

19 February 2016

The Research Director
Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
BRISBANE QLD 4000
Via email: CDSDFVPC@parliament.qld.gov.au

Dear Mr Holden

FURTHER SUBMISSION - QUEENSLAND NIIS

Thank you for the opportunity to expand upon the views and model addressed at the Committee Hearing on Wednesday, 17 February 2016.

The ALA maintains that the underwriting issues raised in relation to the adoption of Option B can be met in a reasonable and sustainable fashion.

THE UNDERWRITING PROBLEM

1. Mr. Mobbs of Allianz (on behalf of the ICA) gave evidence by telephone that there were significant underwriting challenges associated with Option B. It is helpful to briefly summarise the nature of the problem in order to then explain how it can be addressed.
2. For present purposes, we have assumed that Queensland premium collection arrangements will mirror those used in NSW:
 - (a) The CTP insurer collects a premium comprising two components – the CTP component and an LTCS levy.
 - (b) The CTP component of the premium is kept to meet the insurer's obligations and the LTCS levy is paid over to an LTCS Authority to meet its obligations (treatment and care for approximately 136 catastrophically injured per year).
 - (c) The CTP insurer has to meet the fault-based claims of all injured in motor accidents, irrespective of severity save that they only pay for the non-economic loss and economic loss claims of the catastrophically injured.
 - (d) The LTCS Authority meets all care and treatment expenses for the approximately 136 catastrophically injured irrespective of fault.

3. The difficulty being raised by Mr. Mobbs is that if a portion of the 136 who can establish fault (and approximately half can) choose to pursue a lump sum damages claim for the treatment and care components of their damages, then the CTP insurer will not have collected a premium to cover this lump sum liability.
4. If the CTP insurer does have to start collecting a premium to cover this potential liability, then the insurer has to make actuarial estimate (or guess) how many of the 70 or so per year who can prove fault would choose to opt out and collect the treatment and care component of damages as a lump sum. Being conservative (as actuaries are prone to be), they will want to assume that all 70 who could opt out would do so, creating a need for a substantial additional component of the CTP premium.
5. At the same time, the LTCS actuaries being equally conservative would want to assume that all 70 who can prove fault would in fact not pursue a lump sum, but rather choose to remain in the Government scheme. The actuaries would recommend that the LTCS levy cover the cost of these 70 remaining with the LTCS Authority.
6. Thus, you have both the CTP insurers and the LTCS Authority wanting to collect a premium/levy to cover the future care and treatment of the 70 catastrophically injured per year who could prove fault because no-one knows in advance what the stay in/opt out rate might be.
7. There is no sound actuarial basis for estimating the figure and it could be five or six years into the life of the new scheme before any reliable data is available.
8. In summary, you have two entities effectively collecting premium/levy to cover the same risk/payment with the consequential unnecessary inflation of premiums.

THE SOLUTION

9. The key to solving the above dilemma is to avoid imposing a financial liability back on to the CTP insurers where a levy has been collected and paid to the LTCS Authority for the Authority to discharge that liability. If the LTCS Authority has collected the funds to cover the liability for past and future care, treatment and equipment, then it is the LTCS Authority that meets that liability, whether by way of lifetime payments or lump sums.
10. Thus, where an opt out occurs, the LTCS Authority becomes (for practical purposes) a party to the claim. The CTP insurer covers liabilities for which it has collected premium (non-economic loss and economic loss) and the LTCS Authority covers the liability for which it has collected a levy (past and future care and treatment).
11. Given that the LTCS Authority calculates its levy based on a lifetime of care and treatment payments and the associated administrative costs, the Authority is at no financial disadvantage if it discharges its liability by way of a lump sum payment. It does not matter to the Authority from a financial perspective whether it makes payment by way of lump sum or a lifetime of piecemeal payments. The same amount of money is required either way.
12. The precise mechanics of the involvement of the LTCS Authority in resolving this aspect of the claim for lump sum damages are only addressed briefly further below, but the structure outlined above squarely addresses and solves the actuarial concerns raised by the insurers. We would welcome further discussions with key stakeholders about the detailed mechanics, if Option B were preferred by the committee, and ultimately that became government policy.

THE MECHANICS

13. All catastrophically injured would still initially enter the LTCS scheme irrespective of fault. No lump sum claims for damages against a CTP insurer are going to be resolved inside of two years because the compensable rights cannot be determined until it is known whether the claimant is a permanent member of the LTCS scheme or not.
14. As and when the compensable entitlements are being addressed by the CTP insurer (whether by way of settlement or contested hearing), then the potential lump sum entitlements to future care, equipment and treatment would usually be capable of resolution at the same time. A lump sum payment from the LTCS Authority can be the subject of concurrent or separate negotiation and can be the subject of judicial determination if contested.
15. The LTCS Authority could participate as an independent party or could delegate to the CTP insurer as its agent.
16. Appropriate rules and guidelines can be developed to prevent unnecessary medico-legal examination and to streamline any dispute processes.
17. It is accepted that these arrangements will mean that some (we contend a small proportion) disputes over lump sums may be more protracted, complex or expensive. **However, they will be significantly less protracted, complex or expensive than the bureaucratic and administrative efforts required over a claimant's lifetime to periodically review, re-assess and resolve disputes about their ongoing care and treatment needs.**
18. Any disputation over entitlements creates expense and represents a stressor for claimants. Such disputation requires a bureaucracy to manage the dispute and dispute resolution process.
19. As Mr. Hodgson and Mr. Stone identified in evidence on Wednesday, our experience with the injured is that they would much prefer to have all of the disputation over and done with so that they can return to leading independent and dignified lives, controlling their own destiny to the greatest extent possible. Both private trustee and public trustee arrangements, operating now, would continue to be a crucial part of that independence and dignity.
20. There may well be further issues involved in the mechanics of "*opt out*" such as appropriate proscriptions as to those who ought to be permitted to exercise such choice (given that the majority of scheme participants have an ABI). There can also be safeguards built in around trustee control over lump sums awarded (such mechanisms already being in place and well utilised). Again, we would be happy to liaise with key stakeholders about those, and other matters.

The foregoing addresses the broad scheme structural issues. Option B should not be ruled out because of any actuarial concerns. The proposal above removes any underwriting uncertainties associated with inaccuracy or over-estimation as to the number (of the 70 or so who can prove fault) who may opt out of the lifetime benefits scheme.

If we can provide further clarification or detail, we would be pleased to do so.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. Hodgson', with a stylized, cursive 'R' and a small dot at the end.

Rod Hodgson
Queensland President, Australian Lawyers Alliance