EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Mr MA Boothman MP
Ms N Boyd MP
Miss VM Barton MP
Mr SL Dickson MP
Mr BM Saunders MP

Staff present:

Ms S Cawcutt (Research Director)
Ms J Walther (Executive Assistant)

PUBLIC BRIEFING—NATIONAL INJURY INSURANCE SCHEME (QUEENSLAND) BILL

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 12 MAY 2016

Brisbane

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Committee met at 8.01 am

CHAIR: Good morning everyone. I declare open the committee's public briefing about the National Injury Insurance Scheme (Queensland) Bill. I would like to introduce the members of the Education, Tourism, Innovation and Small Business Committee. I am Scott Stewart, member for Townsville and chair of the committee. Other committee members are Miss Verity Barton, member for Broadwater and deputy chair; Ms Nikki Boyd, member for Pine Rivers; Mr Mark Boothman, member for Albert; Mr Bruce Saunders, member for Maryborough; and Mr Steve Dickson, member for Buderim. The briefing is being transcribed by Hansard and a transcript will be published on the committee's website. The briefing is also being broadcast live on the parliamentary website. Please turn off your mobile phones or at least switch them to silent mode if you have not done so already.

The committee's proceedings are proceedings of the Queensland parliament and are subject to its standing rules and orders. After considering the bill, written submissions and oral evidence and Queensland Treasury's comments on submissions dated 10 May, the committee has asked Queensland Treasury including the State Actuary and Insurance Commissioner to provide a further briefing this morning. Yesterday the committee provided the Treasury with a list of specific issues on which it seeks a further briefing and requested a flow chart of proposed processes under the bill.

CANNON, Mr Wayne, State Actuary, Queensland Treasury

HARKIN, Ms Carmel, NIIS Program Manager, Queensland Treasury

SINGLETON, Mr Neil, Insurance Commissioner, Queensland Treasury

WAITE, Mr Geoff, Assistant Under Treasurer, Queensland Treasury

CHAIR: Welcome and thank you very much for turning up early this morning. Mr Waite, as you know, we have set aside an hour for your briefing on the issues we have asked you to cover for us and to ask further questions. Would you like to start, please?

Mr Waite: Thank you, Chair. I think we might go straight in if you are comfortable. Mr Singleton might take you through those clauses.

Mr Singleton: Good morning. In terms of clauses 4 and 7 regarding the application of the scheme, the structure of the National Injury Insurance Scheme minimum benchmarks is that the scheme should mirror the CTP scheme coverage—so coverage for registered vehicles on a road. The examples given around a tractor being used on a farm are not covered under the CTP scheme in terms of any accidents or injuries caused, and the same goes for the NIIS. If an accident occurred in a circumstance such as that, if there was an injury to the operator of the tractor, they may have coverage under a workers compensation scheme or any personal insurance for accident or illness. If there was third-party involvement it may involve a public liability claim, but it does not come back to the CTP scheme. It is envisaged that these catastrophic injuries in those circumstances will come within the scope of the general injury stream of the NIIS when that scheme is revisited in a couple of years time, so there would be global coverage for all accidents leading to a catastrophic injury. However, these circumstances do not come within the proposed scope of the motor vehicle NIIS, and that is consistent in all other jurisdictions.

CHAIR: Is the definition of a road prescribed and identified by Main Roads?

Mr Singleton: It is a public place, a road. There are cases that are tested in court as to whether an accident occurred in an area that is deemed to be a public place, but certainly if it is a private farm or off-road situation, there is no coverage.

Mr DICKSON: Are we charging those very same people a fee when they are on private property? Will they be charged exactly the same fee as somebody who is on a public piece of property?

Mr Singleton: In theory the CTP premium is based on road injuries. There is no—

Mr DICKSON: I do not mean to be right on the issue. I am making the point: are we going to charge the people who have that tractor that is being operated on a farm any fee if their vehicle is registered? If we are, they are then not applicable to be able to claim for injury. However, if they were on the road they are applicable to claim for injury, but it may never go on the road.

Mr Singleton: If the vehicle has to be registered because it is intended to be used on a road, a registration fee, a CTP premium and a NIIS levy would be added to that. It would be proportionate. We are not suggesting that a tractor will pay the same levy. We are looking at how we can scale the levy for vehicles such as tractors and vintage cars, which pay a much lesser premium than a normal car or sedan, so that it is scaled.

Mr DICKSON: If that is being explored—that is what I am looking for. I did not want people paying for something that they will not be able to utilise or get a benefit from because that would just be a tax.

Mr Singleton: If the tractor is not used on the road ever, then it does not need to be registered.

Mr DICKSON: We could talk about it all day long. People do register their vehicles because they have no choice; it may go out once in a year. They have to have it registered, otherwise it is illegal.

Mr Singleton: True.

CHAIR: Any further questions around clauses 4 and 7?

Ms BOYD: Does that answer your four-wheel driving question?

CHAIR: It does, yes. It is where I thought it would be. Carmel, if you would like to go on to clause 13.

Ms Harkin: Clause 13 sets out the circumstances when an individual can buy into the scheme. The intention here is that individuals buy into the scheme subsequent to 1 July 2016. It is to cover injuries that occurred before 1 July 2016 and individuals can buy in subsequent to that. One of the questions that you had is: is it anticipated that an individual would receive a lump sum pursuant to section 44 and then buy in? That is not the intention of that clause. If an individual gets a lump sum, they get the lump sum and they exit the scheme.

Mr DICKSON: I am new to this committee, so please forgive me. I will probably be shooting from the hip a few times. We actually discussed this at length yesterday. I am under the impression that if somebody had been paid a lump sum, after five years they would qualify again. Is that not accurate?

Ms Harkin: No, that is accurate, but that is not under clause 13. That is under a different clause. Individuals can apply to go back into the scheme if they receive a lump sum, and that is under either clause 12 or 17. There is a period of time before they can re-enter because the lump sum they receive pursuant to section 44 is to last them a lifetime in terms of the damages.

Mr DICKSON: What would your advice be to people—hypothetically, we are potentially getting 130-odd people a year who could fall under this category. If they take a lump sum and something happens and they lose the money—it gets invested in the stock market or they pay it through the pokies, who knows, it vanishes—they are exempt for five years from being able to get a benefit. Would it not be better to say to these people, 'You have to go down a certain path and be a member of this sort of thing that we are making available to them,' so we can guarantee they are going to be catered for and looked after and we know that their family or anybody else in society will not have to carry them? Can you give me some advice on that?

Mr Singleton: If a person receives a lump sum, the expectation is that there would be a trustee appointed to manage that lump sum for them and to guide them around investment decisions and their spending. I think the expectation is that it would be highly unlikely that a person would dissipate those funds within five years. In fact, it is hopeful that that fund would last through the lifetime of the person. It is those unusual or unexpected circumstances, where the cost of their care increases because their circumstances change or there is an investment outcome that was worse than expected, Rather than leave them effectively out of the scheme they can apply to re-enter. It is really catering for those unexpected or highly unlikely circumstances but ones that may arise.

CHAIR: Geoff, if you would like to—

Mr Waite: Carmel is going to take us through 24 and 32.

Ms Harkin: Clauses 24 and 32 really go to the heart of the functions of the NIIS scheme. These are decisions in relation to individuals entering the scheme. It is about an application, and clause 32 is in relation to service requests. These are really fundamental decisions about how an individual

enters this scheme. These decisions, we say, are best met by the NIIS—eligibility to enter and the types of services that an individual is provided. The NIIS agency is responsible for the proper functioning of the scheme and to ensure that those individuals who are eligible are accepted into the scheme. It for that reason there is a positive obligation on the agency to make those decisions.

In default of making a decision, the individual will not become a participant of the scheme, nor will a service request be made. In that circumstance, the individual has an opportunity to have that decision reviewed. Where an agency fails to make a decision, the individual has an opportunity essentially to have it reviewed internally.

Mr DICKSON: This was also something that I raised yesterday. If a person is deemed ineligible to be able to participant in the program, who will review that? Will it be within that very same organisation or is there an external body that will do the review?

Ms Harkin: There are two aspects to that, both the internal review and the external review. The initial decision will be reviewed internally by an internal review mechanism process. If the individual remains unsatisfied with that decision they can have that reviewed externally through a QCAT mechanism or appropriate mechanism or the MAT, the Medical Assessment Tribunal.

Mr DICKSON: As far as timing would be concerned, in the case of somebody who is in a very serious situation who has had some terrible trauma that has occurred in their lives, how long would that process take? I threw this up yesterday. In my mind, Caesar judging Caesar is never a good thing. If it is reviewed by the very same department that makes the original decision, I think that is not a great look. Going out to QCAT is another process but is there an in-between model that we could use, maybe the Health Ombudsman or somebody who would be seen to be absolutely impartial?

Mr Singleton: We see QCAT as clearly impartial. In most of the dispute resolution mechanisms that exist, particularly within the insurance industry, there is a strong focus on having an internal dispute resolution focus. It is a body that is separate to the original decision-maker and they are clearly focused on trying to make sure if the wrong decision was made it is rectified quickly. If they believe the correct decision was taken, the person can then elect to continue with that appeal, if you like, through other external mechanisms. It is certainly not the same person reviewing their own decision. It would very much be a separate body. As much as it might depend on the complexity of the situation, the focus is always on speedy resolution of those sorts of processes.

Mr DICKSON: The word 'speedy', what does that cover? Is it a month, six months, a year or a couple of years? A lot of these legal cases can take two years just to get to a point—somebody is waiting and hoping that there is going to be a great outcome. What would be the minimum or the maximum period?

Mr Singleton: Again, it comes down to the complexity of the matter and how much evidence needs to be prepared to enable people to respond. If there was a proposal to cease a benefit, the agency would put forward evidence as to why it was making that decision. The injured person would then seek representation, we believe, to query or challenge that—whether they then want to obtain evidence as part of that process. There is certainly a time factor, but it is not one you could quantify and say that all matters will take the same amount of time.

Mr DICKSON: Basically, it is open-ended.

Mr Singleton: But the focus is certainly on speedy resolution. It is certainly not like a court case where you say that a matter can last for four years. It is a much speedier process than that.

Ms Harkin: In addition, there are some time frames set out in the legislation in relation to making decisions. The agency needs to make decisions within decision-making periods and they are ordinarily 28 days. In addition, in relation to a review of a matter, under clause 110 the time frame for review that is 14 days. Fourteen days after that initial decision was made, it needs to be reviewed by the agency and there are subsequent time frames in relation to getting matters out to an external review and that, again, is 28 days.

Mr DICKSON: That is 28 days to go to the external review?

Ms Harkin: That is correct.

Mr DICKSON: To be completed or to be started?

Ms Harkin: To be commenced and then the requisite tribunals have their own time frames in relation to making those decisions.

Mr DICKSON: Thank you.

CHAIR: Are there any further questions around clauses 24 and 32? Clause 42 is one where we have a sticking point over. We would like to flesh it out a bit more. Would you like to provide a response to our request there around clause 42, please?

Mr Singleton: Forgive me if a step back in time a little bit, but the origin of this was around one of the earlier committee hearings where the Australian Lawyers Alliance proposed a framework for the hybrid NIIS. At that hearing I committed that we would obtain an actuarial costing for that proposal. We went away and spoke to our actuaries and they said, 'Thank you very much for doing that, but we need some material to quantify how this alternative hybrid will work so that we can cost it.' We held a number of meetings with a range of people to really flesh out that, if a person has the election to either stay in the NIIS or pursue a common law claim, what was the expectation of how many would elect to stay in the NIIS and how many would elect to receive a lump sum. Then there were some filters proposed to guide whether people could elect to make that decision or whether they would be, if you like, deemed ineligible to pursue a common law claim.

As all of that conversation was going along, we were building models. The one that went to our actuaries effectively assumed that half of the people would stay in the NIIS and half of the people would pursue and receive their common law lump sum. That was the costing that was provided to the committee most recently. Underpinning the fifty-fifty, if you like—and there were certainly a range of views about whether it would be one-third, two-thirds, half-half, two-thirds or one-thirds—there is no evidence base to say that it will be fifty-fifty. It was simply that we needed to pick a number for the actuaries to cost it.

Underpinning that fifty-fifty were then the filters. One of the filters under discussion was where people who have a very high contributory negligence. If someone has not worn a seatbelt or is intoxicated, should they be allowed to progress their common law claim to seek a lump sum from the NIIS or not? Along the way two options emerged. One was to have a mandatory filter of the 25 per cent and the other was to allow a process where, in effect, a court decides if a person should receive the lump sum or not. The 25 per cent has remained in the bill as proposed, but it is probably going to be a matter for parliament as to whether one is preferred over the other. We would say that whichever is preferred is the model that we would work with.

We do not have any quantified evidence to say how this filter will work—hence there is no strong fixation around whether it must be retained—but it was seen as, if you like, a good social policy filter to say that if someone has materially contributed to their own circumstance, to their own injury, should they be precluded from receiving a lump sum? The way this system will work is that if someone progresses to receive a lump sum they will receive 100 per cent of their entitlement. Effectively, it is either they stay in the NIIS for life or they receive their lump sum at 100 per cent of their assessed entitlement.

If you take a 25 per cent contributory negligence example, it is not proposed that they receive 75 per cent of their damages by way of lump sum and 25 per cent through a lifetime care stream. That is just unworkable. It was seen as being an either/or in terms of that 100 per cent or lifetime care. That was why the contributory negligence filter was seen as being appropriate. As I say, whether it is mandated at 25 per cent or initially there is a legal filter around legal advice to the injured person and then if they wish to progress and test that before a judge, by judicial decision, both get you to the same outcome in the sense that an injured person is told, 'No, you're not eligible for a lump sum. Remain in the NIIS.' The care and support they receive does not differ. Whether you are partially at fault or fully at fault or entirely not at fault, everyone comes into the NIIS. Everyone receives the same care and support. There is no distinction. The only factor that is under consideration is whether you receive this as a lump sum or not.

CHAIR: Would the contribution of the $32, which is highlighted in the explanatory notes, change if the contributory negligence was reduced? For example, if that was zero, would that, in fact, push that $32 to a different amount? Have you done modelling or costings around that?

Mr Singleton: We have not done modelling, but Wayne is here champing at the bit.

CHAIR: That is why we asked you to come along, Wayne.

Mr Cannon: Neil described the costing process fairly well. Could we quantify what the effect of a change in this will be? I think that is just about impossible—certainly, within the time frames but even if there were unlimited time I suspect that it would not be able to be costed because there is no precedent. There is not a scheme like this in Australia. We cannot even go to another state with some other history and see how these things have gone. It is really a matter of speculation as to what is going to happen.

I can say this, though: you have already seen that the costings are great when lump sums are around for a number of reasons. To the extent that this was changed and the 25 per cent threshold was removed and perhaps a court process was in place, which is what I believe the ALA is suggesting, to the extent that there is a greater number of lump sums as a result of that change the actual costs—

and when I say 'actual costs' I mean the difference between what we are estimating now and what really happens—the final cost is what is really paid out. That actual cost would increase. Can I give you a dollar figure? I am afraid I cannot and I do not think any actuary can.

CHAIR: Are there any further questions?

Ms BOYD: I have a number. Thank you for coming back before the committee. It is very much appreciated, particularly at short notice. The bill contains something that, through our discussions, certainly puzzles us and it has puzzled other stakeholders as well. Essentially, if a person stays in the scheme they have no reduction in their care and support. This is the case when they are 100 per cent at fault themselves—let us say that they are a drunk driver and they hit a tree—or they elect to stay in the scheme when they are not at fault. That much is clear. However, if a person provides fault against someone else but it is partly their own fault—let us say that we pick up on that seatbelt example—and they elect to opt out and they take their care and their equipment damages in a lump sum payment, if they are up to 25 per cent at fault then they lose that percentage of care and equipment damages?

Mr Singleton: No.

Ms BOYD: No?

Mr Singleton: No, they receive 100 per cent of their entitlement as their lump sum. There is no reduction due to the contributory negligence from the NIIS benefit. Their CTP claim benefit would be reduced by that component—their pain and suffering and economic loss—but the NIIS benefit is treated very differently. That is why we are saying that it is not practical to have a portion paid as a lump sum and a portion paid as an ongoing stream. The construct of the bill, ideally—or preferably—would be that you are either remaining in the scheme 100 per cent or you take your entitlement as a lump sum of 100 per cent.

Mr Waite: This is a filter on the way in. The outcome is the same. There is a threshold, 'Are you able to opt out of NIIS and seek a lump sum?' There is a series of filters that apply to that decision. Once that decision is made and you are allowed to pursue a lump sum, then the outcome is 100 per cent regardless of how you got through that filter.

Ms BOYD: The purpose of having the lifetime care and support—the NIIS—is to provide those minimum benchmarks and to provide those minimum benchmarks regardless of whether someone is at fault or not. How logically can a filter be applied in there?

Mr Singleton: There are a number of filters. One was around capacity—does the person have legal capacity to manage their own affairs? I think there is a proposal around some sort of an assessment of the person's capacity to receive a lump sum and truly manage that sum for their lifetime care and support. That is probably a subjective filter that a judge is appropriately there to determine. Rather than say simply, 'If you elect to receive a lump sum you get it,' the filters were intended to at least put some checks and balances in the system to make sure that there is an appropriate award rather than giving someone who clearly has no capacity to manage a large sum of money exactly that and then they squander it.

Ms BOYD: I appreciate that. I appreciate that that filter is necessary. My view is that that particular filter needs to be in there. My concern is around the filter on contributory negligence because if the scheme is, in fact, a scheme that provides for lifetime care and support regardless of fault, why is there a component of fault as a filter in the ability for people to get a common law payout?

Mr Singleton: Again, it was just one of the filters that was constructed to say, 'If you have materially contributed to your own accident, should that enable you to receive a lump sum, or should you be required to stay in the scheme receiving lifetime care and benefit support as though you were fully at fault?' I think the question is: is it a mandated contributory negligence level—the 25 per cent—or is it an open filter for a judge to determine? It is really just that structure question in terms of how the filter would work. I believe that all parties believe that it is a good filter. It is just looking at how it would operate in practice.

CHAIR: That is the thing. We will not know until it is tested and then we find out its implications.

Mr Singleton: We acknowledge that nobody goes out to cause themselves a catastrophic injury. You may not be wearing a seatbelt and you may be drunk and it may be a one-off time in your life where that has occurred and the judge can assess that and say, 'No, in that circumstance we believe that you should receive your lump sum,' whereas somebody else may have a long history of bad behaviour and a judge looks at it and says, 'No, I believe that you should remain in the scheme.' The scheme is saying, 'Regardless of fault, we will provide this benefit.' Everyone comes into the scheme. All we are looking at with this filter is around whether people could receive their benefits as a lump sum or not.

Ms BOYD: Can I ask one further question on the types of models? It goes to other jurisdictions in other states. We have seen recently that Western Australia has implemented theirs. Western Australia has no such provision around contributory negligence. There are no reductions around contributory negligence or no prohibitions in terms of opting out based on contributory negligence; is that correct?

Mr Singleton: As we understand it—we have not had a detailed analysis of their bill—it is a judicial process in determining who receives a lump sum and who does not, or whether they remain in their lifetime care scheme.

Ms BOYD: Okay. Thank you.

Mr DICKSON: The differential between the lifetime guarantee and also the negligence of 25 per cent—they are basically two different options that people can choose for how they are going to be cared for. Would there be any difference in cost if there was just the lifetime guarantee and that other option was taken away altogether?

Mr Singleton: You mean take away the common law part?

Mr DICKSON: Yes, we just shoot them straight in. There are 130-plus of these people. They know that they are guaranteed. We know that they are guaranteed. Would that make any difference to the $32? Would that be more or would it be less?

Mr Singleton: There was a costing done for the alternative model. That was provided to the committee previously. The costs are different.

Mr DICKSON: Which way?

Mr Singleton: The full no-fault model costing was higher than the hybrid costing. The way that the two schemes are structured is quite different in terms of the pathway that people can elect to go down in terms of whether people retain a common law right or not.

Mr DICKSON: So it is more expensive—

Mr Waite: The other way round—

Miss BARTON: I was just about to clarify that. I know that I only came onto this committee on Tuesday, but I have done a lot more reading in the last 24 hours than in the previous 36 hours.

Mr Singleton: I apologise. It was not intentional. I was just trying to think it through in the context of the question.

Mr DICKSON: If you could start that again I would really appreciate it. You are telling me now that it would be cheaper if we just had the model where people are guaranteed that they are going to be looked after. If we go down the path that we are looking to go down is it more expensive?

Mr Singleton: It is slightly more expensive.

Mr DICKSON: What does 'slightly' mean? Does that $32 turn to $31.50 or $31.95 or is it $15? Wayne, you sound like the person who can answer that question. What is it?

Mr Cannon: It would be cheaper. The options were previously costed, they are in evidence before the committee. There was a net cost on a long-term basis of a pure long-term care scheme of $60 per vehicle. The hybrid that has been costed was showing as $68 per vehicle. Those are the long-term costs. There are some adjustments that can be made to the CTP premiums that reduce those costs for motorists so that the net cost comes down. The $32 that you are speaking of is the $68 less those savings.

Mr DICKSON: And the other one is?

Mr Cannon: Twenty-four dollars; $8 less.

Mr DICKSON: That is the answer I like. Thank you so much. So there is a difference between $24 per community member and $32?

Mr Cannon: Per vehicle registration on average, yes.

Mr DICKSON: I like the $24 a whole lot more. I am sure 130-odd people would like it and the rest of Queensland would.

Mr Cannon: The 130 will not be affected, of course. The number comes through to the holders of registered motor vehicles.

Miss BARTON: Can I just pick up on the costings. I have a couple of questions, if you will indulge me, Mr Chair. In terms of what Treasury recommended—and, again, forgive the fact that I am new; I am probably asking questions that have been asked before; I have to tried to go through

all the transcripts and the briefings that you have provided—to the government, was the advice from Treasury option A, which is lifetime care and support, as opposed to the hybrid scheme, given the fact that option A is cheaper than option B?

CHAIR: Can I just jump in there. With all due respect, Deputy Chair, that sits outside of our bill. We have already had the inquiry into that.

Miss BARTON: I appreciate that. I have also only just come onto this committee and I am simply trying to get an understanding of where we are at. We have to table a report within the next week. I would like to be able to understand how we have got to this point. I was not part of the original inquiry, obviously. I am just wanting to understand how we got to the point of option B and whether or not Treasury had recommended option A during the preparation of this bill.

CHAIR: Before Treasury answers, just a reminder that the conversations that you have with the Treasurer are obviously in-confidence.

Mr Waite: That is, Deputy Chair, my response. We saw it very much as a policy decision for government to make. We presented the options. We costed the options. As is always the role of Treasury, it was up to the government to make a policy decision on that basis.

Miss BARTON: There were no recommendations made whatsoever in terms of what you thought would be appropriate for the government to do? I appreciate that the decision that has been made is a policy decision, but equally I would have thought it was appropriate for Treasury to make recommendations to the relevant minister about what was appropriate?

Mr Waite: We saw it as a policy decision of government.

Mr DICKSON: Mr Chairman, I did not quite get to finish the question that I originally asked. Wayne, I appreciate you getting to the point that we are at. So I am absolutely crystal clear in my mind, the differential between the lifetime guarantee and the 25 per cent negligence changes from $32 to $24, which is a 25 per cent saving across-the-board for all Queenslanders; is that correct?

Mr Cannon: The 25 per cent contributory negligence is not a key part of this point. You are just looking at the distinction between the full lifetime care arrangements versus the hybrid which includes—

Mr DICKSON: I am talking about the cost.

Mr Cannon: Yes, absolutely. So the net cost—

Mr DICKSON: Wayne, bear with me for just one second. What I am asking about is the raw cost to everyday Queenslanders between the lifetime guarantee and the negligence component if you go down that path of getting a lump sum. We are talking about the two different take-ups—if a person chooses to go either way. The choice would be if we just had the lifetime guarantee $24 compared to $32 which is a 25 per cent per cent saving to all Queensland registered car users. Is that a fact?

Mr Cannon: I think there are a couple of key points you have to take into account because I do not think it is right to make a relative comparison between those two numbers as a percentage. The absolute comparison is the more sensible one. The hybrid model is lifetime care for those who cannot find fault with someone else and a hybrid of lump sums and lifetime care for others. That overall model is the one that the government has selected and is before this committee. The alternative that was previously considered was the pure lifetime care option, if you like, that allowed no lump sums. The difference between those, as I have said, on a long-term basis is that this is the more important one to think about when you are thinking about the policy decision and overall design question because the adjustments that are made in the first year are partly one-off—they do not affect the two options, if you like. I think the valid comparison is between the long-term cost estimate of $68 and $60. Those are the numbers.

If you are looking to compare options, those are the two numbers you should be thinking about. My understanding was that this is not a matter for this committee to be looking at now because the government has made its choice. This is now about the legislation. I guess I have to stay out of that matter.

Mr DICKSON: I will not go back to that point. The first option is $68. Instead of a $32 tax for Queensland it will be a $68 tax for Queensland. If we want to go down that path, that is where you are taking me.

Mr Cannon: No, those are the long-term costs. That is the evidence before the committee previously. Those are the long-term costs. There are a couple of changes that have been identified with the CTP premiums, which have been able to offset those additional costs. That is what brings it down to those numbers. Comparing $24 and $32 and saying that is 50 per cent different—it is not, I do not think—

Mr DICKSON: I am a simple farmer's son, but I was very good at mathematics. I just do not get it. It cannot be $68 converted to $32 and then the other number converted to $24.

Mr Cannon: The same offsets come off both.

Mr DICKSON: That is what I was trying to work through earlier. You are telling me that we are going back to the $68.

CHAIR: We have gone sideways on this. That sits outside of the bill. Could we bring our questions back to the ones we have in front of us.

Miss BARTON: I do have a question about the offsets with respect to both the letter that Jim Murphy has sent the committee on 4 May and the Treasurer's introductory speech. I am assuming that you have seen it. In the letter that Jim sent on 4 May he said in the last paragraph of the first page—

In addition, I confirm that the potential savings of up to $36 per vehicle that have been identified by the government remain applicable for both the hybrid and no-fault NIIS options.

Can I just confirm that the $36 is the saving that has been identified by Treasury as a result of the conversations with the CTP providers? It is $36 and that is taken off the $68. The Under Treasurer has said that it is up to $36, but the Treasurer himself has told the House that it is $44. I am wondering whether it is $36 or $44?

Mr Cannon: Thirty-six dollars, and the $44 was relative to the number that had previously been on the record. So the $76 was a costing of a different hybrid that was before the committee previously.

Miss BARTON: The $44 was—

Mr Cannon: So the offset is $36. Thirty-six dollars comes off the total cost. The previous total cost of the other hybrid option that was previously costed was $76. Take $36 off that—does that get us to the right numbers?

Miss BARTON: No, he said it was a saving of $44.

Mr Cannon: That gets us down to the net position. The Treasurer was speaking relative to the number that was previously on the record—the $76—and saying the overall net position ends up being $32.

Miss BARTON: It was 19 April that the Treasurer said $44. On 4 May Jim Murphy has said up to $36. So when did we get to up to $36 as opposed to $44?

Mr Singleton: The difference in the costings for the two hybrid models is an $8 difference. That is what has moved the numbers over that period. The Taylor Fry costing for the second hybrid, the one that is now before the House, took the $8 differential. It is the $36 and the eight that makes $44.

Miss BARTON: The Treasurer said $44 when he was introducing the model that is before the House. I am trying to understand how the Treasurer can have said $44 and the Under Treasurer is saying 'up to $36'.

Mr Singleton: Because when the Treasurer introduced the bill he was talking about the costing that was then out in the public domain being 76. Subsequently that changed to become $68. Jim Murphy is referencing the subsequent costing. It is the flow of when the new costing arrived relative to the numbers in the public domain at that point in time that has moved those two numbers.

Miss BARTON: The saving of the up to $36 is, as I understand, a result of the CTP providers being able to find some room to move. As I understand it, when Treasury last appeared before the committee on 26 April indication was given then that either the Treasurer or Treasury officials—and forgive the fact that I cannot recall who was having the meeting—were meeting the next day with the CTP providers. Is it possible to get an update on what happened at that meeting because I am very conscious—

CHAIR: I am actually going to rule that question out of order under the standing orders. Schedule 8 says that considerations leading to government decisions or possible decisions such as cabinet deliberations, unless those considerations have already been made public or the minister authorises the department to identify those, are not to be the subject of questions.

Miss BARTON: The minister himself has indicated that he has been able to reach some kind of agreement with the CTP companies or he intended to. I do not understand why either the Treasurer or Treasury would not want to detail in public what they have been able to do to ensure the discount of up to $36. I am not seeking to claim that there was anything wrong with the conversations or the negotiations. I am just trying to understand where Treasury have gotten to in their discussions with

publicly listed companies. This is an impost that will be borne by all who register vehicles in Queensland. I am wanting to make sure that the figures that we are discussing, given that we have had the Treasurer say $44 and the Under Treasurer say $36, are clear. I am trying to understand where we are landing and make sure that the figures that we have are accurate.

With respect, Mr Chair, I do not understand why it is inappropriate for Treasury to detail for the committee how these figures have been landed at and what they have been able to discover with the CTP companies. At some point you would think that the information has to be in the public domain. Why are you seeking to prevent that information from coming into the public domain during our deliberations when it is a relevant factor?

CHAIR: Because it has not been made public.

Miss BARTON: What I am simply asking is that it be made public. Why are you seeking to prevent Treasury from detailing their conversations with the CTP providers? It is an incredibly relevant factor in the costings.

CHAIR: I understand that, but, again, those discussions have not been made public. It is not the role of the committee to do that. Therefore, those questions are out of order.

Miss BARTON: Can I ask Geoff why those discussions have not been made public?

CHAIR: I do not think Geoff is in a position to answer that because he is not the Treasurer.

Ms BOYD: You have made a ruling.

CHAIR: I have made a ruling. I have ruled that question out of order.

Miss BARTON: Can you confirm that the meeting happened? Was it the Treasurer who had the meeting with the CTP companies or was it representatives of Treasury?

CHAIR: Again, I think we are heading down a road that I deem—

Miss BARTON: We are not even going to confirm that a meeting happened, even though Treasury said it was going to happen the next day?

CHAIR: Yes.

Miss BARTON: Right.

CHAIR: Are there any further questions on clause 42? There being no further questions, we will move on to clause 44.

Ms Harkin: Section 40 sets out the contribution of the agency and when this can occur. When an individual is a lifetime participant, they can make a decision to opt out pursuant to clause 41. They provide a notice to the agency and to the insurer. That clause also sets out a number of time frames within which that notice can be provided. If an individual has a legal disability, they need that decision to be sanctioned by the court. The reason for that is that it is a protective decision. They are making a decision in relation to their common law rights. The court will sanction that decision.

Clause 42 looks at the circumstances in which an individual can make an election. We have spoken about the restrictions of people who are more than 25 per cent contributory negligent; they cannot opt out. Individuals can have a court order made against them pursuant to clause 43. That is when the court says they do not have the ability to manage a lump sum and makes a decision that that notice is not valid or the notice has not been given. Otherwise the individual can continue with their claim in relation to damages.

The agency and the CTP insurer are both on notice. There are other provisions in the act—sections 160 and 163—that allow the streamlining of the processes under the Motor Accident Insurance Act to be aligned with the processes that the agency will follow. It ensures that those processes run concurrently and that the pre court processes under the Motor Accident Insurance Act are adhered to and that the agency becomes party to those processes. If a matter does not resolve at an informal conference, pursuant to the Motor Accident Insurance Act a compulsory conference may be held. If the matter does not settle there, it may go to trial. When a matter goes to trial, the agency will also be joined as a party, as a defendant, so the matter can be settled at the same time.

Essentially, the clauses are 40, the notice; 42, who can bring the notice; 43, whether an application is made to the court about the individual's ability to manage the lump sum; 44, the outcome when the individual accepts the damages; and sections 160 and 163 align the CTP process to this new process under the NIIS and ensures it is streamlined.

Mr DICKSON: Thank you all for coming today. I have a question about someone who is waiting to go to court for a lump sum payment. It obviously takes time to go through the court process. In the meantime they are being looked after in the government system. They then go before the court and

they get paid whatever that quantum of money is. How do they work out how much gets repaid? We discussed this yesterday. How does that work? How do you physically work out those real costs? I can imagine there will be X amount of bills, there will be X-rays, cost of care et cetera, but can you give me a broad understanding of how that will work? Hypothetically, if someone gets paid $5 million and they have been cared for by our system for two years, how is that going to unfold?

Ms Harkin: Under the NIIS there is no repayment for past treatment and care.

Mr DICKSON: There is none?

Ms Harkin: If an individual comes into the NIIS scheme, their necessary and reasonable treatment and care is paid for as they go along. What is contemplated under this scheme is an individual has a support plan developed for them, they have their needs assessed and then they make decisions in relation to funding and services that are provided to the individual.

Mr DICKSON: The accident has happened, the person has gone into the government scheme to start with, there is a legal case happening—this is covering the 25 per cent—they then win that court case and they take a lump sum. Are you saying they do not have to repay the government? At the meeting we had yesterday I was told they had to repay the money that had been utilised from that lump sum payment. So they do not have to repay it?

Ms Harkin: Everybody comes into the NIIS when they are originally injured. It is irrespective of fault. Anyone in a motor vehicle accident who meets the criteria—

Mr DICKSON: No, I have got that. We were told yesterday when we were being made aware of how the program works that once you have had the accident, you have gone into the government system where they are looking after you and paying for everything, then in the process your lawyers are going to court because obviously a person could not do that if they are brain damaged. They win a quantum of $5 million or $10 million. What you are saying is that for the two-year period they have been looked after for in the government system that does not have to be repaid at all. That does not come out of the quantum?

Ms Harkin: That is correct.

Mr DICKSON: That is different from what I was told yesterday.

Mr Singleton: They keep that. That is their entitlement under the scheme.

Mr DICKSON: They keep everything? There is no repayment of the procedures and care that has been put in place over the—

Mr Waite: The point is that the court would take that into account—

Mr DICKSON: So it is deducted out of the quantum in the court case?

Mr Waite: The court would say that you have had two years of care. Therefore, that is two years of lump sum effectively that we do not need to pay you. It is a prospective award from that point on.

Mr DICKSON: That is the question that I asked. What I am asking is what percentage on an average basis would that be out of a total lump sum? I am sorry, I did not articulate the question well enough obviously.

Mr Singleton: It does not come into the equation.

Mr Cannon: It does not come into it. There is no apportionment because the lump sum is prospective. Whatever has happened in the past does not affect the lump sum calculation. The lump sum is determined based on that point in time. How much care do you have from now for the rest of your life? What has happened before does not affect that. You do not have to repay it.

Mr DICKSON: What you are saying is that nothing comes out of the lump sum to repay the care provider at all?

Mr Cannon: Correct, because it is not to cover those costs. It covers prospective costs—

Mr DICKSON: They will get the full quantum of the original accident sum—

Mr Cannon: Not the original accident sum. That is where I think you are confused.

Mr DICKSON: Yes, I am.

Mr Cannon: You do not get a lump sum at the time of the accident that allows for your future care from that point. The lump sum is from the point at which it is settled.

Mr DICKSON: That is the point I am making. What is the quantum? What percentage would that be? It could be one year or two years; I do not know.

Mr Singleton: It depends on the life expectancy of the person in terms of how much is determined as the appropriate lump sum award. If they have a 10-year life expectancy versus a 50-year life expectancy, the lump sum will be very different.

Mr DICKSON: The reason I am asking you this question is that it gets down to which way a person should go if they know they are going to get cared for for life under the government system. You do not know what the outcome is going to be if they have been looked after for two years. How much has been chewed up of the potential lump sum that they were ever going to get.

Mr Waite: Is there a section—

CHAIR: Yes, if you could explain clause 44. I think that is where the member for Buderim is at.

Mr DICKSON: I have lines around it.

CHAIR: So do we. It is all highlighted.

Ms Harkin: That is when the individual accepts the damages sum for treatment, care and support only. In relation to that the agency pays the prospective amount. We do not require the individual to pay the past amount. That is what it says under subsection 3(2) (a). The agency must pay the participant the amount of the treatment, care and award less any amounts for the past period. We are paying for the future period because we have paid everything in the past. They have been a participant in the scheme. We have developed their support plan. Together with that support plan we have paid for their treatment.

Mr DICKSON: The word 'less' is why I asked the question. Less means a deduction.

Ms Harkin: No.

Mr Cannon: It means that is how the lump sum is determined.

CHAIR: From that particular point forward?

Ms Harkin: That is correct.

Mr DICKSON: I have got it.

CHAIR: Thank you for clarifying that. Are there any further questions with regard to clause 44? The next one was a flow chart. This was my attempt at putting together a flow chart. Is the flow chart accurate and, if not, would you be able to provide an update or an alternative?

Ms Harkin: I suggest it is a fantastic flow chart. It is probably not as complete, depending on what you want to depict. We have interim participants there. We have not captured lifetime participants. We can certainly assist and update things if you would like. It does capture the opt-out process and it is fairly clear in relation to that. What it does not capture is the sanctioned processes in relation to the preservation notice. We think that is important, particularly for those who have a legal disability. They are required to be sanctioned pursuant to section 41.

It probably does not show the procedural aspects in terms of settlement, judgement and sanction of those matters. Again, when a matter is quantified and decisions made in relation to the quantification of the damages for someone who is under a legal disability, that is also sanctioned. It is another protective mechanism. Overall, this shows a really good representation of the opt-out process.

CHAIR: Can I ask you to make amendments to that and include those aspects which you have highlighted? Could you return that back to us in a very expedient time frame so we can use that as part of our discussions?

Mr Waite: Chair, we certainly would have attempted that. I think the time frame just beat us at the end.

Mr DICKSON: Us too.

CHAIR: Are there any further questions with regard to the flow chart?

Miss BARTON: No.

Ms Harkin: Can I make a comment? In terms of the buy-in provision, right down at the bottom it indicates that an individual can come back into the scheme. That is not correct. Individuals cannot buy back in after they have received a lump sum pursuant to clause 44.

Mr Singleton: They can re-enter the scheme if their lump sum is exhausted, but they cannot get the money and turn around and say, 'Have the money back, I am coming back in.' Once you elect to take the lump sum—

Miss BARTON: Once it has prematurely dissipated they can after a period—

Mr Singleton: After five years.

Miss BARTON:—go back in.

Mr Singleton: They can reapply to come back—

Mr DICKSON: That is still very generous.

Mr Singleton:—but they cannot pay back into the scheme to re-join. It is a conscious decision.

CHAIR: Geoff, I requested that this be returned in an expedient period of time. Would it be reasonable to have that by one o'clock tomorrow afternoon?

Mr Waite: I believe that is possible.

CHAIR: Thank you. That would certainly assist us with our deliberations. Are there any further questions with regard to the flow chart? I open it up to general questions.

Miss BARTON: I have one final question. In his introductory speech the Treasurer stated—

This is a saving of $44 for every motorist from the original estimated cost. The savings will be achieved through MAIC working with CTP insurers to improve current CTP premium affordability ...

Given that you are the department briefing on the bill, are you able to detail the work that MAIC have done with the CTP insurers?

Mr Singleton: It probably goes to your earlier question that the chair ruled out of order.

Miss BARTON: The chair ruled it out of order because he said that it was not in the public domain, yet the Treasurer has said in the House that the MAIC has worked with the CTP providers and the insurers. If the Treasurer is going to stand up in the House in introducing the bill and say, 'We can achieve a saving of $44 because the MAIC is working with CTP insurers,' it is therefore in the public domain. Obviously the chair has not even allowed you to confirm that a meeting you said was going to happen has happened, but I do not think it is unreasonable given the Treasurer has made this statement for you as the relevant department to talk about the work that has been done. The Treasurer has put it in the public domain. He is the one who said that the work was being done. Can I get an understanding of what work there has been?

Mr Waite: I will be guided by the chair.

CHAIR: Let me explain it. I will read schedule 8 again, which is the code of practice for public servants. It states—

As assistants or witnesses, public service employees may be called upon to provide factual and technical background to Government legislation and administration. However, the responsibility for advocacy and defence of Government policy rests with the responsible Minister and not with public service employees. Therefore, when providing information to committees, public service employees may describe Government policies and the administrative arrangements and procedures involved in implementing those policies—

Miss BARTON: I am not asking Treasury to defend the decision the government has made.

CHAIR: Excuse me—

but should not:

...

- identify considerations leading to Government decisions or possible decisions (such as Cabinet deliberations), unless those considerations have already been made public or the Minister authorises the department to identify them.

Miss BARTON: Are the discussions that he has had with the MAIC cabinet-in-confidence? I would have thought that by putting it in the public domain—a member of the public could ring the Treasurer's office and ask this question if they were so inclined and had read his introductory speech. With respect, Mr Chair, I do not think it is particularly helpful that you are seeking to stop officials answering a question based on something that the Treasurer has said. Treasury officials said that the meeting was going to happen. You have not even allowed them to confirm the meeting that they said was going to happen has happened, but the Treasurer himself has said that this work has happened. I do not think it is unreasonable that the committee draw out and understand what work is actually being done.

We are going to be making a report to the parliament with respect to whether or not this is the right way going forward. A huge component of that is going to be understanding that the figures that have been prepared are correct. We have already had different figures from the Treasurer and Treasury in the first place. I do not think it is unreasonable to ask Treasury to provide details of a meeting and details of an arrangement that has been reached that the Treasurer has said has happened.

CHAIR: I am going to rule that out of order because of what I have said with respect to schedule 8. If you wish to pursue this further, I suggest that you take that up with the Treasurer or his staff.

Ms BOYD: I have a question that goes to the support plans. Some of the stakeholders have raised concerns around their ability to have a circuit-breaker, for want of a better word, in terms of disputes or differences of opinion that may arise out of their support plans. I have some concern around this. I think I have raised it with you in previous hearings around what is deemed to be reasonable, deemed to be necessary. Some of the stakeholders are presenting or suggesting that a mediation process is inserted before we go from discussions into dispute—that after a decision is handed down by the agency there is an ability for the person to sit around the table to be able to be heard, to be able to air their grievance and to be able to have that mediated prior to getting into a court system and having a full-blown dispute, which of course is going to be costly. Can I get your feedback as to how you see that process, particularly how you would view it in terms of the financial impost or potential alleviation it would have on the scheme?

Mr Singleton: This is very much going to be a person centred scheme, so the person will be at the centre of that care plan. It will not be prepared in isolation of the person. In terms of mediation processes or various representatives coming together to discuss options or alternatives, that would be part of the claim process or the participation process. If you come to a point where there is a clear dispute as to what is reasonable and necessary, there are mechanisms to address that. It is not intended that this be an adversarial system. It has to be a collaborative system involving the treatment providers, the attendant care services and health professionals. If the person has a representative, whether it is a family member or a legal representative, they would be actively involved in the process as well.

Ms BOYD: What would be your view around, say, an external mediator, so having a third party come in and mediate between the agency and the participant?

Mr Singleton: There are mediation processes available. If there is a dispute, whether it is through a QCAT or MAT style approach or if there is a mediation in the interim, it is probably looking at what is the best pathway to resolve the matter in a speedy manner. From a mediation there are obviously rights that go on from that. You do not choose one pathway and then preclude all other pathways.

Mr SAUNDERS: We were talking about pricing. Would you agree that over time for many participants in rural and regional areas services will be a challenge for them?

Mr Singleton: I think that would be the case now and it will be a challenge that the scheme has to address. We are dealing with what is a relatively small number of people who may come from a diverse geographic background, particularly as new claims in the early stages of the scheme evolve. That is one of the operational challenges the scheme will be looking to address early on. If there is a person in a regional, rural or remote area where there is simply no service provider, what practical solutions can be brought to address that I think will be something that all parties to that situation will be collaborating around. You do not want a situation where someone is forced to move to a regional centre or a metro centre to receive services if you can find other options. We do acknowledge that it is an existing challenge and one that we do need to address.

Mr SAUNDERS: The further you are away from the regional centres or the major cities in the region the more concern there is with regard to quality of care. That is worrying me—the quality of care. Do you think there will be an increase in disputes regarding the quality of care or will that have consequences for the price setting by the agencies?

Mr Singleton: The price-setting mechanism is one which will take account of local cost and service delivery. It is not intended to be a one price across all of Queensland. It is there really to put an upper level cap on costs to keep costs reasonable. It is not there to be a cost constraint to force people to go to the lowest common denominator, so to speak. The primary objective is to get care and support services for the person. In a geographically challenged area in terms of logistics, how we do that will be case by case. The goal of the scheme is to make sure people do receive their reasonable and necessary care and support.

Mr SAUNDERS: Under the existing Motor Accident Insurance Act, the only guiding legal criteria is reasonableness. No prices are set and the pricing is flexible, as I understand it, according to all of the circumstances. If it is good enough for seriously and catastrophically injured claimants, why isn't it good enough for participants in this scheme now? I just have to get my head around that.

Mr Singleton: The cost of medical treatment in the CTP scheme is about 10 per cent of the total scheme cost. In the NIIS it will probably be a much greater number—probably 80 to 90 per cent of the scheme cost. It is therefore a material factor to have an upper bound, so to speak, rather than

looking to be a cost constraint mechanism. We do not want to be in a situation where a service provider has dominant market power and is setting prices excessively. It will come back to the cost of the scheme and that will flow through to the cost to motorists. It is trying to find a sensible balance between the person being cared for and keeping the scheme affordable.

Mr SAUNDERS: You are keeping an eye on it.

Mr Singleton: But sensibly.

Mr BOOTHMAN: Why are the medical costs so low in the CTP scheme at 10 per cent?

Mr Singleton: The bulk of compensation payments in the CTP scheme are for economic loss. Pain and suffering medical cost is, as I say, about 10 per cent of the total costs paid out in the scheme. That is in our annual report in terms of the cost breakdown.

Mr Cannon: The CTP scheme covers the whole gamut of injuries. There are a lot less serious injuries across the entire CTP scheme, so medical is not quite as important.

CHAIR: Thank you very much. As there are no further questions at this stage, we will finish. Thank you to the officials from Queensland Treasury and thank you to Hansard. I declare this briefing of the Education, Tourism, Innovation and Small Business Committee closed.

Committee adjourned at 9.09 am