticism that the scheme is out of control.
- to provide opportunities for persons who have suffered personal injuries in a motor vehicle accident to pursue compensation with a *minimum of litigation costs*.
- there should continue to be *a low cost structure for the Nominal Defendant*.

4. The Current Queensland CTP Model

Queensland has a fault based CTP motor vehicle insurance scheme providing access to compensation for those persons injured in motor vehicle accidents where negligence can be established against an owner or driver.

The scheme has the following major attributes:

Scheme Structure and Administration

- administered by an independent regulatory authority, the MAIC;
- it is a fault based/full common law scheme;
- compulsory for all Queensland registered vehicles;
- CTP cover is a pre-requisite to motor vehicle registration;
- covers approximately 2.3 million vehicles for a total premium of approximately $685 million;

- insurance attaches to the vehicle and not the driver;
- vehicles are rated by class. The average premium for 1999/2000 is $298 and the Class 1 premium rate which applies to approximately 91.5% of motor vehicles is $286;
- the scheme presently is predicted to pay 67% of 1999/2000 premiums received in benefits to persons injured in motor vehicle accidents (excluding legal costs). The percentage of benefits paid and expected to be paid for claims that occurred during the period were 62.8% over five years to 1998/99;
- the scheme focuses on early delivery on rehabilitation of injured persons as quickly as possible;
- there are no limits prescribed for benefits or compensation;
- there is no claims excess;
- there are no zonal or pensioner discounts;
- claims are required to be notified to insurers within nine months of the accident or date when symptoms first became apparent. Claims are also subject to the Statute of Limitations
- the incidence of claims is currently at 4.4 per 1000 vehicles in 1999 having grown from 3.1 per 1000 vehicles in 1994,
- the actuarially assessed average claim size for 1999/2000 is $42,000; and
- MAIC administers the activities of the Nominal Defendant on behalf of the State which deals with claims related to uninsured or unidentified vehicles. The Nominal Defendant is also the insurer of last resort, should an insurer become insolvent.

Premium Determination and Collection

- premiums are actuarially assessed annually and MAIC makes a recommendation to the State Government in respect of the premium for the next year beginning 1 July. Government decides on what level of premiums to apply.
- whilst premiums can be paid directly to the insurer in practice the greatest percentage of premiums are collected by Queensland Transport.
- premiums are comprised of a calculated risk premium and allowances for other costs, levies and profit margin as follows:

	Percentage of Total Current Premium for 1999/2000
– Claims cost (including legal costs)	73.0
– Acquisition and policy costs	7.3
– Reinsurance	2.7
– Claims handling	3.5
– Department of Transport levy	1.3
– MAIC levy	0.3
– Hospital and Emergency Services	1.7
– Nominal Defendant	4.2
– Profit margin	6.0
	100.0

- premiums are risk rated by class of motor vehicle only which creates relatively standard premiums and greater scheme stability where high risk groups within classes are effectively subsidised by lower risk groups.
- the present rating system designates certain types of vehicles as a separate class. In all there are 24 classes of motor vehicles. The current relativity for each class is actuarially assessed and reflects particular groups' claims experience. However, taxis as a class, as it presently stands, are subsidised by other classes.
- premiums currently represent approximately 40% of average weekly earnings - full-time, adult, ordinary time earnings (seasonally adjusted).

Insurers - Arrangements and Responsibilities

- MAIC licences insurers in the scheme and undertakes prudential supervision.
- there are presently six licensed insurers.
- two insurers currently insure 80% of registered motor vehicles.
- insurers in the scheme are required to reach a market share of 5% within five years and maintain at least 5% to retain a licence.
- insurers are unable to decline business.
- all insurers are required to execute an industry deed which prescribes the means of sharing claim costs between insurers in cases where more than one insurer is involved in a claim.
- commissions are paid to agents for acquiring the business but they are limited to 2% for new policies and 1% on renewal.

Explanatory Tables and Graphs

Set out below are tables and graphs which give a background to the operation of the Queensland Scheme which should assist in obtaining an understanding of its structure and key operating data.

TABLE 1

QUEENSLAND MOTOR ACCIDENT STATISTICS			
Year	**Registered Vehicles**	**Total No. Injured**	**No. Fatalities**
1994 - 95	2,074,815	14,922	460
1995 - 96	2,144,564	15,373	391
1996 - 97	2,194,478	15,134	397
1997 - 98	2,264,086	14,408	306
1998 - 99	2,343,820	14,468	300

(Source – Queensland Transport)

TABLE 2

QUEENSLAND MOTOR ACCIDENT INSURANCE SCHEME			
Claims recorded at June 30 1999			
Year	No. Claims Incurred	No. Claims Finalised	No. Open Claims
1994 - 95*	7,054	6,179	875
1995 - 96	8,777	6,955	1,822
1996 - 97	8,562	5,723	2,839
1997 - 98	8,700	3,683	5,017
1998 - 99•	6,289	617	5,672
** Only 10 months of operation under revised Act*			

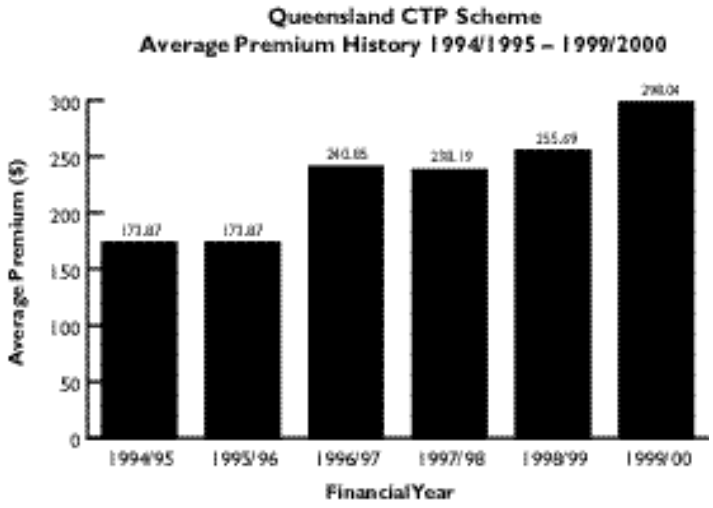
(Source - MAIC)

- Note that all claims are not yet reported by claimants in this table.

AVERAGE PREMIUM PER FINANCIAL YEAR

Financial Year	Average Premium
1994/95	173.87
1995/96	173.87
1996/97	240.85
1997/98	238.19
1998/99	255.69
1999/00	298.04

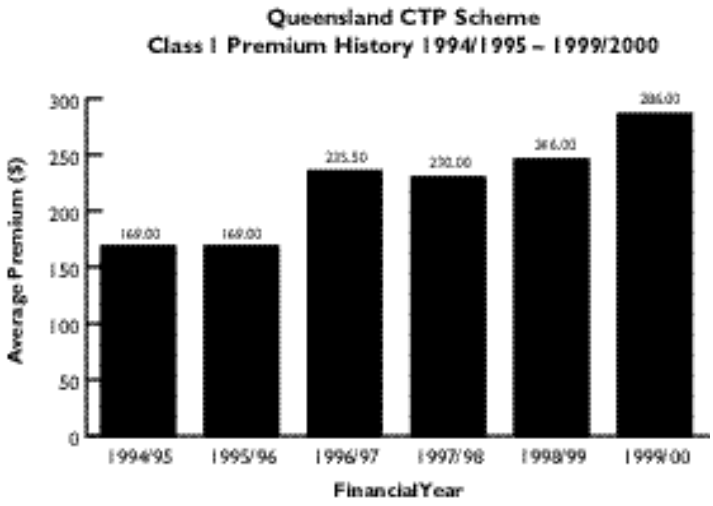
TABLE 3



CLASS 1 PREMIUM PER FINANCIAL YEAR

Financial Year	Premium Amount
1994/95	169.00
1995/96	169.00
1996/97	235.50
1997/98	230.00
1998/99	246.00
1999/00	286.00

TABLE 4



(Source - MAIC)

TABLE 5

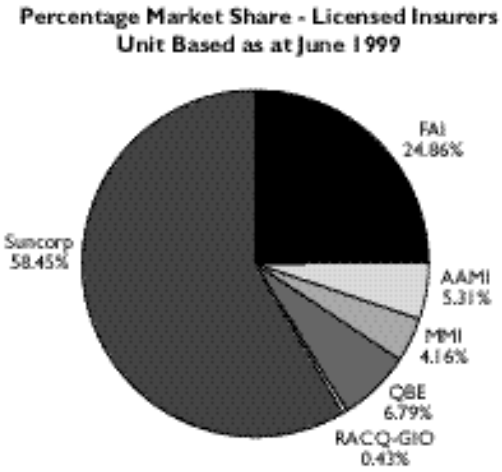
VEHICLES INSURED AS AT 30 JUNE 1999			
Insurance Class	Number of Vehicles	Percentage	Premium from 1.7.99
1	1,692,755	72.22	$286
2	4,922	0.21	$286
3	2,527	0.11	$1,572
4	17,907	0.76	$972
5	4,807	0.21	$26
6	392,542	16.75	$286
7	47,776	2.04	$858
8	5,561	0.24	$286
9	2,563	0.11	$286
10	3,486	0.15	a
11	3,776	0.16	b
12	29,587	1.26	$80
13	42,391	1.81	$286
14	28,653	1.22	$80
15	9,675	0.41	$80
16	744	0.03	$286
17	49,837	2.13	$128
19	382	0.02	$26
20	88	0.00	$26
21	32	0.00	$144
23	3,777	0.16	$286
24	32	0.00	$286
Totals	**2,343,820**	**100.00**	

a $310 + $30 per adult passenger seat in excess of 7

b $290 + $54 per adult passenger seat in excess of 7

(Source - MAIC)

TABLE 6



(Source - MAIC)

TABLE 7

NOMINAL DEFENDANT CLAIMS INFORMATION			
Accident Year	**Notices of Claim Received**	**Unidentified Vehicle Claims**	**Uninsured Vehicle Claims**
1994 - 1995	316	201	115
1995 - 1996	433	261	172
1996 - 1997	368	211	157
1997 - 1998	421	286	135
1998 - 1999	424	269	155
Total	**1,962**	**1,228**	**734**

(Source – Nominal Defendant)

Note that not all claims are yet recorded.

- The uninsured vehicle claims include claims lodged against the Nominal Defendant that, subsequent to investigation were finalised having identified the negligent vehicle and the matter taken over by a licensed insurer. These claims represent approximately 9% of the total claims.

5. Queensland Scheme Performance

The scheme underwent a fundamental review in 1994 but has operated on an unfettered common law basis effectively since 1936.

It has an overall efficiency factor, expressed as the percentage of premiums (excluding legal costs) paid by way of benefits and compensation to injured parties of 62.8% over five years and a predicted 67% in the year ended 30 June 2000. For states offering common law benefits only the national average is 64.2% with NSW having the lowest efficiency percentage of 57.2% and Western Australia the highest at 69.9%.

We have undertaken a financial efficiency analysis of the scheme using information provided by some states. That information is included in section 6 with their knowledge. In some cases where other states did not provide information directly we have used publicly available components of the data, assessed for reasonableness.

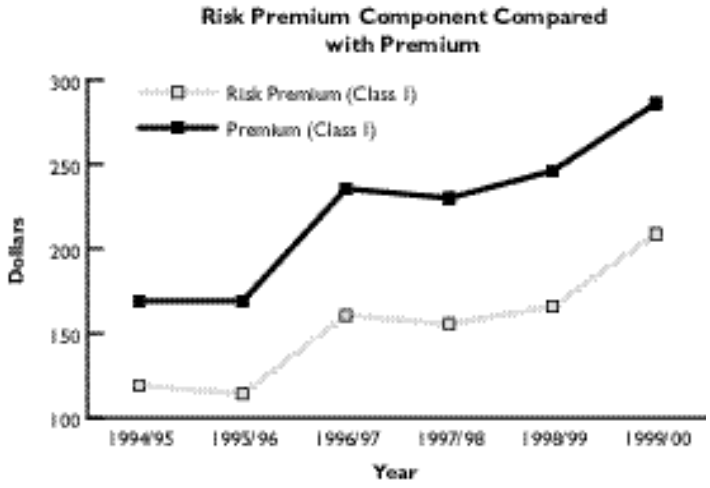
1) Settlements as a Portion of the Premium (Class 1 Vehicles)

a) Total Premium v Risk Premium Component

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00
Premium (Class 1) *	169.00	169.00	235.50	230.00	246.00	286.00
Risk Premium Component As a Percentage of Average Premium	70.5%	67.7%	68.3%	67.7%	67.5%	73%
Risk Premium Class 1	119.13	114.33	160.75	155.60	165.95	208.80

* *represents risks premium actuarially calculated at that time*

TABLE 8



- Premiums are set by the Queensland Government.
- Risk Premium is taken to be the portion of the Premium which is paid out in claims settlement.
- Risk Premium Component calculated using the "Derivation of Premium Rate" as set by Trowbridge Consulting the actuaries to the Scheme for all but the 1999/00 year.

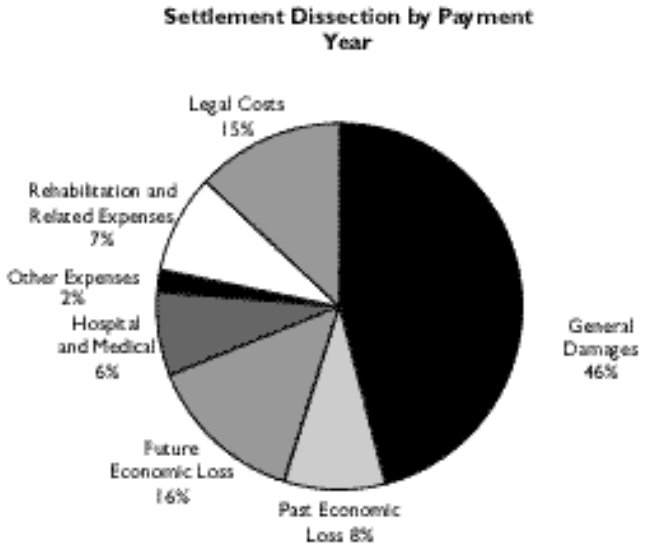
CTP Premiums and the Risk Premium component have moved in tandem which is consistent with the assumptions made by the actuary in advising on the setting of premium rates. Consequently the primary driver for premium increases over the five year period has been the actuarially assessed claims cost.

b) Dissection of Settlement Payments

	Analysis of Finalised Claims on a Payment Year Basis		Analysis of Finalised Claims on an Accident Year Basis
	5 Years	3 Years	3 Years
General Damages	46.45%	47.95%	49.46%
Past Economic Loss	7.62%	7.33%	7.03%
Future Economic Loss & Long Term Care	15.67%	13.87%	14.45%
Hospital and Medical	6.48%	6.67%	6.53%
Other Expenses	1.55%	1.47%	1.51%
Rehabilitation & Related Expenses	6.86%	7.42%	5.28%
Legal Costs	15.37%	15.29%	15.74%

- Given the consistent profile of payments as set out above, only the analysis for all Finalised Claims on a Payment Year Basis (5 Years) will be graphed below.
- The figures for "3 Years" set out above relate to the period 1995/96 to 1997/98 which are for full periods. The 1994/95 year was eliminated as there is only 10 months of data given that the scheme only commenced in September of 1994, and the 1998/99 year was eliminated as there is only 9 months of available data at the time of this review.

TABLE 9



- These figures have been obtained from the MAIC Database.
- The Total Payments include all payments made for finalised claims for the financial years 1994/95 to 1998/99.

Rehabilitation and Related Expenses is made up of the following payment classifications - Rehabilitation, Home and Vehicle Modifications, Long Term Care and Home Care, and Aids and Appliances.

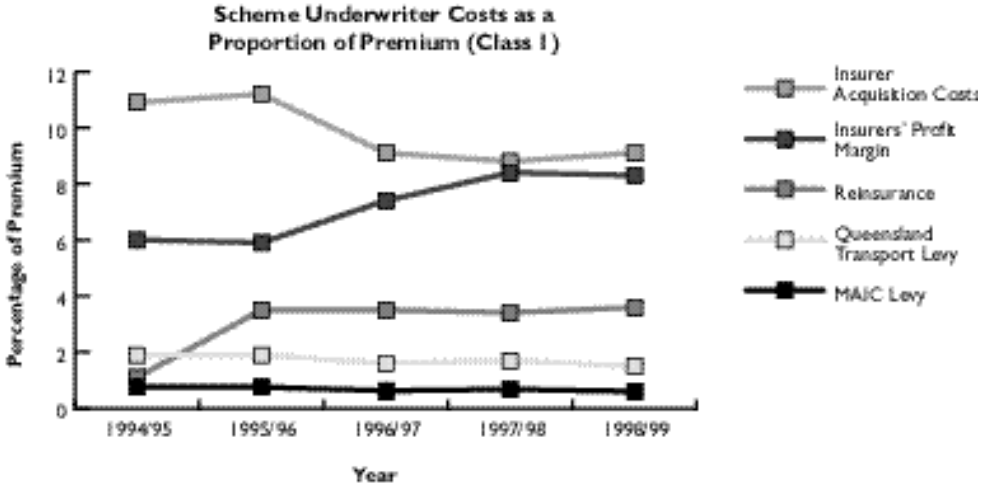
The settlement payment dissection indicated a representative trend regardless of the basis on which the dissection occurs. As the Scheme matures the payment profile may however change as severe accident claims involve a significant finalisation period and involve a larger component for "future economic loss and long term care" and "rehabilitation".

2) Scheme Costs as a Proportion of Premium (Class 1 Vehicles)

a) Scheme Underwriter Costs

	1994/95	1995/96	1996/97	1997/98	1998/99	Average
MAIC Levy	0.75%	0.75%	0.625%	0.675%	0.6%	0.68%
Queensland Transport Levy	1.9%	1.9%	1.6%	1.7%	1.5%	1.7%
Insurer Acquisition Costs	10.9%	11.2%	9.1%	8.8%	9.1%	9.8%
Insurers' Profit Margin	6.0%	5.9%	7.4%	8.4%	8.3%	7.2%
Reinsurance	1.1%	3.5%	3.5%	3.4%	3.6%	3.0%

TABLE 10

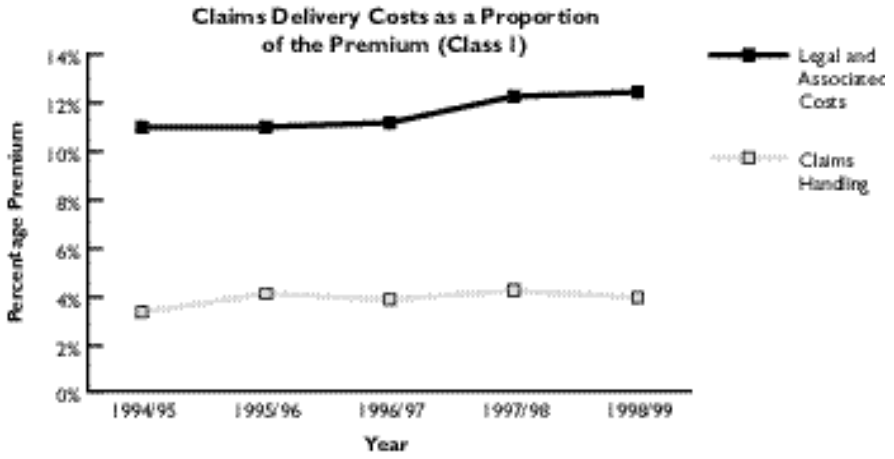


- MAIC and Queensland Transport components are levies set by the Queensland Government.
- The quantum of the Levies have been obtained from the Motor Accident Insurance Act 1994.
- The remaining three components of the Scheme Underwriter Costs above (Reinsurance, Profit and Insurer Acquisition Costs) were obtained from the "Derivation of Premium Rate" as set by Trowbridge Consulting.

b) Claims Delivery Costs

	1994/95	1995/96	1996/97	1997/98	1998/99
Legal & associated Costs	10.94%	10.95%	11.10%	12.22%	12.59%
Claims Handling	3.43%	4.27%	4.06%	4.35%	4.13%

TABLE 11



- Legal and Associated Costs include an allocation of 15% of the Nominal Defendant Levy deemed to relate to the underlying expense.
- Legal and Associated Cost statistics have been extracted by Accident Year (finalised claims only) and were obtained from the MAIC Database.
- Claims Handling Costs include an allocation of 5% of the Nominal Defendant Levy deemed to relate to the underlying expense.
- Claims Handling Costs were obtained from the "Derivation of Premium Rate" as set by Trowbridge Consulting.
- The Nominal Defendant Levy was obtained from the Motor Accident Insurance Act 1994.

Claims handling costs are determined on actuarial advice. These costs have been held at a reasonably constant percentage of the premium. Prior to this review no confirmation of how representative these costs are of actual experience (by the Insurers), under the present Act, has occurred.

Legal and associated costs actually incurred as a proportion of the premium have remained reasonably constant in the first three years of the Scheme under the revised 1994 Act. Legal costs in 1997/98 and 1998/99 would not be totally representative of the legal and associated cost profile as only the smaller claims have been settled in the later years for which legal costs represent a greater proportion of total claims costs.

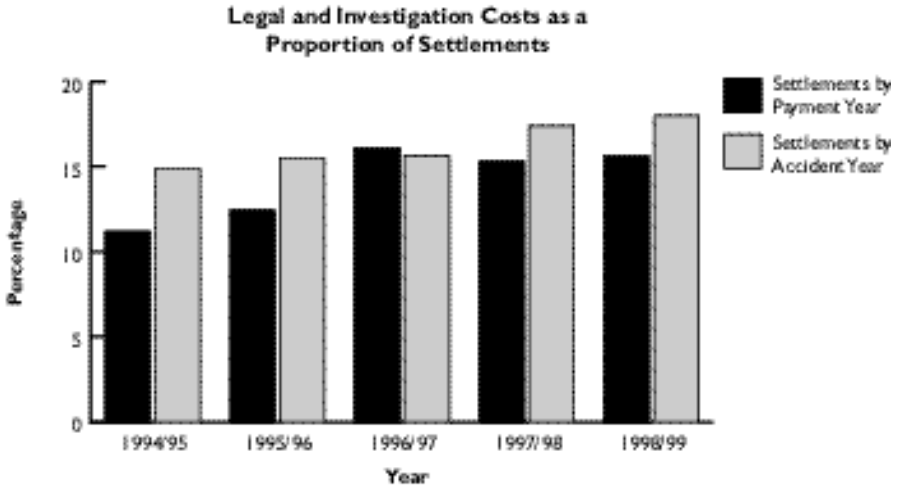
Insurer Acquisition Costs (actuarially assessed) have decreased from 11% in 1995/96 to 9% in 1996/97. This has been a decrease in percentage terms, but not in dollar

terms. Reinsurance increased from 1.1% in 1994/95 to 3.5% in 1995/96 which arose during re-assessment of the appropriate level of reinsurance. Profit increased as a percentage of the premium from 6% to 8.5%. The increase in profit, particularly between the 1995/96 and 1996/97 years is a result of the actuarial recommendations. The advice was provided on the basis that compulsory third party insurance is perceived as a comparatively higher risk insurance business and therefore higher capital base is required to support the business.

3) Legal and Investigation Costs as a Proportion of Settlements (finalised claims only)

	1994/95	1995/96	1996/97	1997/98	1998/99	Average
Proportion by Payment Year	11.19%	12.43%	16.12%	15.31%	15.61%	15.37%
Proportion by Accident Year	14.88%	15.51%	15.60%	17.38%	17.98%	15.41%

TABLE 12



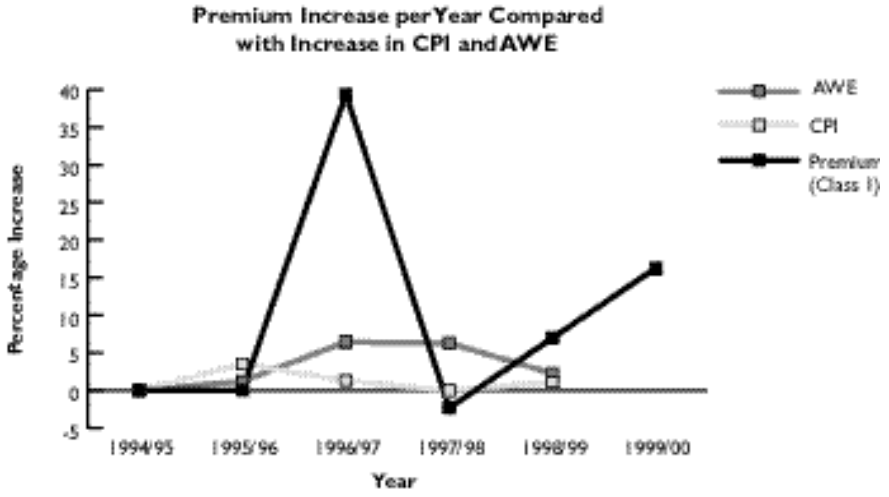
- Amounts have been obtained from the database provided by MAIC.
- The percentage reflected above is calculated as the total legal costs divided by the total payments for finalised claims only.

The data for Accident Years is not complete as there are still outstanding claims relating to the particular years. The data for payment years is misrepresentative at the start of the scheme as very few claims were finalised. The reason for legal and investigation costs by Accident Year being a higher percentage than by Payment Year is that the smaller claims are generally settled a lot faster than the larger claims. The legal and investigation costs relating to those smaller claims are generally a larger percentage of the settlement than for the larger claims and consequently the higher percentages in the later years where fewer claims have been settled.

4) Increase in Premiums per Year Compared With CPI and AWE

	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00
Premium Class 1	0.00%	0.00%	39.35%	-2.34%	6.96%	16.26%
CPI	0.00%	3.50%	1.29%	-0.02%	1.11%	not
AWE	0.00%	1.19%	6.43%	6.27%	2.23%	available

TABLE 13



- The 1994/95 policy year has been set as the base year.
- The Average Weekly Earnings (AWE) figures for Queensland adult males (full time, ordinary time) were obtained from the Australian Bureau of Statistics. They are the average of the quarterly figures for the financial year except for 1998/99 which is the average of the first three quarters of the year as the data above is only current to March 1999. The 1994/95 index is also only the average of the last three quarters as the scheme did not start until September 1994.
- The CPI numbers are the average of the quarterly CPI numbers for the financial year, as per the 1999 Australian Master Tax Guide, except for the 1994/95 and 1998/99 years for the reasons stated above.
- Premium figures have been obtained from the Motor Accident Insurance Regulation.

There was a large increase in the CTP Premium in the 1996/97 financial year due to the actuarial assessment indicating a significant upward trend in claims frequency. This occurred again in 1999/00. Further comparison to increases in the cost of living are therefore difficult given that the actuarial assessment of the risk premium has been affected by unrelated factors such as claims frequency. The objective of maintaining premium increases in line with the general increase in the cost of living is unlikely to be achieved without scheme design changes, when the primary driver in the premium setting process is the risk premium component.

6. CTP IN OTHER STATES

6.1 Governments in all Australian jurisdictions and the majority of other OECD countries regulate the provision of CTP insurance. Government regulation usually takes the form of regulating premium rates in a competitive market and/or participating directly as a provider of CTP insurance as a competitor or monopoly provider.

6.2 In Australia, there is variation in the way CTP insurance is provided. A majority of states and territories have systems in which a monopoly provides the required cover. This includes Victoria, Western Australia, Tasmania, South Australia, Australian Capital Territory and the Northern Territory.

NSW operates in a less regulated market with a file and write system and at November 1998, 11 private insurance companies were the underwriters in that market.

Benefits and compensation vary from one jurisdiction to another. In Queensland an unfettered common law scheme operates and the respective positions across jurisdictions are categorised as follows:

Pecuniary Loss

No Restrictions
- Queensland, New South Wales, Western Australia, Tasmania, Australian Capital Territory and Northern Territory (non-residents).

Thresholds and/or Caps

- Victoria and South Australia.

Non Pecuniary Loss

No Restriction
- Queensland, Tasmania, Australia Capital Territory.

Thresholds and/or Caps
- Victoria, New South Wales, South Australia and Western Australia, Northern Territory (non-residents).

TABLE 14

AUSTRALIAN CTP SCHEMES – STRUCTURAL COMPARISON					
	Government Authority	*Applicable Legislation*	*Insurance Underwriter*	*Premium Setting Basis*	*Fault/No-Fault (Basis at Law)*
Qld	Motor Accident Insurance Commission	*Motor Accident Insurance Act 1994*	6 private companies	Government Premium fixed annually following submissions from insurers and actuarial advice	Fault Common Law with no restriction
NSW	Motor Accidents Authority (the Authority)	*Motor Accidents Act 1988*	11 private companies	File and Write (Authority has the right to reject premiums)	Fault Common Law with restrictions
Vic	Transport Accidents Commission	*Transport Accidents Act 1986*	Government	Government Based on annual actuarial review, claim costs, profit margin and CPI	No-Fault Common law with restrictions
SA	Motor Accidents Commission	*Motor Vehicle Act 1959*	Government (claims managed by SGIC General Insurance Ltd)	Government Based on claims experience	Fault Common Law with restrictions
WA	Insurance Commission of WA	*Motor Vehicle (Third Party Insurance) Act 1943*	Government	Government Based on claims experience and actuarial advice	Fault Common Law with restrictions
Tas	Motor Accidents Insurance Board	*Motor Accidents (Liabilities and Compensation Act 1973*)	Government	Government Based on Government prices oversight advice, and advice from Insurance Advisory Board and claims experience	No fault Common Law with no restrictions
ACT	Department of Urban Services	*Motor Traffic Act 1936*	Private Company (NRMA has a monopoly)	Government Based on claims experience and actuarial advice	Fault Common Law with no restriction
NT	Territory Insurance Office	*Motor Accidents Compensation 1979*	Government	Government Insurance Board Based on claims experience and actuarial advice	No-Fault – Residents Fault – Non-Residents Access to Common Law with restrictions only for visitors

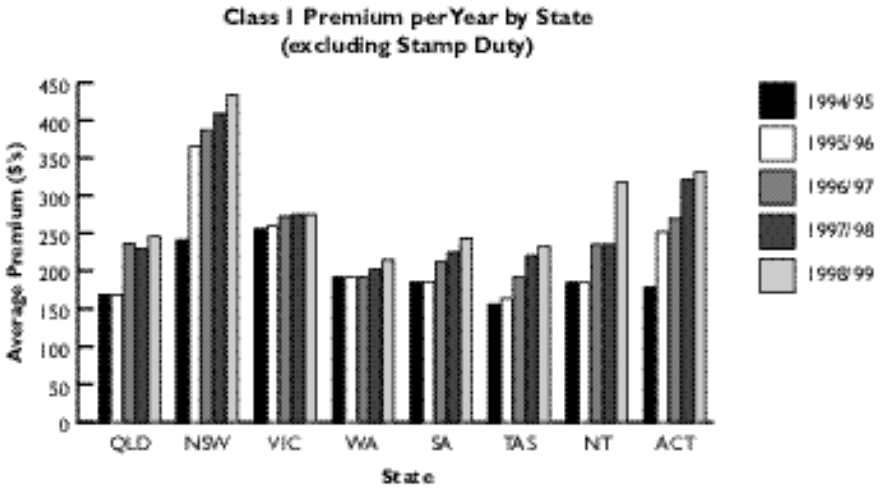
The performance of the Queensland Scheme compared with other states for the period of opertion of the Act is set out in the following tables accompanied by relevant commentary.

1) Comparison of Premiums by State

(Average Class 1 Vehicles excluding Stamp Duty)

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
1994/95	169.00	240.53	255.00	192.00	186.00	156.00	185.00	178.00
1995/96	169.00	364.82	260.00	192.00	186.00	164.00	185.00	252.00
1996/97	235.50	386.63	272.00	192.00	212.39	191.50	235.00	269.00
1997/98	230.00	408.23	275.00	201.60	224.40	220.50	235.00	322.00
1998/99	246.00	433.11	275.00	214.15	243.42	232.50	317.00	331.00

TABLE 15



- The Class 1 premium is an average Class 1 Premium.
- Queensland Premiums have been obtained from the Motor Accident Insurance Commission.
- NSW, Victoria, WA and NT Premiums have been obtained from the various State Commissions.
- SA, Tasmania and ACT Premiums have been obtained from the "Australian CTP Schemes Comparison".
- There has been an increase in the previous three years for all States except WA.
- The 1994/95 and 1995/96 Premiums for WA above, do not include the $50 levy designed to recoup "WA Inc" related debts.

Direct comparison of premium levels is not appropriate given the differing structures of the Schemes. Nevertheless, premium levels in Queensland are not dissimilar to those in Western Australia and South Australia where the Schemes operate without a "no fault" component.

2) Split of Settlement Payments

	QLD	NSW	WA	SA
General Damages	46.5%	32.9%	27.4%	24.8%
Economic Loss	23.3%	21.9%	33.0%	33.0%
Medical *	13.3%	23.6%	20.7%	23.5%
Legal	15.4%	18.3%	11.1%	12.0%
Other	1.6%	3.3%	7.7%	6.7%

* The Medical portion above for Queensland does not include any costs associated with public hospital and public emergency services ordinarily covered by the Hospital and Emergency Services Levy. The figure, when grossed up to be a percentage of the risk premium, would be 3.1% for the average of the five year period.

We highlight that the sources for derivation of this data vary between states as a result of the different operating structures and manner in which costs are classified. The most relevant comparison for the Queensland scheme is the NSW scheme.

TABL

- The only information received from other states that was comparable format to the Queensland data was NSW, SA and WA.
- Included in Medical are Rehabilitation Payments.
- Queensland figures were obtained from the Database provided by MAIC for a five year period.
- Figures for WA, NSW and SA were obtained from the relevant State Bodies based on either a snapshot for a representative year or the average of claims payments over a five year period. The time periods are as follows:

  WA - Average for the last five payment years
  NSW - Estimates for the 1999/00 premium year
  SA - Estimates for the 1999/00 premium year

- "Other Costs" for WA and SA generally are payments that go to the injured party.

General damages payments are capped in NSW, SA and WA hence the lower percentages when compared to Queensland and this has a flow on effect to the legal costs. The legal costs in Queensland and NSW are proportionately higher than the state monopolies. In making these comparisons, consideration also needs to be given to the different litigation environments between states, particularly NSW which has a higher level of litigation than other States.

The legal costs in WA and SA would be lower as there is no investigative cost in respect of how the claims should be split between different private insurers. The capping on general damages in these states also limits legal costs involved in lodging the claim.

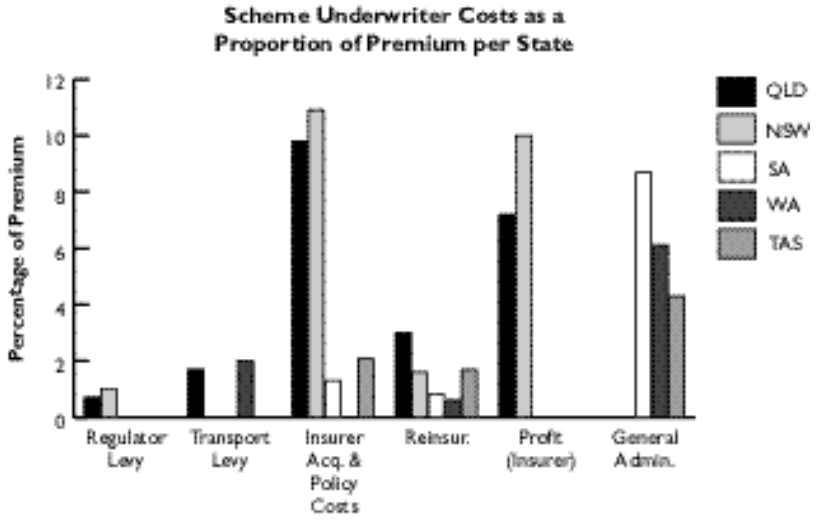
3) Scheme Costs as a Proportion of Premium for the 5 Year Period (Average Class 1 Vehicle)

a) i) Scheme Underwriter Costs (in percentage terms)

	QLD (Average)	NSW (1999/00)	SA (Average)	WA (1999/00)	TAS (Average)
Regulator Levy	0.68%	1.0%	*	*	*
Transport Levy	1.7%	0.0%	*	2.0%	*
Insurer Acquisition and Policy Costs	9.8%	10.9%	1.3%	*	2.1%
Reinsurance	3.0%	1.6%	0.8%	0.6%	1.7%
Profit (Insurer)	7.2%	10.0%	N/A	N/A	N/A
General Administration	N/A	N/A	16%	6.1%	4.3%

* Given the structure of these schemes, the costs are all included in general administration.

TABLE 17



- The statistics for Queensland are the average of the figures set out in (2)(a) of Part A above.
- The NSW figures were calculated from information provided by the MAA detailing a split of the Premium for the 1999/00 policy year for Class 1 vehicles. This is taken to be consistent with prior periods.
- Information for SA and TAS was obtained by applying the proportions of "other costs" detailed in the Government Oversight Commission review of the MAIB (Tasmania) detailed on page 55 of that report. These costs relate to 1994/95 and 1995/96 and the proportions have been taken to be representative in the average premiums for the past five years.
- Information for WA was obtained from the ICWA and relates to an average for all vehicles expected to be in the Scheme for 1999/00.

Comparisons between the schemes are difficult given the different approaches to formulating premiums and analysing CTP costs.

Acquisition and policy costs in NSW are high possibly as a result of a "file and write" or "greenslip" process. On this basis the acquisition and policy costs for Queensland look comparatively high although the statistic is misleading in that the NSW premiums are significantly higher than Queensland.

The profit margin included in the premium is intended to provide the insurer with an appropriate rate of return on the capital provided to support the insurance risk. The scheme actuary has noted that it is generally accepted that the rate of return should be between 4% and 6% greater than the risk-free rate. Furthermore the actuary notes that at a level of capital of 23% to 37% of Premium income and a margin of 5% above the risk-free rate the profit margin should equate to 8.5% of the gross premium. The average assumed profitability (as assumed in setting the premium) for the five years for the Queensland Scheme was 7.2%.

Given the long tail nature of this business and the possibility that claim frequency and size will be significantly different from that assumed for any one premium year, wide fluctuations are likely in the ultimate profit margin.

Ernst & Young performed an analysis of the NSW CTP Scheme in 1998. As part of the analysis they estimated the effective rates of return on capital that private insurers derived from the Scheme on an accident year basis since inception. The analysis was performed by determining the Scheme cash inflows and outflows by accident year together with estimated future Scheme cashflows. The "best guess" of the return on capital invested by insurers in the Scheme by accident year was as follows:

Average rate of return:
1990 - 1998 - 17.5%

Average rate of return since deregulation of the premium setting process:
1993 - 1998 - 3.6%

Whilst this statistic tends to indicate that competition has dramatically reduced margins, a major influence on the rate of return achieved has been the increased claims cost experience.

The average rate of return for the 1993-1998 period has been significantly reduced as a result of negative returns on capital in certain of those years.

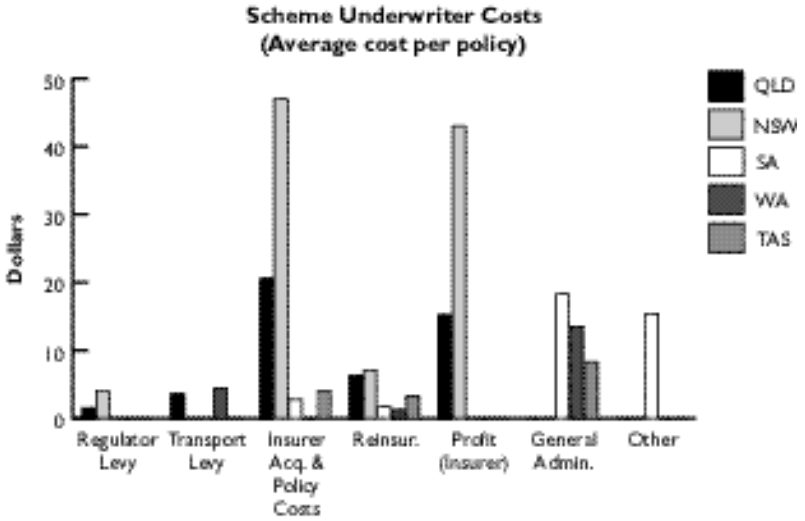
It should be noted that this rate of return should be compared with the desired rate of return referred to by the Queensland scheme actuary which is 4-6% above the risk free rate.

a) ii) Scheme Underwriter Costs (Average cost per policy)

	QLD (Average) $ per policy	NSW (1999/00) $ per policy	SA (Average) $ per policy	WA (1999/00) $ per policy	TAS (Average) $ per policy
Regulator Levy	1.43	4.00	*	*	*
Transport Levy	3.57	N/A	*	4.34	*
Insurer Acquisition and Policy Costs	20.57	47.00	2.74	*	4.05
Reinsurance	6.30	7.00	1.68	1.23	3.28
Profit (Insurer)	15.11	43.00	N/A	N/A	*
General Administration	N/A	N/A	33.67	13.45	8.29

* given the structure of the Schemes the costs are all included in general administration.

TABLE 18



- The costs for Queensland are the average for the five year period based on the proportions set out in (2)(a) of Section 5 above.
- The NSW figures were obtained from information provided by the MAA detailing a split of the Premium for the 1999/00 policy year for Class 1 vehicles. This is taken to be consistent with prior periods.
- Information for SA and TAS was calculated by applying the proportions of "other costs" detailed in the Government Oversight Commission review of the MAIB (Tasmania) detailed on page 55 of that report. These costs relate to 1994/95 and

1995/96 and the proportions have been taken to be representative in the average premiums for the past five years.

- Information for WA was obtained from the ICWA and relates to an average for all vehicles expected to be in the Scheme for 1999/00.

b) i) Claims Delivery Costs (in percentage terms)

	QLD (Average)	NSW 1999/00	WA 1999/00	SA 1999/00
Legal Costs	11.0%	12.8%	8.7%	9.4%
Claims Handling	4.1%	4.0%	*	3.2%

* Included in general administration costs as detailed in 3 (i) (a) above.

TABLE 19

- The statistics for Queensland are the average of the figures set out in (2)(b) of Section 5 above.
- The NSW proportions were obtained from information provided by the MAA detailing a split of the Premium for the 1999/00 policy year. This is taken to be consistent with prior periods.
- Proportions for WA were obtained from the information provided by the ICWA but insufficient information was available in respect of the claims handling component.
- Information for SA was obtained from the projected make-up of the risk premium for 1999/00.

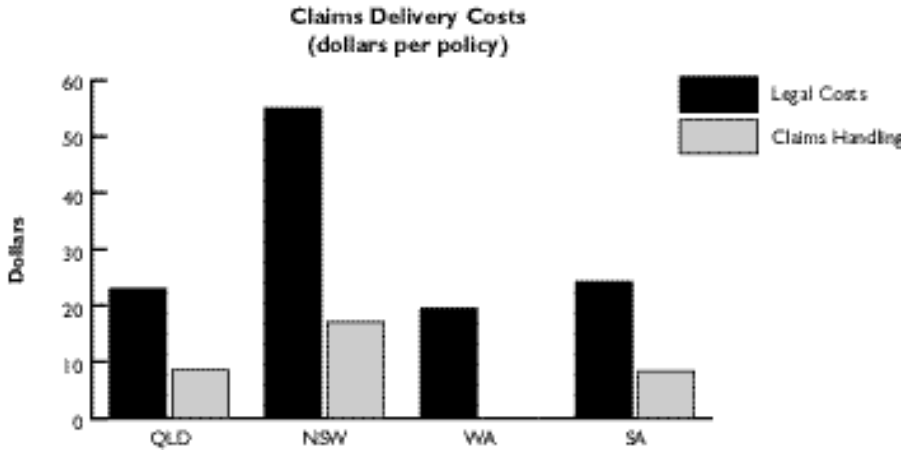
As observed earlier in this review legal costs for the Queensland and NSW schemes are higher than the monopoly schemes.

b) ii) Claims Delivery Costs (in dollars per policy)

	QLD (Average)	NSW 1999/00	WA 1999/00	SA 1999/00
Legal Costs	22.98	55.00	19.40	24.20
Claims Handling	8.61	17.00	*	8.30

* given the general structure of the scheme the costs are all included in general administration.

TABLE 20

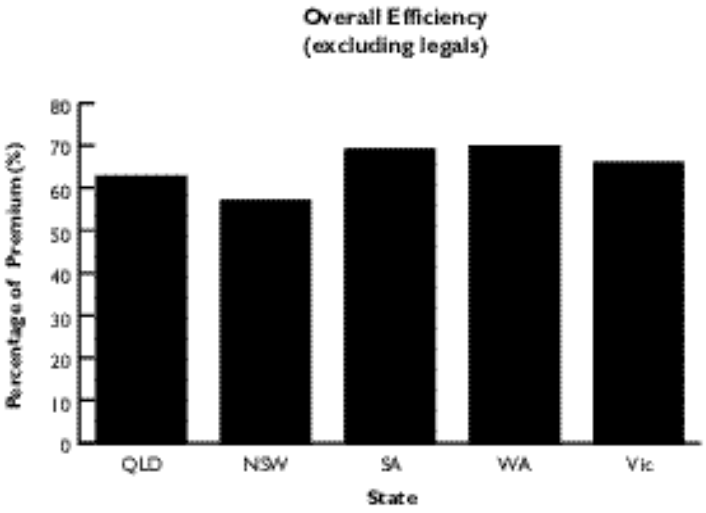


- The costs for Queensland are the average for the five year period based on the statistics set out in (2)(b) of section 5 above.
- The NSW figures were obtained from information provided by the MAA detailing a split of the Premium for the 1999/00 policy year. This is taken to be consistent with prior periods.
- Costs for WA were obtained from the information provided by the ICWA but insufficient information was available in respect of the claims handling component.
- Information for SA was obtained from the projected make-up of the risk premium for 1999/00.

4) Overall Efficiency for 5 Year Period (Excluding Legal Costs)

	QLD	NSW	SA	WA	VIC
Overall Efficiency	62.8%	57.2%	69.1%	69.9%	65.9%

TABLE 21



- The Overall Efficiency of the Queensland Scheme for the 5 Year Period (excluding Legal Costs) is derived from the actuarial assumptions at the time of setting the premium. Insufficient certainty of open claims exists to confirm the assumptions against actual experience.
- The ratio for NSW was estimated from information provided by the MAA showing a split of the Premium for the 1999/00 policy year. This is taken to be consistent with prior periods.
- The ratio for SA was derived from details of the risk premium and the CTP premium provided by the SGIC.
- The ratio for WA was estimated from information supplied by ICWA.
- The ratio for Victoria was estimated from information supplied by the TAC for the period 1994/95 to 1997/98. This figure is not strictly comparable as it includes some legal costs which we were unable to separate. Furthermore the Scheme has a "no fault" component which is different to the purely common law schemes operating in the other States detailed above. If accident prevention programs and research grants are included the efficiency ratio would be 69.3%.
- The MAIB states that the efficiency ratio for Tasmania is approximately 80%. This may be before dividends and tax payments to the state. Due to the uncertainty of this information it is not included in the graph above.

The ratios derived above are the best indication of the efficiency of the Scheme as they reflect the proportion of the premium that is returned to those affected in motor vehicle accidents. Queensland is lagging all states with the exception of NSW. It is

also noted that NSW have recently undertaken a full review of their scheme with a review to reducing the current premium level and hence the efficiency is expected to improve.

7. Restrictions on Competition (NCP Issues)

The Review Committee Issues Paper on the scheme was released for comment by industry participants and the public on 6 August 1999. A significant number of meetings with representatives of insurers, the Insurance Council of Australia, the legal profession, motoring organisations and others have occurred since that date to consult on the issues defined in that paper and to obtain views and opinions which are important for the Review Committee to consider in recommending any changes to the scheme. What follows is an assessment of restrictions on competition for 17 of the 56 issues defined in the issues paper and follow consideration of submissions received on the issues paper contents. The process for consultation is set out in Section 9.

Sections 10, 11 & 12 of this document consider alternative CTP Schemes, their advantages and disadvantages and market power issues. In this respect the issues identified in this section have been considered in arriving at and analysing these alternatives.

(Number references are to the Review Committee's Issues Paper)

Compulsory v Non Compulsory - 1

Present Position

- Queensland has had compulsory third party (CTP) motor vehicle insurance since 1936. The scheme is common law based and covers liability for personal injury arising from motor vehicle accidents with the policy of insurance indemnifying an owner or driver of a vehicle who is found liable, in whole or in part, for the cause of the accident.

Discussion of Issues

- Third party insurance is compulsory in all States and Territories in Australia.
- The scheme is common law based and covers liability for personal injury arising from motor vehicle accidents with the policy of insurance indemnifying an owner or driver of a vehicle who is found liable, in whole or in part, for the cause of the accident.
- Prior to the compilation of the CTP Scheme Issues Paper, 141 submissions were received. In the phase of the process subsequent to the completion of the Issues Paper a further 33 submissions were received. Some of the later submissions were made by parties who had made earlier submissions and the second round were prepared having regard to the Issues Paper content and in some cases with those parties having also met with the Review Committee and its advisers.
- With one exception the submissions gave support for the retention of a compulsory scheme because it ensures the availability of compensation to those injured as a result of the negligence of a driver or owner, by through or in connection with a motor vehicle. A compulsory scheme is highly efficient. It enables the spread of risk and provides lower premiums to the motor vehicle owner than would be the case if individuals sought such insurance independently.

- A compulsory scheme is considered by the Review Committee to be essential to the continuation of an orderly, financially stable and fair third party insurance scheme. Without compulsory cover there would be some uncertainty about the capacity of owners/drivers to meet the costs of compensation and some risks of increase in unfunded public health demand for medical and hospital services, as well as other Government services.
- With an extremely low claim frequency rate it is probable that there would be a preference to take the risk and not insure ("It won't happen to me"). However the claims costs can be extremely high and beyond the average persons capacity to meet the cost of damages.

Analysis Performed

- Account has been taken of the positive comments made in submissions about the retention of a compulsory scheme. No economic analysis was possible.

Recommendations

The retention of a compulsory CTP scheme is recommended on the basis that it is in the community interest because it provides certainty that all registered motor vehicles are covered under the scheme. To the extent that motor vehicles are not registered they are covered by the State through the Nominal Defendant.

Government Monopoly v Insurers - 3

Present Position

- The scheme is based on a system which allows the participation of private insurers. This system has worked well over a very long period (although for the majority of years a Queensland publicly owned insurer held more than 50% of the market). The scheme is generally thought to be advantageous.
- The Motor Accident Insurance Commission (MAIC) as a regulator licenses and supervises private insurers providing policies of insurance. Insurers carry the risk for policies issued, however, the Nominal Defendant as a Government instrumentality is the insurer of last resort, carrying the risk for unidentified and uninsured vehicles as well as the costs associated with claims should an insurer become insolvent.
- It is not possible to insure with an insurer who is not licensed under the Act.
- Queensland and NSW are currently the only States without a monopoly provider.

Discussion of Issues Raised

- A scheme which has the ongoing involvement of private insurers has been strongly supported in the submissions received.
- Private sector underwriting of the scheme has the advantage of the risk being removed from Government albeit that the Nominal Defendant, a Government instrumentality, is the insurer of last resort should an insurer become insolvent.
- Private sector underwriting offers commercial management, acceptance of financial risk and price competition (if scheme design allows).
- Monopolies may have greater capacity to smooth premium adjustments.
- Government operated schemes have the ability, because of their structure and control, to not necessarily adjust premiums when appropriate with possible consequences for funding.

- Importantly the involvement of private insurers also provides an opportunity to benchmark performance.
- Monopolies which are generally government operated are running successfully in some other states on the basis set out in Table 14 and they have some advantages over privately insured schemes. Some of those advantages are consistency of claims management, lower acquisition costs and closer attention to long term care and scheme policy issues.

  There are disadvantages also and these include that in Queensland's case a move to a Government monopoly would be a move further away from competition and it would tend to deny the history of the scheme.

Analysis Performed

- Substantial quantitative and qualitative review work has been undertaken on this issue and it is set out in Sections 10, 11 & 12 and Appendix A to this report.

Recommendations

- This issue has been considered in the knowledge that the modelling has shown that a possible average premium under a monopoly in 1999/2000 would be $262 against an adjusted premium for the present scheme of $288 and a Vehicle Class Filing Scheme of $278 (subject to the possibility of further reduction based on assumptions made by insurers). The foregoing premiums have been determined under differing profit assumptions which are defined in Appendix A.
- A move to a monopoly is not considered appropriate because it would involve the assumption of scheme risks by the state, a move away from competition and substantial adverse impact on the insurers and as a consequence on the Queensland economy.

Licensing Insurers - 4

Present Position

- The *Motor Accident Insurance Act 1994* allows a body corporate carrying on the business of general insurance to apply to MAIC for a licence to issue policies for CTP insurance.
- Sections 62, 63 and 64 of the Act set out the provisions for the licensing of insurers and the conditions of licence.
- Section 10 of the Act which outlines MAIC's functions requires MAIC to establish and revise prudential standards with which licensed insurers must comply.
- An applicant for a licence must be carrying on the business of general insurance in Queensland and must have executed the Industry Deed prior to granting of the licence.
- Under Commonwealth legislation insurers writing business in Australia must be licensed with APRA.
- APRA undertakes extensive analysis of an insurer's solvency and capacity to meet ultimate claims cost.
- However, information pertaining to an insurer's financial capacity is not shared with the State jurisdiction, resulting in a level of duplication with regard to prudential supervision undertaken by MAIC.

Discussion of Issues Raised

- The present scheme has performed well with a relatively small number of insurers and it has provided a basis for control and supervision.
- Imposition of standards (including the industry deed) by the regulation ensures that licensed insurers have an appropriate market presence, operating structure and staff.
- MAIC has statutory powers to set standards which insurers are obliged to meet.
- Under existing requirements licensed insurers are required to report to APRA and MAIC. This involves a level of duplication which the Review Committee acknowledges but given the high risk associated with outstanding claims liabilities in the order of $2 billion the role which MAIC performs in relation to the prudential aspects of the scheme continues to be important.
- There is a present inability to insure with insurers who are not licensed by MAIC.
- The Review Committee believes that the requirement for MAIC to regulate the activities of insurers has been important to maintaining a stable CTP market.

Analysis Performed

No analysis has been conducted, apart from the consideration of the contents of submissions received. Submissions generally favoured the retention of licensing which is consistent with the requirements of financial markets generally.

Recommendations

- That licensing of insurers is seen to be in the best interest of the CTP scheme and the State as insurer of last resort (if an insurer fails).
- That MAIC should continue to be responsible for licensing and prudential supervision.
- That MAIC should liaise with APRA with a view to achieving a more appropriate sharing of information so that as far as reasonably possible duplication of prudential information requirements on insurers is reduced.

Five Year Restriction on Being Re-instated if Insurer Withdraws - 5

Present Position

- Section 62 of the Act states that an insurer whose licence is withdrawn or is surrendered under the Act may not re-apply for a licence within 5 years after the withdrawal.

Discussion of Issues Raised

- Scheme stability has occurred in Queensland as a result of several important design features and the way in which it has been operated by the participating insurers and MAIC. Important in this has been the requirement that insurers have a long term commitment to the scheme. A restriction on reinstatement for an insurer who has previously withdrawn is seen as an important component in maintaining that stability and it should to a degree, control major market fluctuations which might arise if insurers were to be able to leave and then re-enter the CTP market on an unfettered basis. The five year period has been questioned and it may be excessive. A shorter period of one year would have the

same practical effect but it would also allow insurers to react to market circumstances in a way which would promote more competition and therefore benefit motor vehicle owners.

Consideration needs to be given to the impact of the regulatory burden for scheme control and the re-licensing of applicants if such changes became more frequent.

The continuation of a restriction has received general support in the submissions.

- It has been suggested that the Act be amended to enable MAIC to have a discretion to allow the reinstatement of an insurer. Circumstances for reinstatement may include:

  a) a merger of two insurers;

  b) a change in parent company or controlling shareholder; *or*

  c) a major change in scheme design.

Analysis Performed

- No economic analysis has been performed. Where this subject was mentioned in the submissions its retention was supported.

Recommendations

- That the five year restriction on being re-instated if an insurer withdraws be reduced to one year.
- A level of discretion be granted to the Commisson to be exercised where it can be demonstrated to be in the best interest of the scheme.

Industry Deed Prescribing Means Of Sharing Claim Costs Between Insurers - 6

Present Position

- A major difficulty in a scheme delivered by multiple insurers is the complexities encountered by injured parties in bringing a claim in which there is more than one “at fault” party. To minimise the difficulties an Industry Deed provides appropriate resolution and sharing mechanisms.
- All insurers sign an Industry Deed at the time of licensing. The Deed sets out the requirements for the management of CTP business and the basis for insurers transacting business between one another.
- Where more than one insurer is involved in an accident the Industry Deed provides a sharing agreement but where the issues cannot be resolved after two months the deed sets out the basis for cost sharing, and dispute resolution.
- Scheme experience has shown that the concept has generally worked very well, ensuring injured parties are unaffected by issues over liability between insurers. The only problems seem to stem from insurer non-compliance with timeframes.

Issues Raised

- The submissions from insurers have supported the retention of the Industry Deed as the administrative arrangements within it flow through to the community.
- In other submissions where the Industry Deed was mentioned it was supported.
- Signing of the Deed is a pre-requisite to an insurer becoming licensed thereby ensuring that all insurers are bound in the same way.

- It has been suggested that the Deed should incorporate the current sharing agreement which exists between insurers as it is more extensive in its coverage. However it has been noted that the requirements are made clear in the Act.

Analysis Performed

- No economic analysis has been performed. Submissions have been reviewed.

Recommendations

- That the Industry Deed remains appropriate and should be retained because it conforms with a clear objective of the regulation and it benefits the injured party through timely resolution of claims in circumstances where multiple insurers are involved.

Nominal Defendant is Only Insurer of Uninsured and Unidentified Vehicles - 8

Present Position

- The Nominal Defendant is the deemed insurer for uninsured and unidentified vehicles.
- The Nominal Defendant also provides gratuitous insurance in special circumstances, e.g wheelchairs, trailers.
- In NSW the Nominal Defendant claims are handled and claims costs shared by the underwriting insurers.
- NSW claims costs are approximately 33% higher than the industry average compared with Queensland which is consistent with the industry.

Discussed of Issues Raised

- It has been suggested that in a competitive market consideration might be given to enabling private insurers to assume this underwriting risk and opportunity for new business. However it is noted that claims against the Nominal Defendant frequently require substantially more investigation than other claims and the incidence of fraud is considerably higher. This underlines the importance of the role of the Nominal Defendant.
- Appropriate linkages to Queensland Transport need to be encouraged in the common goal of reducing the number of unidentified and unregistered CTP insured vehicles. One view is that the effort to reduce the incidence of these vehicles runs counter to a free market business philosophy where private insurers assuming this underwriting responsibility would presumably want to grow this business.
- If the scheme was operated as a monopoly it may be appropriate for the Nominal Defendant to also be part of that change.
- The Nominal Defendant, a function of the MAIC and an insurer in its own right, gives the regulator a view of what is happening in the scheme.

Analysis Performed

- We have not conducted economic analysis however we have reviewed all relevant submissions and we have noted the basis under which the NSW Scheme allocates the uninsured and unidentified vehicle claims to the insurers in that scheme.

Recommendations

- Given the complexities associated with Nominal Defendant claims and specialised claims processes the role of the Nominal Defendant is important to the scheme and should be retained in its present form. It also provides for the Commission an ongoing view of the operation of the Scheme with the Nominal Defendant as an insurer.

Competition Amongst Insurers - 17

Present Position

- There are currently 6 licensed insurers in the Queensland scheme, two of which have a market share of approximately 80%.
- In the NSW scheme, the only other State with competing insurers, there is an element of price competition between insurers.
- In an effort to gain better business and an advantage over competitors in target markets, anecdotal evidence in NSW indicates that insurers' strategies extend to avoidance of risks from certain socio-economic groups. In a compulsory scheme such a practice is not in the interests of the community as a whole.

Discussion of Issues Raised

- The Committee is considering a number of options for introducing price competition which includes a NSW 'File & Write' (Green Slips) system involving a premium set around an agreed benchmark with each insurer. This system promotes a closer relationship between the insurer and vehicle owners and enables differential premiums. It does however have a very high delivery cost and is operationally cumbersome.
- Variations on the above which might not include green slips but use the Queensland Transport database to coordinate customer access in a scheme under this type of design.
- A tender system.

Analysis Performed

- A tender system has not been specifically analysed as it can be likened to a Monopoly for a set period with competition once only in the period of the tender. It also does not allow customer choice of insurer.
- Other options have been analysed and the results of that analysis are included in Sections 10, 11 & 12 and Appendix A .

Recommendations

- That amendments be made to the present scheme where practical to improve the competitive position of insurers including the removal of impediments to changing insurers and changing the Five Year restriction on re-instatement and the minimum market share requirements.
- That consideration be given to the deregulation of premiums.

Impediments to Change of Insurers - 18

Present Position

- Vehicle owners renew their registration by several alternative methods, including:
  - payment by personal attendance at a Queensland Transport Customer Service Centre;
  - payment by bank authority;
  - payment by telephone using a credit card;
  - payment through Australia Post or some other agencies; *or*
  - payment by mail.
- Queensland Transport will not accept a request for a change in CTP insurer other than by mail or through the insured signing an authority at an office of Queensland Transport.
- To ensure continuation of policy coverage where payment is not effected by due date the legislation imposes on the insurer an obligation to provide a 30 day period of grace. Consequently, to avoid disputes over liability the change of insurer must be completed and premium paid on or before due date.

Issues Raised

- There have been a significant number of submissions which have suggested that the selection and change of insurer process is too restrictive and should be improved to allow more flexibility, e.g. allow requests for change of insurer by phone in the same way as registration of motor vehicles is paid by phone.
- It may be that the current practice acts as a disincentive for new insurers wishing to enter the scheme.
- The renewal notice issued by Queensland Transport as part of the registration process limits the insurer's opportunity to acquire new business.

Analysis Performed

- The submissions received have been taken into account and further analysis conducted in Section 10.

Recommendations

- That changes be made to the present system to promote choice for the motor vehicle owner and to do so at times during the year other than at renewal. * That Queensland Transport's system be altered to make changing of insurers easier for Motor Vehicle owners at the time of payment.

Minimum Market Share Requirements - 19

Present Position

- Section 64 of the Motor Accident Insurance Act and Section 14 of the Regulation prescribe that a CTP insurer must have a market share equal to or greater than 5% at the end of the financial year following the fifth anniversary of the granting of the licence, otherwise MAIC must withdraw the licence.

- However, MAIC need not withdraw the licence if in the next or subsequent year the licensed insurer has a share of the market of at least 4.5% and the insurer had been at a level of at least 5% in the previous financial year.

Discussion of Issues Raised

- Minimum market share requirements have been in place since 1994 but the first period of 5 years under the Act runs until June 2000, so the Commission has had no requirement to enforce this provision to this point.
- The insurers who submitted comments on this subject were generally in favour of a relaxation of this requirement on the basis that it currently represents a barrier to entering and remaining in the market and that provided an insurer is satisfying prudential requirements and other statutory obligations, the market share maintained by that company should not be relevant.
- The counter argument is that insurers with market shares lower than 5% are more likely to have difficulty reaching sufficiently profitable levels to remain in the market long term and that this may cause scheme instability. Added to this is the theory that niche marketing is not in the interests of the scheme as a whole.
- The experience in the past has been that when insurers have retired from the scheme the changes have been managed between the retiring parties and other insurers who are continuing in the scheme and MAIC.
- Based on past experience the view has been expressed that insurers other than Suncorp Metway and FAI are only likely to support the Queensland scheme as long as they continue to participate in the NSW scheme due to the economies of scale which exist in a wider operation and the efficiencies to be achieved in the costs of running the business. This may be an added area of volatility for the Queensland scheme particularly if there are substantial changes made to the NSW scheme.
- There is a genuine issue and concern expressed by some that it is not in the interest of the scheme to have insurers at very low percentages of market share. The experience in the scheme since 1994 is that there were 11 at that time and this has moved to 6 currently (with VACC's licence suspended). The changes have occurred with most insurers leaving the scheme at levels of low market share.
- It is also considered that there are circumstances where the Commissioner should have discretion to allow the continuation of a licence where an insurer has not reached a market share after 5 years of 5% but where it can be demonstrated that the insurer is making a concerted effort to achieve that objective.
- The requirement for an insurer to reach 5% market share in five years does limit market access and it has the effect of lowering the numbers of insurers involved in the scheme. Because of the long tail nature of claims insurers must have a long term commitment to the scheme and this is unlikely to occur unless they achieve a reasonable market share.
- In a competitive market insurers are able to make their own decisions on which markets to enter. Provided there are adequate controls through licensing which require insurers to maintain required standards of operation including on exit, the removal of this restriction should not adversely impact the Scheme.

Analysis Performed

- No economic analysis was performed but all submissions received were considered in relation to this matter.

Recommendations

The present restriction exists to ensure that there is stability in the market, that insurers are required to have a commitment to the Queensland CTP scheme at a reasonable level, supported by a minimum market share. It is recognised that the 5% level may be too restrictive and that a lower percentage may be able to achieve the same result. We also understand the arguments for removal of the restriction entirely. On balance we recommend:

- That the 5% minimum market share requirement within 5 years, be reduced to a minimum market share of 2%.
- That the Commission have the discretion to waiver compliance in circumstances where the market share requirement has not been met but in its judgement a substantial effort has been made and the insurer is likely to reach the market share requirement in the future.

Optional Cover v Standard Cover - 20

Present Position

- The current scheme has the same policy of insurance for all motor vehicle owners.
- The person insured under this policy is the owner, driver or other person whose wrongful act or omission in respect of the insured vehicle causes injury to someone else and any person who is vicariously liable for the wrongful act or omission.
- The policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia subject to the scope of cover expressed under Section 5 of the Motor Accident Insurance Act, which in essence restricts the cover to the driving of a motor vehicle.
- The policy does not insure a person against injury, damage or loss that either arises independently of any wrongful act or omission or is attributable to the injured person's own wrongful act or omission.
- Some States do allow the option of an excess on CTP premiums, which is understood to be difficult to administer.

Discussion of Issues Raised

- The submissions generally support the concept of a standard cover.
- The standard policy denies the insurer the opportunity to limit cover for risks it considers too broad or alternatively to provide a wider cover so as to gain market share. In this respect the motor vehicle owner is not gaining the benefit of a free market.
- Nevertheless injured parties have access to the same level of cover and are not affected by some choice on scope of cover made by the owner of the motor vehicle.

- Common law plus no-fault. Unless common law benefits were reduced, this option would increase costs. It has been suggested that because the Federal Government bears certain costs which are taxpayer funded and relate to medical, hospital, unemployment and social security benefits for at-fault injured parties, the availability of no-fault benefits under CTP would result in transfer of costs from Federal to State level.
- However offering of optional no-fault cover is a way of ensuring that all motor vehicle owners and drivers are afforded the opportunity to acquire full cover - an option not available under the present scheme and seen by some as a shortcoming.
- The provision for cover for no-fault could be at the discretion of insurers but under a premium framework approved by MAIC. This form of cover may provide an opportunity for product differentiation in a more competitive model.

Analysis Performed

- No economic analysis was performed. Submissions received have been considered.

Recommendations

- Standard policy cover to be retained as a minimum in the best interests of the community.
- Encourage the promotion of no-fault optional cover (at insurer's discretion) to be considered subject to actuarial assessment and cost determination.

Insurers Unable to Decline - 21

Present Position

- A CTP insurance policy under the Act is binding on the licensed insurer who cannot repudiate or decline to issue or re-new a CTP insurance policy.

Discussion of Issues Raised

- There is full support for the current scheme. The compulsory nature of this insurance means that every motor vehicle owner is able to purchase an insurance policy.
- This ensures cover availability irrespective of individual driving records.
- There are some disadvantages to insurers in this process through having to accept risks which they otherwise might decline but it is considered that these risks are outweighed by the advantages and certainty this provides to the community, which insurers acknowledge.

Basis for Analysis Performed

- No economic assessment was undertaken. Consideration of all submissions.

Recommendations

- That the requirement that insurers are unable to decline CTP business be retained as this is in the best interest of the community and the operation and stability of the scheme.

Premiums Fixed by Government - 28

Present Position

- Insurance premiums, levies and fees are fixed annually by regulation. Within 3 days of the tabling of the regulation in the Legislative Assembly, the Minister must table the Motor Accident Insurance Commission's recommendations and if the premiums, levies or fees differ from the Commission's recommendations, the Government must also table a report setting out the reasons for the difference.
- The Motor Accident Insurance Act sets out the basis for the determination of premiums and prohibits the discounting of CTP insurance.
- The Commission's recommendation is based on actuarial analysis of the scheme data on claims frequency and claim size, supplemented by submissions from insurers and other interested parties.
- The actuarial analysis is conducted by independent consulting actuaries, and reviewed by the State Actuary.
- In more recent years, other States have established independent bodies to make recommendations to Government on premium rates.
- Tasmania has a Government Prices Oversight Commission while South Australia has a Premium Review Committee.

Discussion of Issues Raised

- The current system regulates the costs of CTP cover, however it is not a free market for owners or insurers. There is considerable support for "de-politicising" premium rate setting through the establishment of an independent body to set premiums. Where this has been done in other states, Governments have retained the right to vary the recommended premium.

Analysis Performed

- Basis for analysis included consideration of alternative schemes set out and discussed in Sections 10, 11 & 12 and analysed in Appendix A.

Recommendations

- That consideration be given to deregulation of premiums.

Regulation of Insurers Profit and Other Factors - 29

Present Position

- MAIC, on an annual basis and after actuarial advice, recommends to the State Government a basis for the premium for CTP cover for the following year.
- This recommendation is in a form which provides a detailed breakdown of the elements making up the premium.
- The Government can approve a modified premium with specific adjustments to certain costs and the insurers profit margin. This occurred in determining the premium for 1999/2000. However, under the terms of the legislation, the Government must table in the Parliament a report detailing the reasons for the difference.

Discussion of Issues Raised

- By regulating the premium the Government has some controlling effect on the insurer's income stream. While the regulated premium has a profit allowance built in, the actual level of profit depends on this allowance and factors such as:
  - economies of scale;
  - claims management efficiencies;
  - efficient policy acquisition; *and*
  - claim frequency and claim size.

  A regulated premium prevents insurers from freely determining premiums to optimise profit and market share.

Analysis Performed

- This matter is addressed under scheme alternatives and the analysis set down in Sections 10, 11 & 12 and Appendix A.

Recommendations

- That consideration be given to deregulation of premiums.
- Insurer's profit would then be regulated only to the extent of filings not being accepted by MAIC if they were, based on excessive profit margin, or considered unsustainably low.

Premium Relativity - 35

Present Position

- MAIC, on an annual basis and after actuarial advice, recommends to the State Government a basis for the premium for CTP cover for the following year. This recommendation is in a form which provides a detailed breakdown of the elements making up the premium and recommends a premium for each class.
- The Government can approve a modified and lower premium with specific adjustments to certain costs and the insurer's profit margin. This occurred in determining the premium for 1999/2000. However, under the terms of the legislation, the Government must table in the Parliament a report detailing the reasons for the difference.
- The only area of cross subsidisation in the existing scheme relates to taxis which are 5.5 times the Class 1 premium.
- Under the current scheme with its fixed premium, there is still some opportunity for differentiation and marketing.

  Although a fixed premium applies - insurers presently seek to identify the better risks and target those groups with inducements outside the CTP scheme, e.g. discounts on comprehensive insurance. This practice develops relationships between the client and insurer and sees a flow-on discount on other products. In essence, the scheme offers an indirect risk rating factor.

Discussion of Issues Raised

- The principal of community rating adopted in the present scheme provides appropriate cover for Queensland motor vehicle owners. It also shields drivers in

higher risk categories who might be required to pay substantially higher premiums under a risk rating scheme.

- It is understood that there are some groups who claim to be disadvantaged by the present rating system, including owners of taxis, some truck classes and motor cycles. However, the argument is generally for greater community rating so that the higher risk groups are subsumed into Class 1.

Analysis Performed

- Review of findings on relativities recently conducted by the scheme actuaries and consideration of the contents of submissions.

Recommendations

- The current basis for premium relativity is appropriate for the existing scheme in our view because it provides community rating which results in affordable premiums for most motor vehicle owners.
- Under a price competitive model there would be scope for the Commission to increase the rating classification over time to provide greater opportunity for differential premiums.

Commissions - 36

Present Position

- Section 96 of the Act prohibits the payment of commissions to business originators of more than 2% of the gross premium for new vehicles or those being re-registered and 1% of the gross premium each year of those policies which are renewed.

Discussion of Issues Raised

- Restrictions on the level of commissions payable assists in ensuring a stable market through the removal of commission rate volatility. Further, it limits delivery costs which would ultimately be paid by the motor vehicle owner.
- There appears to be ways used by some insurers to get around the commission provisions of the legislation.
- It has also been suggested by some that as a compulsory product there should be no commissions.
- However commissions are regarded as important for the insurers who are not direct marketers and to eliminate them entirely may adversely impact the ability of insurers, particularly new entrants, or those with small market shares, to improve their client bases and market positions.

Analysis Performed

- This has been part of the analysis conducted in Appendix A. There have also been a considerable number of submissions on this issue which have been considered.
- In the financial model in Appendix A we have adopted the commission levels (as currently applied by the insurers) to the Vehicle Class Filing (QT Model) and we have used 3% (estimated) for the NSW Model.

Recommendations

- That restrictions on commissions in respect of the present scheme be removed.
- Under a price competitive model it is suggested that there be no restrictions on insurers in relation to the payment of commissions provided that the commissions are paid out of insurers profits giving them the opportunity and discretion to determine their own basis for commissions.

Provision of Cover in the First Instance for Negligence of Manufacturers - 44

Present Position

- Insurers are required to meet the reasonable costs of a claimant in the first instance notwithstanding that the cause of the accident may have been related to a vehicle defect caused by negligence of a manufacturer or repairer and would have ordinarily necessitated legal action directly against the manufacturer or repairer which would be the province of other forms of liability insurance.
- Section 58 of the Act gives the insurer recourse for the recovery of claim costs from the manufacturer or repairer.

Discussion of Issues Raised

- The policy of insurance extends indemnity to the manufacturer and repairer but affords the insurer with a subsequent right of recovery. The instance of such claims are very small but the concept assures the injured party a right to compensation without the complexities of joint defendants in an action.
- This requirement has been and remains an important part of the present scheme.
- Insurers and the Insurance Council of Australia have supported the retention of this requirement.

Analysis Performed

- No economic analysis was performed. Submissions were reviewed.

Recommendations

- This requirement ensures that motor vehicle owners are not required to be involved in protracted negotiations or litigation relating to negligence of manufacturers because insurers have this responsibility. For this reason its retention is recommended.

Rehabilitation - 47

Present Position

- Section 51 of the Act requires an insurer, on admission of liability (in whole or in part), to provide reasonable rehabilitation services to a claimant.
- Section 42 requires an insurer, on admission of liability to make payments to or for the claimant for private hospital, medical and pharmaceutical expenses reasonably incurred because of the injury or a proportionate part of the expenses reflecting the extent to which liability is admitted.
- There are many cases where insurers have provided rehabilitation prior to the admission of liability. However, there are a number of claimants who are caught in a situation of need for rehabilitation but who are unable to personally fund the services.

Discussion of Issues Raised

- This is an important feature of the Queensland product with clear benefits to claimants. It provides appropriate assistance in early recovery and reduces length of incapacity for claimants and costs to the public health system.

Analysis Performed

- No economic analysis was performed. Submissions were reviewed.

Recommendations

- Rehabilitation approached with appropriate urgency after an accident is a fundamental aspect of the scheme and the requirement for the insurers to provide it should be retained.

8. Key Affected Groups and Impacts

The potential for changes in the CTP scheme, design, premium determination, basis for claim and or means for delivery to impact the key affected groups referred to in this section is noted. It should also be stated that all of these groups have been consulted directly, or through their agents or associations or at the very least they have been given the opportunity to submit their views on the Issues Paper made available in August.

To the extent that there are implications for change they have been dealt with in this section and in the conclusions in Section 14.

A summary of the material expected impacts of any prospective changes in an NCP context is set out below.

Groups	Expected Impact if Changes to Existing Scheme Occur
• Registered motor vehicle owners	The PBT is being undertaken in conjunction with the Review of the Scheme. The intention is to identify areas of improvement in the scheme which will benefit this group.
• Injured Parties	Any changes to the basis for cover, claims, rehabilitation and medical expenses
• Owners of Unregistered / Uninsured Motor Vehicles	This group may be affected dependent upon any changes which occur in relation to the operations of the Nominal Defendant.
• Medical and Allied Health Professionals	This group may be affected if there were structural changes to the scheme or changes in relation to the provision of medical services.
• Legal Profession	There would be an impact if scheme design changed, e.g. limiting common law provisions.
• Licensed Insurers	Licensed Insurers are an essential part of the present scheme and they have had substantial input into the considerations of the Review Committee through the opportunity already given to provide submissions. This group would be affected by any changes in the structure of the scheme, including the basis for cover, premiums, claims, commission payments and minimum market share issues.
• Insurers - possible new entrants	This group would be impacted in the same way as currently licensed insurers.
• Re-insurers	This group would be impacted by any structural changes to the Scheme which affected the basis for cover, premiums or claims.
• The Queensland Government	
Queensland Treasury	To the extent that changes result in the assumption of risks and any increases or decreases in funding by the State.
Queensland Transport	The Department would be affected by any changes in the basis for the collection of premiums.
The Nominal Defendant	Would be affected if any changes were to be recommended to the basis of operation or assumption of risk by the Nominal Defendant.
Queensland Health	Any changes in relation to basis for provision of services including rehabilitation
Emergency Services	Any changes in relation to the structure or basis for levies.
• Agents for CTP Insurers including Motor Vehicle Dealers	This group would be affected by any structural changes which related to the payment of premiums or changes to the basis for or rates of commissions paid

The above stakeholders have been considered in the analysis we have undertaken throughout this paper.

These impacts have been summarised by NCP issue in the CTP Insurance NCP Review - Summary Matrix. (Refer page 100)

9. The Process for Consultation

Argyle Capital has conducted the NCP Review and has undertaken a process of consultation with insurers, other scheme participants and the Review Committee.

That process is summarised as follows:

1. Meeting with the Review Committee on a regular basis throughout the period July - September.
2. Meeting on several occasions with representatives of Queensland Treasury in respect of the NCP process and the requirements of Government.
3. Reviewing written submissions received from 141 parties after the initial call for advice and opinions from industry participants and the public.
4. Discussions with Motor Accident Insurance authorities in other States and Territories to obtain comparative data.
5. Meetings and discussions with representatives of the currently licensed insurers and the Insurance Council of Australia prior to the closing date of 6 September 1999 for further submissions following the release of the Review Committee's Issues Paper.
6. Discussions with individual insurers in relation to the information requirements for this review which required their specific input.
7. Meeting with the Queensland Taxi Council.
8. Reviewing written submissions received from 33 parties on the Issues Paper.
9. Meeting subsequently with some insurers at their request.

The results of this consultation have been taken into account in conducting the analysis and the preparation of this report.

10. Alternative CTP Scheme Models

Consideration has been given to alternative CTP Scheme Models with a view to providing an assessment of the conditions which might exist should they be adopted. Those conditions relate to the existing Queensland scheme, the NSW model and two hypothetical models being a State run monopoly and a Vehicle Class Filing scheme both using the Queensland Transport data system for delivery of the product.

These models are considered to be valid for the purpose of comparison with a view to being in a position to assess the current scheme under NCP requirements and the possible economic consequences of retaining the scheme in its current form.

The comparative assessment is set out on the following table in which alternative models are evaluated based on the expected costs structure of each. (The table is an abridged version of the detailed modelling set out in Appendix A.)

TABLE 22

CONSIDERATION OF ALTERNATIVE CTP SCHEME MODELS

	Existing Scheme	State Run Monopoly	Vehicle Class Filing	File & Write
Major Scheme	• Compulsory	• Compulsory	• Compulsory	• Compulsory
Attributes	• Fault	• Fault	• Fault	• Fault
	• Common Law	• Common Law	• Common Law	• Common Law
	• 6 private insurers (licensed)	• State run monopoly (licensed)	• Private insurers (no private insurers)	• Private insurers (licensed)
	• Other insurers able to join	—	• Other insurers able to join	• Other insurers able to join
	• Insurers unable to decline business	—	• Insurers unable to decline business	• Insurers unable to decline business
	• Government regulates premium taking account of submissions from insurers and actuarialanalysis	• Government regulates premium	• Competitive - MAIC approves premium within floor/ceiling ranges	• Competitive File & Write and Green Slip System - MAIC approves premium ranges
	• Community rated premiums (rating by vehicle class)	• Community rated premiums (rating by vehicle class)	• Community rated premiums (rating by vehicle class)	• Risk rating of premiums heavily restricted hence largely community rated
	• Restricted commissions	• No commissions	• Commissions restricted but at higher levels than existing	• Commissions by market forces
	• No restrictions on benefits/compensation	• No restrictions on benefits/compensation	• No restrictions on benefits/compensation	• No restrictions on benefits/compensation
	• Premiums collected by Queensland Transport	• Premiums collected by Queensland Transport	• Premiums collected by Queensland Transport	• Premiums collected by insurers
Benefits of Scheme	—	—	• Competitive market model	• Competitive market model
	• Premium controls/ affordability	• Premium controls/ affordability	• Premium controls/ affordability	—
	• Should ensure full funding	• Should ensure full funding	• Should ensure full funding	• Should ensure full funding
	• Private sector underwriting	—	• Private sector underwriting	• Private sector underwriting
	• Community rating of premiums	• Community rating of premiums	• Community rating of premiums	• Community rating of premiums with some variability
	• Relatively low acquisition and policy costs	• Very low acquisition and policy costs	—	—
	—	• No IT system duplication	—	—
			• Wider marketing benefits around other products	• Wider marketing benefits around other products
Problems with Scheme	• Not competitively priced premiums	• Not a competitive market model	• Swings in market shares	• Swings in market shares
	—	—	—	• Premiums can fluctuate leading to scheme instability
	—	• Requires Government underwriting	—	—

	Existing Scheme	State Run Monopoly	Vehicle Class Filing	File & Write
	—	—	—	• Risk rating - prohibitive for some
	—	—	• Higher acquisition and policy costs	• Very high acquisition and policy costs
	• IT system duplication	—	• IT system duplication	• IT system duplication
	• Subject to Government approval	• Subject to Government direction	• Market freedom subject to floor and ceiling pricing which, in turn, is subject to affordability index (based on average weekly earnings) agreed by Government	• Market free to set premiums subject to MAIC approval but does not remove political direction
Average premium	$298.17	$262.40	$278.19	$306.68
Acquisition and policy costs	$21.86	$1.47	$11.01	$37.00
Claims handling costs	$10.36	$6.00	$7.15	$8.00
PREMIUMS ADJUSTED FOR EFFICIENCY GAINS				
Average premium	$298.17			
Estimated efficiencies +	($9.29)			
Adjusted premium	$288.88			

* The NSW Government is undertaking a review with the intention of reducing costs. We understand that the objective is to lower premiums by $100 but we don't know whether this is likely to be achieved.

\+ Reference Appendix A

COMMENTARY ON ALTERNATIVE CTP SCHEME MODELS

Claims costs for all schemes have been assumed to be constant at $217.70

Existing Scheme

A potential saving of $9.00 is based on an analysis of the present Scheme and financial information provided by the insurers and relates to a reduction in costs for Policy and acquisitions, claims handling and reinsurance. We have had to make several assumptions in preparing the model and we believe that this reduction in premium whilst modest would be achievable.

State Run Monopoly

There is a potential for a reduction in premiums ($26 in the foregoing table) under a State Run Monopoly. These benefits arise due to the fact that a State Run Monopoly has considerably lower policy and acquisition costs. The reduced premiums do, however, come at the cost of the assumption of Scheme operating risk by the State and other risks.

Vehicle Class Filing

In the modelling undertaken it has been assumed that the risk premium is constant which suggests that there is a potential for a reduction in premiums of $20, compared with the existing scheme adjusted, based on the assumptions that acquisition and policy costs would reduce in a competitive market and we think there is also the capability to reduce claims handling costs.

It should also be recognised that there is scope for an insurer to adopt more optimistic assumptions in respect of claims frequency and costs. This, together with more optimistic assumptions on economic factors affecting the premium calculation may result in a further significant reduction of the premium.

File & Write

This represents a cost of $18 above the present scheme by applying the NSW greenslips model to Queensland. The major part of the increase relates to additional policy and acquisition costs associated with that type of scheme.

Sensitivity Analysis

Included in the possible average premiums detailed in Table 22 alternative CTP Scheme models above is a constant set of economic assumptions for the risk premium component.

The scheme actuary has advised that a more aggressive approach to assumed investment returns and required level of super-imposed inflation and management of claims (which results in a lower claims size) could result in the following further reduction in the required risk premium.

	Variable	Impact on Risk Premium Increase $(decrease)
1)	1% increase in discount rate	(8.20)
2)	1% reduction in superimposed inflation	(9.40)
3)	5% reduction in claims frequency or claims size	(10.70)

This highlights the point that an insurer seeking to increase market share could use a combination of expense reduction and an optimistic interpretation of risk premium assumptions to file lower premiums.

11. Advantages and Disadvantages of Alternative CTP Schemes

Having regard to what has been written previously we consider the advantages and disadvantages of the four alternative scheme alternatives set out in Table 22 to be:

Existing Scheme

Advantages

- Premiums are fixed by Government on a basis that ensures, as far as reasonably possible that premiums are equitable for the motor vehicle owner and the insurer.
- Young and inexperienced owners and older owners are not exposed to higher premium levels because of community rating.
- Ease of access to the cover for the motor vehicle owner through the links to registration.
- Minimal confusion for the insured.
- Highly efficient delivery through the system provided by Queensland Transport.
- Safety net provided by the Nominal Defendant.
- Insurers required to achieve minimum market share which helps create stability.

Disadvantages

- No competition on pricing
- Changing of insurer is not possible for those who use bank or credit card facilities due to Queensland Transport processes.
- Insurers are required to achieve minimum market share which may discourage new entrants.
- Changing of insurer can only occur at renewal.
- Little incentive for motor vehicle owners to change insurer.
- High risk owners of vehicles subsumed within classes.
- Individual risk rating not part of scheme.
- Low risk groups subsidise high risk groups within a class as no risk weighting applies.
- Complexities with multiple insurers in claims.
- Data base duplication.
- Government regulation of premiums and profit margins may be a disincentive to insurers.

State Run Monopoly

Advantages

- May provide savings in premiums to motor vehicle owners which are capable of being sustained over time.
- Opportunity to smooth premium adjustments.
- Uniformity in claims management.

- Opportunity for better rehabilitation management.
- Removal of database duplication and providing consistency in data quality
- Control of provider fees.

Disadvantages

- Scheme funding and operational risks moved to Government.
- Greater Government involvement in premium setting.
- Direct operational impact of loss of revenue and profitability of insurers.
- Significant impact on operations of insurers possibly leading to the need for them to make structural changes which would be likely to adversely impact the Queensland economy.
- The need to meet Government return criteria.

Vehicle Class Filing Scheme

The nature of this scheme is that insurers would file premiums on perhaps a half yearly basis. Subject to an approval by MAIC these premium rates would be advised to Queensland Transport who would allocate the appropriate premium to each insured vehicle for advice to vehicle owners concurrent with the advice for vehicle registration. The premium setting process for a scheme of this type is set out in Section 14.

Advantages

- A move to a price competitive model.
- Pricing competition would drive marketing for insurers and provide the opportunity for differentiation.
- Retention of low delivery cost features of the existing scheme through Queensland Transport.
- Half yearly revision of rates and levies (subject to model design).
- Possible reduction in premiums for some motor vehicle owners.
- Greater opportunities for insurers to increase market share and link to other products.
- MAIC still regulating premium, albeit within constraints of a floor/ceiling range.
- High risk groups within classes are not disadvantaged by higher premiums which currently occurs in the NSW model.

Disadvantages

- Basis for rates allows for more competition but it is limited.
- Individual risk rating not part of scheme.
- Low risk groups subsidise high risk groups within a class as no risk weighting applies.
- Ability to vary rates may result in those insurers with greater capacity to reduce premiums through lower cost bases (in this case the two insurers with 80% of the market), being able to gain additional market share thereby lessening competition.

- Insurers less successful with relationship marketing may lose market share.
- Lessening of direct Government control over premium setting.
- Some confusion for motor vehicle owners in selecting insurers and in paying premiums.
- Greater responsibility on insurers to get the premiums right to ensure full funding.
- Added responsibility for Queensland Transport in processing
- Increasing awareness of CTP by motor vehicle owners may lead to higher claims frequency.
- Increased responsibility for MAIC in setting a floor and ceiling price.
- Potential for substantial shifts in market if one insurer was to take an overly optimistic view on claim trends and other costs. However, this can be limited by the premium range set by MAIC.
- Delays in premium refilings could impact on market shares.

File & Write Scheme

This scheme works on the basis of insurers filing premiums for approval by the Motor Accidents Authority. Insurers then market the CTP product at those filing rates subject to bonus/malus. Vehicle owners must obtain cover pre-vehicle registration through the purchase direct from an insurer of a Green Slip for attachment to registration renewal.

Advantages

- Competitive model, full consumer choice.
- Frequent rate revision.
- Closer to risk rating scheme.
- Greater incentives to achieve good driving records.
- Greater opportunities for insurers to increase market share and link to other products.

Disadvantages

- High delivery costs.
- Reduced Government control of premiums.
- High premiums and policy inaccessibility for some who are frequently from groups with poor claims history.
- Difficult renewal process which puts much more responsibility and expense on vehicle owners.
- CTP awareness and premium structure may lead to higher claims frequency.

12. Assessment of Market Power Issues

There is a concentration of market share of 80% with two insurers (Suncorp Metway and FAI). One of those insurers has 58% of the market (Suncorp Metway).

The position of the major insurer has an historical context and it has developed over a long period and prior to the introduction of the Act.

Because of that history and the current position there is an issue of market dominance by one insurer. Counterbalancing that is the fact that it can be argued that it provides stability to the scheme because of size, market reach and a substantial demonstrated commitment to the scheme.

There is a potential for the market power of the two largest insurers to be exerted in a way which might lessen competition under a file and write scheme structure due to their size in the market and lower cost structures. This, if it occurred, might have an adverse impact on a scheme which operates reasonably well with 7 licensed and 6 active insurers.

13. Public/Social Interest issues

The CTP Scheme has a high community profile and awareness of the issues in the scheme is growing and this is being reflected in greater public focus on premiums as part of Motor Vehicle Registration and through the claims process.

It is important to note here that the scheme has several design attributes which are specifically intended to benefit the community in a Social Context including the fact that the product is compulsory, there is an industry deed which governs the conduct of insurers in Multi-Vehicle accidents to the benefit of Motor Vehicle owners, there exists a nominal defendant which is an insurer of last resort, insurers are unable to decline CTP business thus ensuring that all registered Motor Vehicle owners are protected against negligence of manufacturers because the Act requires that this aspect be covered by insurers.

There is also the matter of Community rating which is designed to provide cover at costs which are affordable for Motor Vehicle owners and which protect higher risk groups who might otherwise be required to pay substantially higher CTP Premiums.

14. Conclusions

- Consideration has been given to some very complex issues in arriving at a view on the present scheme's compliance with National Competition Policy and the alternative scheme options for Vehicle Class Filing using Queensland Transport delivery, a State Run Monopoly and a File and Write System in line with the NSW scheme.
- In this paper we have examined the existing scheme having regard to the Act's objectives and the public benefit which may be derived from the restrictions imposed by certain provisions of that Act.

The Existing Scheme

1. The existing scheme has served Queensland Motor Vehicle owners relatively well with the exceptions of premium volatility in more recent years and the fact that the scheme is restrictive in some material respects and provides a limited basis for competition.
2. The average efficiency measured on the basis of the component of Premium which flows to the benefit of injured parties is estimated over the last five years to be 62.8%. This compares less favourably with States which have a monopoly as outlined in Table 21. The efficiency of the NSW Scheme is lower and is estimated to be 57.2%.

3. 17 of the 56 Issues identified in the CTP Scheme Issues paper completed in August were relevant to the NCP review. They have been examined in detail in Section 7 and those issues have flowed through to the consideration of scheme alternatives in Section 10 and an assessment of the advantages and disadvantages of those schemes in Section 11.

4. It is our view that if the existing scheme is to be retained, it requires some significant legislative and scheme design changes to satisfy the requirements of National Competition Policy, notwithstanding the Public benefits which arise under some issues which have been identified and which may justify their retention. These matters are set out later in this section.

5. Having considered the NCP Issues in the existing Scheme, we recommend the following:

   Licensing of Insurers - 4

   - That MAIC should liaise with APRA with a view to achieving a more appropriate sharing of information so that as far as reasonably possible duplication of prudential information requirements is reduced.

   Five year restriction on being re-instated if Insurer Withdraws - 5

   - That the five year restriction on being re-instated if an insurer withdraws be reduced to one year.
   - a discretion be granted to the Commission to vary this requirement in extenuating circumstances.

   Competition amongst Insurers - 17

   - That amendments be made to the present scheme where practical to improve the competitive position of insurers including the removal of impediments to changing insurers and changing the five year restriction on re-instatement of insurers and the minimum market share requirements.

   Impediments to Changing Insurer - 18

   - That changes be made to the present system to promote choice for the motor vehicle owner and to do so at times during the year other than at renewal.
   - That Queensland Transport's system be altered to make changing of insurers easier for Motor Vehicle owners at the time of payment of premiums.

   Minimum Market Share Requirements - 19

   - That the 5% minimum market share requirement within 5 years, be reduced to a new minimum market share of 2%.
   - That the Commission have the discretion to waive compliance in circumstances where the market share requirement has not been met but in its judgement a substantial effort has been made and the insurer is likely to reach the Market share requirement in the future.

   Optional Cover Versus Standard Cover - 20

   - Standard policy cover to be retained as a minimum in the best interests of the community.

- Insurers should be encouraged to promote no-fault optional cover as an enhancement to standard cover which would provide benefits, particularly in single vehicle accidents.

Premium Relativity - 35

- The current basis for premium relativity is appropriate for the existing scheme in our view because it provides community rating which results in affordable premiums for most motor vehicle owners.
- Under a price competitive model there would be scope for the Commission to increase the rating classifications over time to provide greater opportunity for differential Premiums.

Commissions - 36

- That restrictions on commissions in respect of the present scheme be removed.
- Under a price competitive model it is suggested that there be no restrictions on insurers in relation to the payment of commissions provided that the commissions are paid out of insurers profits giving them the opportunity and discretion to determine their own basis for commissions.

6. Based on our review we believe it is appropriate to retain the existing legislative provisions for:
   - Compulsory product - 1
   - Government Monopoly versus Insurers - 3
   - Industry Deed - 6
   - Nominal Defendant the only insurer of uninsured and unidentified vehicles - 8
   - Insurers unable to decline - 21
   - Provision of cover in the first instance for negligence of manufacturers - 44
   - Rehabilitation - 47

   The reason for this is that the benefits of retaining these restrictions are important to the stability and operation of the scheme and in our view they outweigh the costs of their retention to the community.
7. The Queensland Transport system of delivery is very efficient and should continue.
8. It is our view that consideration should be given to the deregulation of premiums and this relates to the following NCP issues:

   Competition amongst Insurers - 17

   Premiums fixed by Government - 28

   Regulation of Insurers Profit - 29

Based on information provided by insurers and analysed in Section 10 and Appendix A there is a potential premium saving achievable for the present scheme of $9. This saving relates to reductions in costs for Policy and acquisition, claims handling and reinsurance.

The answer to the question of whether a scheme which has a regulated pricing structure meets NCP requirements is a matter for judgement and in this case it is finely balanced. A key issue is whether there is a better alternative which would provide material and sustainable benefits to motor vehicle owners whilst maintaining the stability of the scheme. The Vehicle Class Filing model has the capacity to deliver an estimate of $20 reduction compared with the premium for the existing scheme (Refer Table 22) and this has the possibility of being a higher benefit depending on the position taken by insurers in determining premiums in a price competitive market. (See Sensitivity Analysis - Page 158)

VEHICLE CLASS FILING

1. A vehicle class filing scheme has the capacity to provide considerable benefit to motor vehicle owners, if the changes are properly managed. We recommended that consideration be given to this as a serious alternative.

2. This scheme would require filing of premiums by insurers for all classes, with MAIC on a half yearly basis. MAIC would have the responsibility to approve the premium within a floor/ceiling range. Provision may need to be made for more regular filings by insurers in circumstances where they need to react to market changes.

3. Queensland Transport would continue to administer the delivery of the Scheme in respect of the collection of premiums and also the election by Motor Vehicle owners of their CTP insurer.

4. Community rated premiums would remain.

5. Some of the benefits of the Vehicle Class Filing Scheme are:

   - introduction of price competition and therefore choice for motor vehicle owners;
   - it would open the market for insurers;
   - it would provide the opportunity for insurers to obtain additional or more market share through price and product differentiation;
   - it would provide a reduction in premiums assessed against the existing unadjusted scheme of at least $20, taking the average premium cost from $298 to $278. These changes are based on the analysis we have conducted in Section 10 and Appendix A. It should also be recognised that there is scope for an insurer to adopt more optimistic assumptions in respect of claims frequency and average claims cost. This, together with more optimistic assumptions on economic factors affecting the premium calculation may result in a significant further reduction in average premium costs in a price competitive market.

6. Other issues to be considered before adopting such a Scheme include the potential impacts on scheme stability having regard to the issue of full funding, possible changes in market share and potentially higher acquisition and policy costs for some insurers.

STATE RUN MONOPOLY

1. Based on our analysis in Section 10 and Appendix A a state run monopoly has the capacity to deliver an average premium of $262 mainly through a considerable reduction in acquisition and policy costs and also reductions in claims handling costs on a synergistic basis. This premium is $36 lower than the existing model.

The State Run Monopoly has a lower premium than the Vehicle Class Filing example by $16 on the base numbers. However, this does not take account of the potential for considerable reduction in the Vehicle Class Filing average premium if insurers were to make more optimistic assumptions in respect of claims frequency and average claims cost based on their own experience and also more optimistic assumptions on economic factors affecting premium calculation;

2. A State run monopoly would represent a move even further away from competition;

3. It would require the assumption by the State Government of the risks in operating the scheme;

4. It would have a significant adverse impact on the business of the scheme's insurers; *and*

5. As a consequence, a wider, adverse economic impact on the community from possible restructurings undertaken by the insurance industry.

6. Some of the benefits of a reduced premium identified above may be eroded over time due to a lack of competitive forces.

FILE & WRITE

1. Whilst providing a higher level of competition and a premium setting system which more closely aligns with risk rating, this system would also have very complex problems in implementation in Queensland. We can draw on the NSW experience, which has produced a system which has the highest premium costs in Australia albeit that they have been influenced by a highly litigious environment and recognising that there is a cost of living adjustment between the States.

   The scheme, based on analysis which has adjusted the scheme to Queensland circumstances, has:

   - a premium $8 higher than the existing scheme and $28 higher than the Vehicle Class Filing model;
   - high delivery costs;
   - a cumbersome green slip system which has considerable community impact in accessing the product; *and*
   - a premium rating system which impacts on lower socio-economic groups.

In summary we believe that the File and Write Scheme and the State run monopoly are unsuitable alternatives for adoption having regard to present conditions, the NSW precedent and the history of the development of the CTP Scheme in Queensland and should not be considered further.

The existing scheme is only able to meet NCP requirements after the scheme changes and legislative amendments referred to earlier and after consideration by the Review Committee of the issue of Price deregulation. On balance, if a scheme can be developed which provides pricing competition (with premium approval within a floor/ceiling range by MAIC) whilst maintaining scheme stability, we believe that would be preferable to the existing scheme.

The Vehicle Class Filing Scheme is a genuine alternative and we believe it has the potential to produce substantial benefit to Queensland Motor Vehicle owners. The Review Committee should further develop that scheme option in arriving at its recommendations to the Queensland State Government.

APPENDIX A – ASSUMPTIONS

	Cross Ref	1999/00 Premium	Adjusted 1999/00 Premium	Monopoly – No Profit	Monopoly – With Profit	Vehicle Class Filing	QT Model – Small Insurer	File & Write
Key Data								
Average Premium per Vehicle	Page 4	298.17	288.88	246.65	262.40	278.19	295.52	306.68
Number of Vehicles	Page 5	2.3m	2.3m	2.3m	2.3m	2.3m	2.3m	2.3m
Gross Premium Revenue								
Analysis based on -		1999/00 average premium assessment $685m	1999/00 premium assessment adjusted for updated info on scheme u/writer costs (using average for all insurers) $664m	WA & SA CTP, Nominal Qld Workers Comp. $567m	WA & SA CTP, Nominal Qld Workers Comp. $603m	NSW Scheme & information at hand $640m	NSW Scheme & information at hand $680m	$705m
Claims Costs Cost per policy adj by economic variables = risk premium	Page 5	73.0% premium ($217.70)	75.4% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme	88.3% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme	83.0% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme	78.3% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme	73.7% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme	71.0% premium ($217.70) Fixed per 1999/00 actuarial assessment of scheme
1) Cost per Policy		$184 4.39 per 1000 vehicles $42,000 av claim size						
2) Economic Variables		3.5% AWE Inflation				2.5-4.5% AWE Inflation	2.5-4.5% AWE Inflation	2.5-4.5% AWE Inflation
(sensitivities to be tested outside of the model)		3.5% Superimposed Inflation 5% Discount Rate WA 1999 3.7% Super Inflation Workcover 1998 – 5.1%-5.6% Discount Rate – 3.5%-3.9% AWE Inflation				2.5-4.5% Superimp. Inflation 4-7% Discount Rate	2.5-4.5% Superimp. Inflation 4-7% Discount Rate	2.5-4.5% Superimp. Inflation 4-7% Discount Rate
3) Risk Premium		$218						
Acquisition and policy costs	Page 6	7.3% premium ($21.86) NSW 1999/00 10.9% ($47.00) SA 5 yr average 1.3% ($2.74) QLD 5 yr average 9.8% ($20.57)	5.1% premium ($14.87) Based on insurers average cost base as anticipated for 1999/00	0.6% premium ($1.47) Based on adjusted comm., advert/ marketing, dealers comm., IT, salaries Includes existing MAIC levy	0.6% premium ($1.47) Based on adjusted comm., advert/ marketing, dealers comm., IT, salaries Includes existing MAIC levy (Reference SA cost base $2.74 per policy)	4.0% premium ($11.01) Based on large insurers average per policy Possible increase with addit. administration and marketing/advert. (current with discounts on multiple policies), commission and receiving premiums	6.3% premium ($18.52) Based on small insurers average per policy Possible increase with addit. administration and marketing/advert. (current with discounts on multiple policies), commission and receiving premiums	12.1% premium ($37.00) NSW Scheme 1999/00 adj. for difference between NSW & QLD average weekly earnings (and commission adjustment) $28.00 fixed $9.00 variable (3% comm.)

APPENDIX A – ASSUMPTIONS

	Cross Ref	1999/00 Premium	Adjusted 1999/00 Premium	Monopoly – No Profit	Monopoly – With Profit	Vehicle Class Filing	QT Model – Small Insurer	File & Write
Reinsurance	Page 7	2.74% premium ($8.17) NSW 1999/00 1.6% ($7.00) SA 5 yr average 0.8% ($1.68) WA 5 yr average 0.6% ($1.23) QLD 5 yr average 3% ($6.30)	1.4% premium ($4.15) Based on insurers average	0.6% premium ($1.50) Expected to be significantly lower because volumes & opportunities to adjust premiums (+ ref to interstate %) Assumes $10m retention	0.6% premium ($1.50) Expected to be significantly lower because volumes & opportunities to adjust premiums (+ ref to interstate %) Assumes $10m retention	1.1% premium ($2.98) Based on large insurers average per policy	1.8% premium ($5.20) Based on small insurers average per policy	1.0% premium ($2.98) $2.98 per QT Model – Large Insurer
Claims handling	Page 8	3.5% premium ($10.36) NSW 1999/00 4% ($17.00) SA 5 yr average 3.2% ($8.30) QLD 5 yr average 4.1% ($8.61)	2.4% premium ($6.86) Based on insurers average	2.4% premium ($6.00) Based on stand alone best practice + margin	2.3% premium ($6.00) Based on stand alone best practice + margin	2.6% premium ($7.15) Based on large insurers average per policy	2.6% premium ($7.82) Based on small insurers average per policy	2.6% premium ($8.00) 2.6% premium per QT Model – Large Insurer
Dept of Transport levy	Page 9	1.3% premium ($3.79) WA 5 yr average 2% ($4.34) QLD 5 yr average 1.7% ($3.57)	1.3% premium ($3.79) Fixed per 1999/00 average premium	1.2% premium ($3.00) Scope for possible decrease under monopoly as no tfr between insurers to be processed (IT costs therefore lower)	1.1% premium ($3.00) Scope for possible decrease under monopoly as no tfr between insurers to be processed (IT costs therefore lower)	1.4% premium ($4.00) Increase under deregulated with increased administration	1.4% premium ($4.00) Increase under deregulated with increased administration	1.3% premium ($4.00) Fixed per 1999/00 average premium
MAIC levy	Page 9	0.335% Premium ($1.00)	0.335% Premium ($1.00) Fixed per 1999/00 average premium	Nil Included under monopoly acquisition & policy costs	Nil Included under monopoly acquisition & policy costs	0.4% Premium ($1.25) Fixed per 1999/00 dollar level + margin	0.4% Premium ($1.25) Fixed per 1999/00 dollar level + margin	0.4% Premium ($1.25) Fixed per 1999/00 dollar level + margin
Hospital & Emergency Services levy	Page 9	1.7% Premium ($5.00)	1.7% Premium ($5.00) Fixed per 1999/00 average premium	2.0% Premium ($5.00) Fixed per 1999/00 average premium	1.9% Premium ($5.00) Fixed per 1999/00 average premium	1.8% Premium ($5.00) Fixed per 1999/00 average premium	1.7% Premium ($5.00) Fixed per 1999/00 average premium	1.6% Premium ($5.00) Fixed per 1999/00 average premium
Nominal Defendant	Page 9	4.2% Premium ($12.40)	4.3% Premium ($12.40)	4.9% Premium ($11.98) Savings based on volumes. Decrease based on % of claims handling costs as a % of claim costs.	4.6% Premium ($11.98) Savings based on volumes. Decrease based on % of claims handling costs as a % of claim costs.	4.5% Premium ($12.40) Fixed per 1999/00 average premium	4.2% Premium ($12.40) Fixed per 1999/00 average premium	4.0% Premium ($12.40) Fixed per 1999/00 average premium

APPENDIX A – ASSUMPTIONS

	Cross Ref	1999/00 Premium	Adjusted 1999/00 Premium	Monopoly – No Profit	Monopoly – With Profit	Vehicle Class Filing	QT Model – Small Insurer	File & Write
Profit Margin	Page 10	6% Premium ($17.89) QLD 5 yr average 7.2% ($15.11) NSW 1999/00 8% ($43.00)	8.0% Premium ($23.12) QLD 5 yr average 7.2% NSW 1999/00 8% MAIC recommended 8.5% to the government	NIL	6.0% Premium ($15.75)	6.0% Premium ($16.70)	8.0% Premium ($23.63)	6.0% Premium ($18.35)
Premium Information		1998/99 Class 1 QLD $286 1998/99 Class 1 NSW $433 1998/99 Class 1 WA $215 1998/99 Class 1 SA $243 1998/99 Class 1 VIC $275		1998/99 Class 1 WA $215 1998/99 Class 1 SA $243	1998/99 Class 1 WA $215 1998/99 Class 1 SA $243	1998/99 Class 1 NSW $433	1998/99 Class 1 NSW $433	
Other Issues		No incentive for insurers to get a license - 5% market share req'd in 5 years, Govt determines premium. Insurers unable to adj for risk	No incentive for insurers to get a license - 5% market share req'd in 5 years, Govt determines premium. Insurers unable to adj for risk	Save on claims costs by managing your providers As no disputes between insurers savings on claim costs and claims handling costs are possible	Save on claims costs by managing your providers As no disputes between insurers savings on claim costs and claims handling costs are possible	Excludes additional commissions, marketing, advertising & impact of competitive pricing on claims handling. Would additional insurers enter the market? Will claim management decline/ become too tough? Assume commission subject to current legislation. Relationship management has increased emphasis.	Excludes additional commissions, marketing, advertising & impact of competitive pricing on claims handling. Would additional insurers enter the market? Will claim management decline/become too tough? Assume commission subject to current legislation. Relationship management has increased emphasis.	Cost of living adjustment based on AWE differential NSW 783.00 QLD 698.70 Decrease costs to 89% % Decrease 11% Ignores synergies that arise in a bigger pool Assumes no commission limitation

Note: A profit margin of 6% has been used in this comparative analysis in all but two circumstances. We have used 8% for the adjusted 1999/00 premium model because it relates more closely to the Queensland 5 year average of 7.2% and because we think it would be more in line with insurers profit expectations under a revision of the scheme.

We have also used 8% in the QT Model-Small Insurer to reflect the return we believe an insurer in that category would require.

The Vehicle Class Filing Model is represented by the QT Model - Large Insurer.

APPENDIX A – COMPOSITION OF AVERAGE INSURANCE PREMIUM

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	%	$	%	$	%	$	%	$	%	$	%	$	%
Claims Costs	217.70	73.0%	217.70	75.4%	217.70	88.3%	217.70	83.0%	217.70	78.3%	217.70	73.7%	217.70	71.0%
Acquistion and policy costs	21.86	7.3%	14.87	5.1%	1.47	0.6%	1.47	0.6%	11.01	4.0%	18.52	6.3%	37.00	12.1%
Reinsurance	8.17	2.7%	4.15	1.4%	1.50	0.6%	1.50	0.6%	2.98	1.1%	5.20	1.8%	2.98	1.0%
Claims handling	10.36	3.5%	6.86	2.4%	6.00	2.4%	6.00	2.3%	7.15	2.6%	7.82	2.6%	8.00	2.6%
Dept of Transport levy	3.79	1.3%	3.79	1.3%	3.00	1.2%	3.00	1.1%	4.00	1.4%	4.00	1.4%	4.00	1.3%
MAIC levy	1.00	0.3%	1.00	0.3%	-	0.0%	-	0.0%	1.25	0.4%	1.25	0.4%	1.25	0.4%
Hospital & Emergency Services levy	5.00	1.7%	5.00	1.7%	5.00	2.0%	5.00	1.9%	5.00	1.8%	5.00	1.7%	5.00	1.6%
Nominal Defendant	12.40	4.2%	12.40	4.3%	11.98	4.9%	11.98	4.6%	12.40	4.5%	12.40	4.2%	12.40	4.0%
Profit Margin	17.89	6.0%	23.12	8.0%	-	0.0%	15.75	6.0%	16.70	6.0%	23.63	8.0%	18.35	6.0%
Total Premium	298.17	100.0%	288.88	100.0%	246.65	100.0%	262.40	100.0%	278.19	100.0%	295.52	100.0%	306.68	100.0%

APPENDIX A – CLAIM COSTS

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium
Claim Costs	217.70	73.0%	17.70	75.4%	217.70	88.3%	217.70	83.0%	217.70	78.3%	217.70	73.7%	217.70	71.0%
	217.70	73.0%	17.70	75.4%	217.70	88.3%	217.70	83.0%	217.70	78.3%	217.70	73.7%	217.70	71.0%
Total Premium	298.17		288.88		246.65		262.40		278.19		295.52		306.68	
Claim Frequency (per 1000 vehicles)	4.39		4.39		4.39		4.39		4.39		4.39			
Average Claim Size (PWC)	42,000		42,000		42,000		42,000		42,000		42,000			
Total Number of Policies	2,365,548		2,365,548		2,365,548		2,365,548		2,365,548		2,365,548			
Inflation - AWE		3.5%		3.5%		3.5%		3.5%		3.5%		3.5%		3.5%
Inflation - Superimposed		3.5%		3.5%		3.5%		3.5%		3.5%		3.5%		6.0%
Total Inflation		7.0%		7.0%		7.0%		7.0%		7.0%		7.0%		9.5%
Discount Rate		5%		5%		5%		5%		5%		5%		5%

APPENDIX A – ACQUISITION AND POLICY COSTS

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium
Total acquisition & policy costs	21.86	7.3%	14.87	5.1%	1.47	0.6%	1.47	0.6%	11.01	4.0%	18.52	6.3%	37.00	12.1%
	21.86	7.3%	14.87	5.1%	1.47	0.6%	1.47	0.6%	11.01	4.0%	18.52	6.3%	37.00	12.1%
Total Premium	298.17		288.88		246.65		262.40		278.19		295.52		306.68	

ASSUMPTIONS FOR DIFFERENT MODELS

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium
Commissions			2,405,288		-		-		1,581,784		450,000			
Advertising/marketing			7,099,400		100,000		100,000		5,631,000		668,400			
IT costs	**N/A**	**N/A**	9,211,222		500,000		500,000		6,516,102		662,200		**N/A**	**N/A**
Salaries and on costs			3,411,984		500,000		500,000		2,271,084		553,900			
Costs associated with dealers			5,083,620		-		-		3,831,000		200,000			
Other			7,964,837		-				1,981,252		1,199,100			
MAIC Levy equivalent charge			-		2,365,548		2,365,548		-		-			
			35,176,351		3,465,548		3,465,548		21,812,222		3,733,600		-	
Number of Policies			2,365,548		2,365,548		2,365,548		1,981,264		201,633			
Average cost per policy			14.87		1.47		1.47		11.01		18.52			
Market Share			100%		100.0%		100.0%		83.8%		8.5%			

APPENDIX A – REINSURANCE

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium
Reinsurance Cost (net)	8.17	2.74%	4.15	1.44%	1.50	0.61%	1.50	0.57%	2.98	1.07%	5.20	1.76%	2.98	0.97%
	8.17	2.74%	4.15	1.44%	1.50	0.61%	1.50	0.57%	2.98	1.07%	5.20	1.76%	2.98	0.97%
Total Premium	298.17	4.0%	288.88		246.65		262.40		278.19		295.52		306.68	
Risk Premium	217.70	1.8%												

APPENDIX A – CLAIMS HANDLING

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	%	$	%	$	%	$	%	$	%	$	%	$	%
Salaries and on costs	10.36	4.8%	6.86	3.1%	6.00	2.8%	6.00	2.8%	7.15	3.3%	7.82	3.6%	8.00	3.7%
Other			-											
	10.36	4.8%	6.86	3.1%	6.00	2.8%	6.00	2.8%	7.15	3.3%	7.82	3.6%	8.00	3.7%
Risk Premium	217.70		217.70		217.70		217.70		217.70		217.70		217.70	

ASSUMPTIONS FOR DIFFERENT MODELS

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium	$	% Premium
Salaries and on costs	**N/A**	**N/A**	14,290,492		4,632,767		4,632,767		13,044,767		775,200			
Other insurer costs	**N/A**	**N/A**	1,928,980		1,127,280		1,127,280		1,127,280		801,700		**N/A**	**N/A**
					2,650,000		2,650,000							
			16,219,472		8,410,047		8,410,047		14,172,047		1,576,900		-	
Number of Policies			2,365,548		1,401,264		1,401,264		1,981,264		201,633			
Average cost per policy			6.86		6.00		6.00		7.15		7.82			
Market Share			100%		59.2%		59.2%		83.8%		8.5%			

Assume that claims sharing agreement remains under a deregulated scheme

APPENDIX A – LEVIES

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	%	$	%	$	%	$	%	$	%	$	%	$	%
Department of Transport Levy	3.79	1.27%	3.79	1.31%	3.00	1.22%	3.00	1.14%	4.00	1.44%	4.00	1.35%	4.00	1.30%
MAIC Levy	1.00	0.34%	1.00	0.35%	0.00	0.00%	0.00	0.00%	1.25	0.45%	1.25	0.42%	1.25	0.41%
Hospital & Emergency Services Levy	5.00	1.68%	5.00	1.73%	5.00	2.03%	5.00	1.91%	5.00	1.80%	5.00	1.69%	5.00	1.63%
Nominal Defendant Levy	12.40	4.16%	12.40	4.29%	11.98	4.86%	11.98	4.57%	12.40	4.46%	12.40	4.20%	12.40	4.04%
	22.19	7.44%	22.19	7.68%	19.98	8.10%	19.98	7.61%	22.65	8.14%	22.65	7.66%	22.65	7.39%
Total Premium	298.17		288.88		246.65		262.40		278.19		295.52		306.68	

Reduction in Nominal Defendant Levy

Per 1998/99 Nominal Defendant Accounts				
Total Underwriting Expenses	910,000			
Total Claims	14,780,000	6.2%		
Claims Handling Costs as % Claims Costs			2.8%	2.8%
Reduction in Nominal Defendant Handling Costs			55.2%	55.2%
Handling Cost Component			0.76	0.76
Reduction in Handling Cost Component			0.42	0.42
Amended Nominal Defendant Levy			11.98	11.98

APPENDIX A – PROFIT MARGIN

	1999/00 Premium		Adjusted 1999/00 Premium		Monopoly – No Profit		Monopoly – With Profit		Vehicle Class Filing		QT Model – Small Insurer		File & Write	
	$	%	$	%	$	%	$	%	$	%	$	%	$	%
Profit Margin	17.89	6.00%	23.12	8.00%	-	0.00%	15.75	6.00%	16.70	6.00%	23.63	8.00%	18.35	5.98%
	17.89	6.00%	23.12	8.00%	-	0.00%	15.75	6.00%	16.70	6.00%	23.63	8.00%	18.35	5.98%
Total Premium	298.17		288.88		246.65		262.40		278.19		295.52		306.68	
Sensitivity Analysis	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**	**Margin**	**RFR + PM**
	29.82	10.0%	28.89	10.0%	24.66	10.0%	26.24	10.0%	27.82	10.0%	29.55	10.0%	30.67	10.0%
	23.85	8.0%	23.11	8.0%	19.73	8.0%	20.99	8.0%	22.26	8.0%	23.64	8.0%	24.53	8.0%
	11.93	4.0%	11.56	4.0%	9.87	4.0%	10.50	4.0%	11.13	4.0%	11.82	4.0%	12.27	4.0%