



On the road to a better CTP scheme

CTP reform position paper



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Minister's foreword



CTP Motor Accident Insurance has been compulsory for all vehicle owners in NSW since 1942. The scheme provides a vital safety net to protect and support injured road users in their hour of need.

The cost of the scheme is met through Green Slip premiums paid on more than 5 million vehicles and it is incumbent on government to ensure the scheme remains fit for purpose. Currently NSW has the highest CTP premiums in Australia, with the average vehicle owner paying over \$640 for their Green Slip.

Low severity claims, such as whiplash and soft tissue injuries, have skyrocketed in recent years. They now make up more than 40 per cent of all claims, with a continuing upward trajectory. This is creating significant volatility in the scheme and pressure on premiums, with 10 to 20 per cent increases in the pipeline. Insurer profits, as high as 20 per cent per year, are further compounding the problem and in order to reduce these, we need to reduce volatility in the scheme.

Under the current scheme, NSW motorists are the losers. Only 45 per cent of every Green Slip dollar goes to injured road users. The rest goes towards scheme costs, including insurer profits, legal fees and medical expenses.

It has been more than 16 years since our scheme has undergone a comprehensive review and the majority view emerging from the recent consultation is that the current scheme is in need of major structural reform if we are to achieve the following objectives:

- Increasing the proportion of benefits provided to the most seriously injured road users;
- Reducing the time it takes to resolve a claim;
- Reducing the opportunities for claims fraud and exaggeration; and
- Reducing the cost of Green Slip premiums.

The Government has decided to proceed with the implementation of a hybrid no-fault scheme, which introduces defined benefits for low severity injuries, retains access to common law for the most seriously injured and for the first time extends protection to at-fault road users (currently around 7,000 people per year).

The majority of individuals and organisations which contributed to the consultation, together with views obtained from the broader community, support the Government's preferred model. The Government is committed to further targeted consultation on the design of the new scheme and legislation.

The Government will also establish a form of risk pool to reduce the premium burden on high-risk vehicle classes. We will also introduce reforms to address disparities in the point to point transport market (licensed taxis, ride share vehicles and hire cars). We will encourage the use of innovation, such as telematics, to more accurately price premiums based on individual risk and road usage.

I look forward to the next phase of the reform process, as we strive towards a fairer and more sustainable CTP scheme.

A handwritten signature in black ink, appearing to read 'Victor Dominello', written in a cursive style.

The Hon Victor Dominello MP
Minister for Innovation and Better Regulation

Introduction

In March 2016, the NSW Government released an Options Paper¹ for reform of the CTP Motor Accidents Insurance Scheme calling for submissions and feedback from stakeholders. The Government also released an independent review of insurer profit² produced by Trevor Matthews and Deloitte. More than 50 submissions were received from a range of individuals, organisations, industry and stakeholder associations, and are available on the State Insurance Regulatory Authority (SIRA) website.

During the consultation period, SIRA held roundtable forums with all major stakeholder groups including legal professions, insurers, road user groups, transport peak bodies and medical and allied health associations. These forums were well supported by industry and productive in generating discussion among the groups about their perceptions of the issues impacting the scheme and ideas for improvement.

The consultation process was supported by independent consumer research covering vehicle owners, road users and injured people who have made a claim on the scheme. The research incorporated a range of methodologies including in-depth qualitative focus groups, quantitative research involving 1,200 people and an online discussion forum.

Based on feedback from these consultations, there is strong support for the key objectives that should underpin the CTP scheme: increased proportion of benefits for injured people; timeliness of benefits; affordability of Green Slips; and reducing opportunities for fraud and exaggerated claims. There is also overwhelming agreement that the current Green Slip scheme is not successfully delivering these outcomes and, on a number of key performance measures, the situation is likely to deteriorate further without determined action.

The Options Paper presented four options for consideration:

Option 1	Option 2	Option 3	Option 4
Retain the current common law, fault-based scheme with process improvements (no change in benefits)	Retain the current common law, fault-based scheme with adjustments to benefit levels as well as process improvements	Move to a hybrid no-fault, defined benefits scheme with common law benefits retained in parallel	Move to a fully no-fault, defined benefits scheme with caps, thresholds and no common law

Following feedback on the Options Paper from the community, stakeholders, service providers, and actuarially based analysis, the Government intends to introduce a version of Option 3. This options best delivers against the four objectives of reform. The Government will introduce a hybrid scheme providing for defined benefits available to all people injured in a motor vehicle accident, regardless of fault and modified common law damages (which are fault based) for the more seriously injured.

¹ *On the road to a better CTP scheme; Options for reforming Green Slip insurance in NSW*

² *Report of the Independent Review of Insurer Profit*

Why Option 3?

Option 3 is preferred because it:

- best addresses the objectives for a CTP scheme set out in the Options Paper
- is the option most preferred by stakeholders and members of the public that made submissions
- addresses concerns expressed by the public via qualitative research about the time it takes for people injured in motor accidents to receive benefits and finalise a claim under the scheme, and about the disproportionate amount the scheme was paying for costs other than benefits
- will improve health outcomes by encouraging faster resolution of claims and providing benefits regardless of fault
- will deliver a substantial reduction in average CTP premium prices and make the scheme more sustainable into the future as well as reducing insurer profit by bringing greater certainty to benefits and timeframes
- will substantially reduce the incentive for fraudulent and exaggerated claims
- will bring consistency with the other major NSW personal injury compensation scheme, workers compensation, and alignment with the approach in other States.

The performance of the current scheme and objectives of the preferred option are as follows:

Reform objectives	New scheme objectives	Current scheme
Increasing the proportion of benefits provided to the most seriously injured road users	60% of total premium (excl levies and GST) going to the injured in benefits	Approximately 45% of total premium (excl levies and GST) goes to the injured in benefits
	70% of claims cost going to seriously injured claimants [whole person impairment (WPI) > 10%]	Less than 50% of claims cost currently goes to seriously injured claimants (down from 63% in 2001)
Reducing the time it takes to resolve a claim	45% of defined benefits paid in year 1 and a further 10% in year 2 Total of 55% of all defined benefits paid by year 2	6% of benefits paid in year 1 and a further 16% paid in year 2 Total of 22% of scheme benefits paid by year 2
Reducing opportunities for claims fraud and exaggeration	Lump sums paid only for serious injuries; empowered regulator	Lump sum paid for all claims
Reducing the cost of Green Slip premiums	Significant reduction in the average price for all vehicles	Based on recent trends average premiums could increase up to \$90 over the coming year

What happens next?

An expert reference panel along with technical working groups will be established that include relevant stakeholders and service providers.

The reference panel and working groups will assist SIRA to design the new scheme and its processes in detail and provide advice to Government for the formulation of a Bill that will be tabled in Parliament. The Government recognises that the proposals outlined in this position paper will fundamentally reform the scheme and will have some significant impacts. The consultation process is intended to work through the detail of the proposed reforms with a view to identifying possible improvements to the model.

A particular focus of the expert reference panel will be to consider whether the proposed thresholds and time-limits for statutory damages benefits and common law appropriately balance the goals of improved affordability, efficiency, timeliness and fraud reduction with the need to ensure fairness to injured people. The panel will give consideration to the establishment of a fairness test to protect people with low severity injuries who may require additional assistance beyond the defined benefit entitlements.

A timetable for implementation of the new scheme will also be developed.

Market and premium setting

Underwriting model

Maintain a privately underwritten scheme

Some stakeholders presented arguments in favour of public underwriting, however, the Government has decided to retain private underwriting as there was not sufficient evidence that a change in underwriting model was required. In their submissions, the insurance industry has committed to implementing defined benefits as part of the scheme design.

The Government proposes a statutory review of the new scheme three years after commencement. This review will focus on whether the difference between the actual profit insurers make and what they propose at the time they set their price (super profits), have been eliminated as well as the general performance of insurers in the new scheme. The reference panel will also look at measures, in transition and beyond, to ensure profits are not excessive.

Opinions vary among stakeholders on whether the scheme should be first party or third party. There is not sufficient evidence that a change from the current third party model was imperative or would produce superior customer outcomes. However a mechanism will be required in legislation to ensure that claimants are not disadvantaged while the managing insurer is determined.

Premium setting and vehicle classes

Improve equity between vehicle classes

The legislative framework will include provisions to support more flexible premium setting across all vehicle classes as well as the development of a risk equalisation mechanism such as a 'risk pool' to ensure a balance between affordability and risk based pricing that will increase competition among insurers and provide a fair price for all road users.

In March this year SIRA released a discussion paper³ which considered the perceived disparity between the rules and prices associated with different classes of point-to-point transport vehicles.

Point-to-point industry vehicle stakeholders have indicated a strong preference for a more risk-based approach to setting premiums for point-to-point transport vehicles, based on vehicle usage and using the latest telematics technologies. The reforms will allow for this new approach in the premium setting system to ensure greater equity among these vehicles.

³ *Review of CTP Green Slip insurance for point-to-point transport vehicles*

Claims and disputes

The following pages outline a starting proposition for consultation on the benefit structure in the scheme. It is suggested that under defined benefits, people injured in a motor accident will be entitled to benefits for loss of earnings and medical expenses for up to five years, and commercial attendant care expenses for up to two years, and in some cases for longer. It is not proposed that these time limits would apply to treatment and care expenses for the more seriously injured (more than 10% Whole Person Impairment). The more seriously injured will also retain the right to claim modified common law damages (if they are able to prove another driver was at fault). This means they will still be able to claim for lump sum damages for loss of earnings and for non-economic loss (pain and suffering). Medical and attendant care expenses would continue to be paid on an ongoing basis.

Claims

Introduce a defined benefit regime for anyone injured in a motor vehicle accident regardless of fault

A majority of the community and many stakeholders agree that injured people should have access to benefits regardless of fault and importantly these benefits should be delivered quickly. A possible benefit design for consultation and consideration by the reference panel is as follows:

1. Income benefits will be paid if a person's capacity to work is affected by their injuries:
 - a. A specified percentage of pre-injury income will be paid to an injured person for loss of earnings/earning capacity, with that percentage reducing over time (95% to 80% of pre-injury income), similar to the step down provisions in the current workers compensation legislation.
 - b. Loss of earnings/earning capacity will be paid up to five years after the date of the accident. Special provisions will apply for earners, or potential future earners, who are seriously injured (such as greater than 20% WPI) and unable to work after five years.
 - c. Injured people who were not workers at the date of the accident will be paid for loss of earning capacity after a specified period.
 - d. Payments for loss of earnings/earning capacity will be capped at the same maximum that applies in NSW workers compensation (currently \$2,042.80 per week or approximately 1.5 times Average Weekly Earnings) and indexed on the same basis as workers compensation.
2. Medical and care expenses
 - a. The injured person's reasonable and necessary medical, treatment and rehabilitation costs will be payable until five years post-injury if the person's injuries have resulted in a WPI 10% or less, as assessed under Impairment Guidelines. Certain costs will continue to be paid beyond this, as necessary.
 - b. Reasonable medical, treatment, care and rehabilitation costs will continue to be paid if the person's WPI is more than 10%, irrespective of fault.
 - c. The injured person's reasonable care costs (commercial care service – not gratuitous care provided informally by family or friends) will be payable up to two years post-injury if the person's WPI is 10% or less, and on an ongoing basis if the person's WPI is greater than 10%.
 - d. SIRA will have the power to set maximum fees and issue guidelines for 'reasonable and necessary' treatment and care.
 - e. Consistent with the current scheme, participants in the Lifetime Care and Support scheme will receive their treatment, rehabilitation and care administered through that scheme, upon acceptance as a participant in the scheme.

3. A prohibition on the commutation (lump sum payment to claimants) of defined benefits is proposed.
4. There will be limitations and exclusions on compensation where the injured road user has engaged in unlawful activity. Consideration will be given to limitations and exclusions which exist in other no-fault schemes such as Victoria.
5. Benefits upon death
 - a. Reasonable funeral expenses.
 - b. Compensation to Relatives' claims will still be able to be made under the *Compensation to Relatives Act 1897* where fault of another can be proven.

The new scheme will remove the need for a separate Accident Notification Form (ANF). Provisions to encourage early claims will be consulted on and included in the legislative framework.

Injured people will not be able to claim both workers compensation and motor accidents statutory benefits for the same injuries.

The new scheme will not be retrospective, and will apply only to injuries occurring after its commencement date.

Retain access to common law benefits for an injured person with greater than 10% Whole Person Impairment if they were not at fault in the accident

1. It is proposed the threshold for access to (modified) common law will be where an injured person is assessed as having greater than 10% WPI and where the injury was caused by the fault of another vehicle (the current threshold for access to non-economic loss damages).
2. Subject to consultation, define available damages under modified common law to:
 - a. Allow recovery of past and future loss of earnings/earning capacity, but reduce the weekly cap (currently \$4,688 per week or approximately 5 times Average Weekly Earnings) so that it is comparable to the NSW workers compensation scheme.
 - b. Non-Economic Loss (NEL) payments (for pain and suffering) capped at the amount under the existing scheme (currently \$511,000) and indexed. Participants in the Lifetime Care and Support scheme will be automatically deemed to be eligible for the maximum NEL payment, less any contributory negligence.
3. A person who receives common law damages:
 - a. Will remain entitled to have medical and care expenses paid under the defined benefit scheme on an ongoing basis, based on need/expenses as incurred, for the rest of their life.
 - b. Will have any amounts already paid under defined benefit scheme for loss of earnings/earning capacity deducted from their common law damages.
4. There will be a power to prescribe applicable ranges, agreed through consultation, for contributory negligence reductions such as for failure to wear a seatbelt/helmet to reduce the incidence of dispute and provide greater clarity of entitlements.

Other road users

Previous reviews have highlighted a perceived lack of available remedies for pedestrians injured by bicycle riders. It is proposed to provide coverage under the CTP scheme for pedestrians injured by bicycle riders who cannot access alternative appropriate liability insurance. Some limited rights of recovery against bicycle riders will be allowed.

Dispute resolution

Streamline independent review and dispute resolution and introduce 'arm's length' internal review by insurers as a preliminary step

Both the community and stakeholders agreed that the current processes for resolving disputes needed to be made simpler and faster, with the right to have decisions independently reviewed to be retained. To achieve this, the Government proposes to introduce a streamlined independent review process for defined benefits matters (which will operate in a non-adversarial way), and to adapt the existing dispute resolution services to resolve disputes over common law damages and certain defined benefits matters. Independent medical experts will make assessments on medical and care matters, but processes will be improved to make these faster and simpler. Insurers will be required to put in place independent internal review arrangements and this will be the first step for anyone seeking a review of a decision made by an insurer.

There will be a greater emphasis on alternative dispute resolution processes. Professional mediation and conciliation services will be available and their use encouraged at all stages and may be mandatory at some stages. All decision makers (including, if requested, insurers) will be required to provide reasons for making a decision. Further consultation will occur on access to legal representation during each of these stages.

Administration and other amendments

A number of other amendments will be made to improve the scheme as outlined below as well as process improvements that require legislative changes including additional powers to issue guidelines where required. Amendments will also be included to address other minor issues, including those arising from the development of case law, the administration of the current scheme and issues consequential to the *Motor Accidents Compensation Act 1999* not applying to future accidents.

Enhanced role for SIRA

The legislation will give SIRA more power to regulate the scheme and insurers

The legislation will give SIRA more power to be a proactive regulator across insurer premium setting, market practices and claims management. SIRA will have increased access to timely information and data to enable informed oversight of insurer decision making and hold them to account for their decisions and actions.

The 2015 *Report of the Independent Review of Insurer Profit* made a number of recommendations to reduce the difference between the profits indicated by insurer premium filings and realised profits, stimulate market competition between insurers, and improve the regulation and design of the scheme to remove or reduce excessive insurer profit.

In relation to premiums, this will be achieved through powers aimed at increasing competition and reducing profit levels, including:

- removing the provisions relating to commissions on insurers' agents and instead give SIRA general powers to cap acquisition and other insurer expenses
- removing the requirement that a filed premium must fully fund liabilities, allowing SIRA to demand balanced rather than inflated premiums, and
- allowing a price cap to be set on premiums for privately owned vehicles and provide statutory assurance to all road users that premiums cannot exceed a stipulated limit (eg in the case of vehicles facing higher costs as a result of the shift to a no fault scheme).

SIRA will be given increased powers in relation to investigation and prosecution of fraudulent claims. Penalties will also be increased. SIRA will have the power to compel insurers to provide policy, premium and claims data.

A key aspect of the reform will be the establishment of a stronger data-driven approach to the regulation and performance monitoring of the scheme. New 'real time' databases will be established to enable swift response to emerging trends, and digital linkages to new and existing data systems will support better and more timely decision making. Customer service opportunities to improve online claims processes and better transactions for vehicle owners will be key initiatives.

Specifying liable insurer

Provide for which insurer is to be liable for the payment of defined benefits and common law damages

The Bill will provide for which insurer is to be financially liable for the payment of defined benefits and common law damages. Subject to consultation, this is likely to be the insurer of the driver of the vehicle that caused the accident (third party). This will not impact the ability or timeliness in which an injured person can make a claim.

Legal costs

Provide for the regulation of legal costs

The rights of claimants for common law damages to claim their legal costs will be retained, and legal costs will continue to be regulated but with appropriate modifications consulted and negotiated for the new scheme and to ensure that legal costs are proportionate and appropriate. As only the more seriously injured will be able to claim common law damages, overall legal costs in the scheme should decrease substantially. It is anticipated legal involvement in defined benefits will be limited.

Support and advocacy service

Provide a service to support targeted claimants, particularly those accessing defined benefits

A support and advocacy service for injured people is proposed, to assist with the making of claims, investigation of complaints and the resolution of disputes. Defined benefits do not involve technical legal disputes over fault, liability, contributory negligence, or quantifying common law damages. The service will provide appropriate and targeted assistance to defined benefit claimants. Similar to the licensing regime for conveyancers, SIRA may make orders setting out the qualifications for the advocates and issue guidelines for continuing education requirements.

Transitional arrangements

Allow for transitional arrangements to ensure greater predictability in the first few years of the new scheme

SIRA will consult on transitional arrangements including:

- the new Act to apply to accidents after a specified commencement date;
- a period whereby any extraordinary losses or profits made by insurers due to an underestimation or overestimation of liabilities during this period can be recouped over a subsequent defined period; and
- the issue of unearned premiums such as a 'premium reduction guarantee' (because premiums are paid in advance and legislation reducing liabilities may give a windfall profit to insurers).

Disclaimer

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Catalogue no. SIRA08101

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ISBN 978-1-74341-634-1 © Copyright State Insurance Regulatory Authority NSW 0516.