



EDUCATION, TOURISM, INNOVATION AND SMALL BUSINESS COMMITTEE

Members present:

Mr SJ Stewart MP (Chair)
Mr MA Boothman MP
Ms N Boyd MP
Mr SE Cramp MP
Dr MA Robinson 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 2016

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 26 APRIL 2016

Brisbane

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Committee met at 10.33 am

HARKIN, Ms Carmel, Program Manager, National Injury Insurance Scheme

KENNEDY, Ms Yasmin, Senior Legal Officer, Queensland Treasury

SINGLETON, Mr Neil, Insurance Commissioner, Queensland Treasury

WAITE, Mr Geoff, Assistant Under Treasurer, Queensland Treasury

CHAIR: I declare open the committee's public briefing into the National Injury Insurance Scheme (Queensland) Bill 2016. I would like to introduce the members of the Education, Tourism, Innovation and Small Business Committee. I am Scott Stewart, the member for Townsville and committee chair. The other committee members are: Dr Mark Robinson, the member for Cleveland and deputy chair; Mr Bruce Saunders, the member for Maryborough; Ms Nikki Boyd, the member for Pine Rivers; Mr Mark Boothman, the member for Albert; and Mr Sid Cramp, the member for Gaven.

The briefing is being transcribed by Hansard and a transcript will be published on the committee's website. It is also being broadcast live on the parliamentary website. Please turn your mobile phones off or at least put them on 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.

On 19 April 2016 the Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport introduced the National Injury Insurance Scheme (Queensland) Bill 2016 into parliament. The bill was referred to the Education, Tourism, Innovation and Small Business Committee for detailed consideration. The committee is required to report to the Legislative Assembly by 19 May 2016. Queensland Treasury will brief us on the bill this morning. Mr Waite, would you like to start the briefing after which we will ask questions.

Mr Waite: I would like to thank the committee for this opportunity to brief you in relation to the National Injury Insurance Scheme (Queensland) Bill 2016. As you are aware, this is an important social reform, and Treasury and the Motor Accident Insurance Commission have been a key part of this policy development. I also note the previous inquiry by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, and after that the work of this committee, in contributing to the development of the bill.

The primary objective of the bill is to facilitate the provision of appropriate treatment, care and support to people who are catastrophically injured in motor vehicle accidents in Queensland from 1 July 2016 in a way which complies with the requirements of the minimum benchmark. The bill establishes the scheme, which has been designed with a view to accommodate other accident types in the future. It establishes a robust and independent review mechanism for decisions under chapter 6 of the bill and for a parliamentary committee to provide oversight of the NIIS clause 138 in accordance with the committee's recommendations.

In addition, a range of constructive design elements provided in submissions to the previous parliamentary committee and in the committee's report have been incorporated in the bill, including the requirement for services to be provided by registered providers in clause 9, the provision of care services for a person's lifetime and options for self-management in clause 34. The bill is consistent with the committee's design recommendations.

The National Injury Insurance Scheme in Queensland incorporates a no-fault model and retains common law rights to recover the costs of treatment, care and support for those who are not at fault for their injuries. Under the NIISQ, all people catastrophically injured in a motor vehicle accident in Queensland would immediately become participants in a no-fault scheme irrespective of fault, with care and support services managed by a national injury insurance agency instead of through a CTP insurer. Persons who may have a claim against a CTP insurer—that is, where they can assert fault—may also pursue a claim for non-economic loss and economic loss. In addition, certain participants will be able to elect to opt out of the no-fault scheme and pursue a common law lump sum amount for care and support from the NIISQ.

The bill provides for safeguards to minimise the risk of these lump sums exhausting. Only persons who meet the preconditions may opt out of the NIISQ. These preconditions include where the person is an agreed lifetime participant, has a CTP claim with contributory negligence less than 25 per cent and who has not been excluded from receiving a lump sum by the court. In addition, the existing safeguards under the CTP scheme would continue with court sanctions and trustee management where required.

Queensland Treasury looks forward to assisting the committee to enable it to complete its report to parliament by 19 May 2016. I look forward to your questions now to both myself and my colleagues here this morning.

CHAIR: I will open it up to any questions that the committee may have.

Dr ROBINSON: Thank you for your presentation and further detail. Obviously many of the things that have been discussed by the committee are being taken up in the bill. A lot of very good work has already been done which has been acknowledged by all on the committee, so we appreciate all the work that has been done. This is an incredibly important area. As we also consider the NDIS and other parallel areas there is a lot to be considered, so thank you for all you do.

I have some questions concerning the financial viability of the scheme in terms of some of the earlier Treasury figures that were used regarding the likely increases to premiums. Can you enlighten us on any further work that has been done since Treasury last presented to the committee and the implications of that?

Mr Waite: Certainly, Deputy Chair. There is probably a point at which I do not want to stray too far into government policy in terms of the costing of these arrangements, but I would refer back to the Treasurer's introductory speech for the bill in which he outlined the net cost of the scheme and indicated that the savings would be achieved through MAIC working with CTP insurers to improve current CTP premium affordability and returning the part year unearned CTP premium where cover will now be provided by the NIISQ. There are a couple of areas in the coming days that MAIC will commence working with CTP insurers to see where some costs can be taken out of the CTP premium as it currently stands. At this stage that is probably as much as I can say, Deputy Chair, about where we are heading with those costings. Certainly there is work ongoing in that regard.

Ms BOYD: Thank you very much for coming before us today. The committee has done a significant amount of work on this and put together a report, which is report No. 11 tabled by the committee, which was the *Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme*. One of the recommendations in that report was to establish a robust and independent review mechanism for decisions taken under the lifetime care and support scheme, and I just wondered if you could update us on your knowledge as to where that is and if we will indeed find that in the bill.

Mr Waite: I might ask Carmel Harkin to guide you through that.

Ms Harkin: You will find that under chapter 6. In terms of the reviews, part 1 looks at internal reviews and part 2 is external reviews. Part 2 division 1 is reviews by medical tribunals, and division 2 is external reviews by QCAT.

CHAIR: Could you please tell us more about the proposed NIIS agency? For example, will its staff be the people who assess what care and support services an injured person needs, or will external experts be involved in those decisions?

Mr Singleton: The operating model for the NIIS agency has not been determined as yet. The intention would be to have a mixture of internal staff and to use existing insurance commission resources as much as possible and then to engage external resources in terms of to some degree case management, but certainly attendant care services and particularly services where the injured person elects a service provider mechanism. It is very much around the injured person's choice, so we would honour and recognise the injured person's needs as well, but we do not have the operating model determined as yet.

Mr BOOTHMAN: Going back to your comments about CTP and that we have found some savings in that area which we can pass on, I am just curious as to why that was not done before to help reduce payments of these premiums. Is all that money which has been saved up over time to build this nice buffer? If we take that buffer away, what consequences does that have if there is a spate of additional accidents et cetera? I am just curious as to why we have found these additional funds sitting there. What have they been used for? Have they been going back into Treasury?

Mr Waite: It relates to the fact that the NIIS emerges to complement or to sit alongside the CTP, so once you introduce a NIIS there are some elements of the CTP scheme that are not necessary anymore because that cover is now provided from the NIIS. So a significant part of the

savings come from that crossover between CTP and NIIS essentially. That is probably the key area that we are looking at and then as part of the introduction of the NIIS there will be further work with the insurers to say, 'Okay, now that the NIIS is on the ground, where are we able to find some efficiencies in the scheme?' The premiums are designed simply to fund the scheme. There is no buffer involved in the premium setting, if I can put it that way. Neil, can you make any addition to that?

Mr Singleton: We have our first meeting with the insurers scheduled for tomorrow to start these dialogues ahead of the 1 October levy, assuming that is when the levy collection starts.

Ms BOYD: Clause 95 of the bill talks about the transfer of funds from the Nominal Defendant Fund and I just wondered if you could talk us through in some detail how this actually works. What is it and how does it work and how will it have an impact?

Mr Singleton: The Nominal Defendant scheme has existed since the 1960s. Over recent times a surplus of funds has built up in the Nominal Defendant through a number of sources, most notably in 2000 the collapse of HIH and it also involved the failure of a licensed CTP insurer in Queensland, FAI, where the Nominal Defendant then stepped in and met the outstanding claim liabilities on behalf of FAI. Subsequent to that, the HIH liquidator has achieved a full recovery of those funds so we received 100 cents in the dollar which was in excess of \$400 million. Those moneys have been invested and over recent years the investments have performed very strongly, so a surplus has built up in the Nominal Defendant over a number of years and we are currently satisfied that there is in excess of \$600 million within the fund that is not required by the Nominal Defendant and that money can be transferred to the NIIS to help with the solvency and initial set-up solvency of the NIIS itself with no detrimental effect on the Nominal Defendant.

Ms BOYD: Would that also go into your calculations around a levy as well? Is that something that feeds in to those calculations, or is it something that is entirely separate?

Mr Singleton: If Wayne Cannon was here as an actuary he would take you through the detail chapter and verse. The proposed structure for the NIIS levy is to adopt long-term economic assumptions in how the levy is structured which would involve earning more money through interest than is lost through the effect of inflation. Currently we are in a more depressed economic environment and in fact the reverse is happening so that the Australian government bond yields are currently at the lowest I think they have probably ever been. In the initial period the levy that is being collected actuarially would be viewed to be inadequate, but the actuaries are confident that over the long run of this scheme—and because it is a very long-tail scheme—the NIIS is still an appropriate mechanism rather than have motorists exposed to the volatility of the market and their levy moving up and down year on year depending on how bond yields move. The \$600 million is a strong buffer so that the solvency of the NIIS is secure while we work through these initial years with this current depressed economic environment in terms of the earnings that the NIIS will achieve.

Ms BOYD: Thank you. That is very helpful.

Mr CRAMP: I am not sure who to address it to, so I will just ask for some clarity. Following on from the last two questions and your answers, I am just trying to get some clarification around an issue. When you initially came in and provided some explanation on the figures, we were talking figures of around \$87 extra to the premium. My understanding was that that was based on a percentage take-up of the program, but initially over the first few years that would not occur and it would in turn build a buffer as such and assist with later years. If I recall, the Treasurer noted a figure of around \$36, so around a \$50 drop. Are you saying that the \$600 million that will be transferred is now that buffer? My concern and the bit I want clarity around is we were talking about having a buffer for future years through not having an initial intake up to that \$87 mark, but now we are saying it is going to be \$36. Where is that buffer now?

Mr Waite: The \$600 million is to secure the solvency of the fund, so it does not enter into the calculations around premium. It is there to provide essentially a positive cash flow for the early years of the scheme. Correct me if I am wrong, Neil, but ultimately the annual liability of the scheme is in the \$300 million range as estimated by the actuary. Obviously in early years we will not be paying out that much because the scheme will progressively have more and more people enter into it, so that will be a build-up. As Neil said, to offset the cash impact of that in the early years, we will be using that \$600 million for cash flow but it does not enter into the actuaries' calculations of how they have arrived at the premium. Is that correct, Neil?

Mr Singleton: Yes.

Mr Waite: The differences in the numbers that the Treasurer spoke about will be as a result of negotiations with the CTP insurers and what the crossover between the NIIS and the CTP is.

Mr CRAMP: Is there an expectation for that premium then just to rise after the first years once we see an increased intake, because there was a buffer there and now there is no buffer? We are looking at just the actual costs, so the expectation will be we will see possibly a dramatic increase or just an increase in general over the coming years as we see more and more intake. We are no longer having that buffer.

Mr Singleton: There is no expectation of that. The scheme experience will determine the levy over time. Being a very long-tail scheme, it will probably take some time for experience to emerge in a way that can lead to an informed decision around the levy. I would say that there would not be any material shift in the levy in the early years while that experience unfolds.

Mr SAUNDERS: Is there any indication of what the initial start-up costs will be for the scheme to get it going with the bureaucracy? I understand the savings you are going to make between the CTP scheme because the premiums will drop down. How do the insurance companies feel about giving up some of their profit out of the CTP scheme?

Mr Waite: As Neil said, he is about to commence discussions with the insurers.

Mr Singleton: I will find out tomorrow.

CHAIR: That meeting is tomorrow.

Mr Singleton: In terms of the operating model for the NIIS, because this is a start-up scheme from 1 July we do not expect a material amount of resource required in the first year. On the actuarial numbers on average, we would expect three people a month to come into the scheme and, sadly, the start of their experience in the scheme will be in hospital. So for the first several months the requirements from the NIIS will be quite minimal, but that will ramp up over time. The insurance commission already has resources in terms of systems and finance and HR which will be available to the NIIS. Over time we would expect to see some claims managers and case managers come into the structure, but that will be a very gradual build-up. We would expect less than 10 FTEs by the end of the first year, and certainly there is no expectation of more than 10 FTEs in year 1 based on the assumptions we have so far.

Mr SAUNDERS: Thank you very much.

CHAIR: One of the bodies for the external review is the medical tribunal under the workers compensation act. Do we know who sits on that tribunal at all at this stage?

Ms Kennedy: It is the Medical Assessment Tribunal and the workers compensation act. As I understand it, there are a number of subtribunals within that body that have different specialist areas. As I understand it, it is probably likely that for the purposes of this scheme there is a generalist tribunal that is used and that will probably be the one that would be used for the purposes of this scheme. There may be some extra tribunal members that are brought on for this purpose because we are dealing with children possibly being injured and obviously that is not particularly catered for in the workers compensation area at the moment, but I understand that the tribunal members are quite happy that they could cater for most of the types of injuries that would need to be considered for this scheme at the moment.

CHAIR: Okay, so the existing body would look after that and just maybe pull in some experts to top it up?

Ms Kennedy: Yes, correct.

CHAIR: Thank you.

Mr SAUNDERS: So we are estimating about \$380 million a year to run the scheme currently?

Mr Singleton: That is the levy income in a full year. That obviously then has to last for the lifetime of the participants in the scheme, so in some cases for decades.

Mr SAUNDERS: For decades for the medical—

Mr Singleton: For their attendant care services and all the other benefits available under the NIIS. The cash flow out of the NIIS will be much lower for probably the first three or four decades before it reaches a maturity point where we will see some stabilisation around outgoing payments compared to incoming levy, but the fund that is there is effectively saying that if the scheme stopped in, say, 40 years time there is enough money in the bank to pay for all of the people in the scheme over that 40-year period. We are certainly not expecting that to happen, but that is the expectation of a fully funded scheme—that there is always enough money in the scheme to pay for everybody's lifetime requirements out of that scheme.

Mr SAUNDERS: As a further question, we know motorcyclists are more at risk than other people in cars. Is the levy going to be where motorcyclists pay more than people who are less at risk if they have an accident?

Mr Singleton: The funding model or the levy is to be determined and it is a matter for government decision. The initial proposal is that the levy be flat so nobody pay above a determined levy. Over time experience can then maybe inform a better levy structure so it could be that some vehicle types are deemed to be more at risk and should pay a higher levy, but I think that would be a process of consultation rather than determined on day one.

Mr SAUNDERS: Once you get the data through over the years.

Mr Singleton: Correct.

Mr CRAMP: I am trying to ascertain the figures the Treasurer used in parliament—the \$36. Is that under advice from yourselves? I understand it may not be the only advice he received, but did you advise him of those much reduced figures initially? Is that how he started to come to figures from around the mid-\$80 mark to the mid-\$30 mark?

Mr Singleton: The figure that the Treasurer quoted was \$32 as the additional cost. There were a range of factors underneath that which I am not sure is a matter for us to be talking about today, but there was an advice to the Treasurer in terms of the range of options around how the cost of the NIIS and the cost of CTP can come together affordably from a motorist's perspective.

Mr CRAMP: So you gave some advice on that.

Ms BOYD: The intention of the NIIS was to bring in a minimum benchmark level of care. I am just looking through the draft bill in front of us at the moment and I am trying to establish is there anywhere in this legislation—or could we find through another means—exactly what that minimum benchmark looks like? One of the things that I have taken away from the legislation, particularly around a care plan or a support plan, is that treatment or care or support is what is deemed to be necessary and reasonable. One of the things that I was not clear on in previous discussions is if, for instance, somebody decides to build a new home or to modify their home whether in fact that could be something that falls under lifetime care and support. I just wondered if you could please provide me with some clarity there in terms of what the minimums are and how the support plan will play into that.

Ms Harkin: Section 8 of the act sets out the meaning of treatment, care and support needs and those are identical to the minimum benchmarks. They set out the medical treatment, dental treatment, rehabilitation, et cetera. You will see section J also touches on home modifications. Depending on an individual's circumstances, they will then be assessed. A care plan will be developed—a support plan—for them. That support plan will capture their current needs in terms of what their needs are and their goals. It will also record the types of treatment and support they get and then the actual payments made in that regard. It really depends on an individual's circumstances. If they own their own home and they require modification to enable them to get back home, modification will be contemplated and assessment will be done by a medical provider in terms of what the requirements are. Then a decision will be made in relation to a number of factors: the cost of that, whether it links in with their goals, the fact that it is reasonable and necessary—all of those considerations. There will be a number of considerations under the regulations, which will mirror the minimum benchmarks in terms of appropriateness of service, the cost, the benefit to the individual. Does that answer your question?

Ms BOYD: Yes, it does. I suppose it then comes down to the interpretation of 'reasonable and necessary' and what the participant may view as reasonable and necessary versus the agency. I imagine that is where the dispute process will actually kick in.

Ms Harkin: Indeed. That is similar to a number of jurisdictions. The NDIS already has a body of decisions in that regard in relation to reasonable and necessary. Similarly in other jurisdictions: New South Wales, South Australia, et cetera. We will look to those as well in terms of making some of those decisions.

Mr Singleton: Just as an addendum to that, I know there is a lot of focus on purchasing a house as opposed to modifying an existing property. This scheme will not fund the purchase of a house, but there are opportunities to provide capital advances or funds that the person may choose to use for that purpose, but it is not an explicit benefit under the scheme. For a CTP claimant who has a common law entitlement, they may choose to receive their lifetime care and support benefits as a lump sum, which would then be passed over to a trustee. It would then be for that person to negotiate with their trustee as to how those funds are used, so it would occur outside of the NIIS.

Ms BOYD: For instance, if I was catastrophically injured, straightaway I would get treatment and support under this scheme. What is the window of opportunity that I have if I choose to go down a self-funded path, rather than the lifetime care and support? What period is there for people to make that decision? Can you also outline the process and the level of care that will be provided in the meantime?

Mr Singleton: The person would come into the scheme from day 1 and would receive the necessary and reasonable care and support. If they have a common law claim that their lawyer is pursuing against the CTP insurer, we would anticipate that the NIIS common law claim would be brought on at the same time. Typically, these claims would need at least four to five years to resolve, but obviously that would be a subject of how the lawyer chooses to progress the matter and when they choose to commence the action. The person stays in the scheme throughout that. Benefits are not suspended once a common law claim is started. When the common law claim is concluded, the person receives their lump sum from the CTP insurer. It is then proposed that they have 14 days to decide whether to accept the lump sum from the NIIS or return to the NIIS and remain in the NIIS as a lifetime participant. It is the person's election at that point. They are under no time pressure from the NIIS. They would be advised by a lawyer and then, through a court sanction, as to the amount of money. Barring any legal process where a court said, 'No, we don't believe you are appropriate to receive a lump sum'—that aside—it is entirely up to the person how they choose to receive their money.

Ms BOYD: Are there limitations on how long after your injury you could actually opt to take up a common law claim? For instance, if I was injured on 2 July 2016, could I wait until 2 July 2026 to initiate a common law claim? Is there a time limit?

Mr Singleton: Yes, there is a statute of limitations. You would need to be guided by your lawyer as to your time frames and be alert to your time frames. There are grounds on which the statute can be extended, particularly if you have a brain injury and you do not have legal capacity. However, I would say you would be very wise to consult a lawyer and follow legal advice on those time frames.

Ms BOYD: Certainly. Do we have any idea what the statute of limitations on this is?

Mr Singleton: For an adult, three years; for a child, three years from reaching legal maturity.

Ms Harkin: The three years is when they turn 18, up to 21.

Ms BOYD: So if they were injured at age seven, for instance, they could be a participant of the scheme and then, once they reach 18 or 19, they could actually choose to go the common law route. Okay, thank you.

Mr BOOTHMAN: Neil, going to the question of the member for Maryborough about risk, wouldn't we have the data from previous crash records to show how much risk a motorbike rider has compared to the driver of a sedan or truck and so on? Wouldn't there be some information already to review?

Mr Singleton: We certainly have CTP data around third party injuries.

Mr BOOTHMAN: Which would be very similar.

Mr Singleton: What we do not know is how many are at fault or people who are catastrophically injured. We have had to approximate using Queensland Trauma Registry data and looking at hospital admissions. We think we have an understanding of how many people, but we do not have scheme experience of how many people are at fault and would be eligible for the NIIS in terms of confidence to set the levy and recommend a levy by vehicle class. Currently, it would be a best guess rather than an evidence based and informed recommendation, hence the recommendation that we start with the flat levy and build over time.

Mr BOOTHMAN: Going back to the costings and option A, which I believe the Treasury originally recommended, wouldn't we see even better cost savings with option A compared to option B, considering the savings that the Treasury has come up with which is at least half the price? Wouldn't we see even better savings with option A, if we take that into account?

Mr Waite: I do not think any of the savings that reduce the premium from the initial amount that the committee heard to the level that the Treasury announced—

Mr BOOTHMAN: But obviously you are working with the insurance companies to reduce their—

Mr Waite: Yes.

Mr BOOTHMAN: And good luck, Neil, no disrespect to the insurance companies—

Mr Waite: What I was going to say, Mr Boothman, is that the relativities that were on the table when the committee considered the two options, essentially, largely remain. The savings that we are seeking to drive out of the scheme would be savings under either option. Those initial relativities—

Mr BOOTHMAN: So automatically you would be cheaper with option A anyway, then?

Mr Waite: It was already cheaper with option A. Those savings would reduce either of those options.

Mr SAUNDERS: I would like to ask about catastrophic accidents. The panel determines the injuries. Say I am driving home to Maryborough, have an accident and cannot work for the rest of my life. The medical profession determines that I cannot work, but who determines what my financial earnings would have been? Is a panel set up to look at future earnings and how much I would need if I lived to 75 or 80, et cetera? Is there a separate panel for that?

Mr Singleton: In terms of your future care and support requirements, it would be very much based around the evidence of your treating practitioners. The panels are really there if there is a clarification or a dispute around what is necessary and reasonable, but initially it would be based on your medical providers saying that you require this care and this level of support. That would be the first point, to determine that. As your situation may change over time, again, your medical advisers would be identifying the need to change your care support arrangements and would be recommending to the NIIS what those changes would be, based on your circumstances.

Mr SAUNDERS: With the advancement in technology and safer cars, has there been any forward planning to say, 'Catastrophic accidents may come back'? I do not mean to be rude: my first car was a HR Holden and in those days there were a lot of accidents and a lot of injuries involving cars compared with today's modern cars. Now if I get too close to another car, the car I drive today stops. It pulls me up so that I do not get too close, it has air bags, et cetera. Do you see eventually the numbers will drop in the scheme due to the safety of motor vehicles and so on?

Mr Singleton: I think that is where we would see the scheme going in terms of safer roads and safer cars. Taking out the human error factor is obviously the most important aspect there, as well. We are looking at autonomous vehicles as very much an important part of the future. As we think crash rates will reduce and the number of injuries will reduce, the levy would respond accordingly, but I think we need to get to that point to have confidence that that is unfolding.

Mr SAUNDERS: I was just making sure that is in the forward planning for it, because we are looking at these Google cars where we will be able to sit back and have a packet of potato chips—

Mr Singleton: And watch parliament on TV.

Mr BOOTHMAN: I am not sure about that, Bruce.

Dr ROBINSON: In terms of the initial \$600 million fund—I believe that was the figure used—could you clarify a little more the origin of that? I think you said it was the Nominal Defendant Fund. Could you talk a little about that and help us to understand it a little better, please?

Mr Singleton: The Nominal Defendant Fund was established to provide protection for people who are injured through an unregistered vehicle or an unidentified vehicle. It is a statutory scheme funded by motorists. The levy currently is \$11 per vehicle. The fund exists to meet the cost of claims arising from that year through either of those two sources. As I say, the fund started to accrue a surplus when the HIH liquidator started to actually recover money from the FAI claims unexpectedly. We invest money with the Queensland Investment Corporation and they have had some recent years of stellar returns, which has boosted the fund. I have been at the commission for six years and the fund has grown each of those six years through both HIH liquidator refunds and through stronger investment returns than were planned. We have now reached the point where we have about \$900 million in the Nominal Defendant Fund and we believe that the outstanding claim provision only needs to be close to \$300 million. The surplus is available. This would be an appropriate use for that surplus, given the origins of it in terms of its connection to motor vehicles and personal injury.

Mr SAUNDERS: I come from a regional area and am interested to know if we will see NIIS officers in Townsville, Cairns, Rockhampton or somewhere in the Wide Bay? Will it be statewide and not just centred in Brisbane?

Mr Singleton: Very much so. I think the service delivery will be very much a face-to-face model. The hard part for us will be developing a structure as injuries occur: if the first claim comes from Cairns and the second one from Toowoomba, how we structure ourselves to meet those people's needs. The early period will be a bit problematic, but we will very much be looking to have Brisbane

local resources working with local medical practitioners and service providers. As the scheme grows, we will have the infrastructure available. We will be working with WorkCover Queensland, through their resource network around Queensland, and we will be looking to the NDIS to see where we can leverage off resources that they have, building capability across Queensland. We very much see this as a regional service delivery model with a very lean, modest head office infrastructure, which could be in Brisbane but could be anywhere.

Mr SAUNDERS: I am really happy that we are investigating the other government bodies with the NIIS, so that we are getting a broad spectrum right across the area.

Mr Singleton: It is very important. The personal attendant care service is case management and I believe knowing the injured person personally is a very important aspect of service delivery for the scheme.

Mr CRAMP: In regards to sourcing funding, obviously we are going through the CTP model. Initially when we spoke to you there was some suggestion from the committee, not towards you guys but in general conversation, about whether there are other funding models so we could not just take from Queensland motorists but also have a more broader base to pull money from for this scheme. Has that been looked at to date or has it not come into the equation and we have stuck with CTP?

Mr Waite: I think one of the principles of the scheme is that you attribute the cost to where the benefit lies. Whilst the benefit here is to catastrophically injured parties, there is a symmetry between the imposing of a premium on motorists because ultimately this benefits the motorist. Given the experience in other states which have all imposed a premium on motorists—actually I should be clear; it is a premium on motor vehicles—that was considered an appropriate revenue-raising approach.

Ms BOYD: The idea of participants double dipping in this scheme, potentially going down a common law route, running out of money and needing to go back into the NDIS, has been discussed as a possibility. I wonder whether you could outline for us how this legislation will deal with that.

Ms Harkin: If someone has received a lump sum under clause 17, they can apply to come back into the scheme. They do have to wait a period of five years and there will be some conditions placed in a regulation as well. The agency will consider on a fair and reasonable basis the individual, their circumstances and how the lump sum was paid in the initial part. If a lump sum was paid for an individual and they outlived their expectation, the agency has an opportunity to reconsider whether that lump sum was sufficient if a period of five years has passed, and there will be a number of other conditions. There are those safeguards that are in place.

Mr Waite: There are also those opt out filters up-front that are built into the legislation. Carmel, you might like to tell us about that.

Ms Harkin: Under clause 40 an individual who is a lifetime participant can make an election to opt out. They have to be a lifetime participant; they are not interim participants. A person comes into the scheme initially on a period of two years as an interim participant. If they have injuries that are eligible, they become a lifetime participant. It is only after that time they can make an election to opt out. When they make an election to opt out, if they are labouring under a legal disability the court will need to sanction that decision—the decision either to remain within the NIIS or to opt out and take their lump sum. That is a safeguard. If an individual has contributory negligence at greater than 25 per cent, they are not able to opt out.

Similarly, under clause 43 either the agency or another party can make an application to the court, and the court can make an order that the individual is not capable of managing a lump sum. There is a number of indicia and the court has a fairly wide discretion under section 43 to consider whether or not that individual can manage that lump sum and whether it is in their best interests to receive a lump sum.

Ms BOYD: Will avenues like the trustee kick in at that particular point?

Ms Harkin: Indeed. After an individual accepts an award for a lump sum, that will be sanctioned so the individual gets that amount. If they do not have capacity to manage that sum, it will then go to a trustee to manage it on their behalf. Again, at the time the decision is made, at the time a lump sum award is made, the sanctioning practices are made together with the trustee management.

Ms BOYD: Would you also be able to outline for us the buy-in principle that is in the legislation?

Ms Harkin: That is under clause 13. There is an opportunity for individuals to buy in in circumstances and the agency will consider the contribution for the individual—the amount of money they have, their lifetime needs et cetera. It is fairly wide. More will be placed in a regulation in relation to those buy-in provisions.

Mr SAUNDERS: I have a question about the trustees. Will it be government trustees or will there be private trustees set up by the legal fraternity? Will there be a monitoring body if it is not run by government trustees? We do not trust everyone in this world, even trustees, to make sure that the best interests of the client are looked after.

Ms Harkin: There are a number of mechanisms now in terms of trustees, both private and public trustees—private trustee companies and the Public Trustee who administer moneys on behalf of individuals. I assume they have their own regulations.

Mr Waite: The trustee process essentially is a result of a court determination—if there were a lump sum action and the court determines that there be a trustee. That is a result of that court decision and that is consistent with what currently happens with CTP arrangements.

Mr BOOTHMAN: I have been doing some simple mathematics. We are looking at a \$44 drop in the cost, so it is down to \$32. If we went with option A, we were intending it to be a \$60 increase. If we drop that by \$44, that is down to \$16. That is less than half the price of option B—\$32 down to \$16. That is a negligible hit to our residents. I just wanted to get that on record. Going with option A would have saved a tidy sum for our residents.

Dr ROBINSON: To follow up on the point that Mark made, you mentioned the possibility that either of the options could be reduced by those savings and with the nominal defenders fund in advance to keep it solvent and cash flow positive. Would there have to be any other changes to the scheme if there is a reduced figure for option A? What would be the implications of that, if that were an option to the parliament?

Mr Waite: To go back to the decision between option A and option B?

Dr ROBINSON: Yes.

Mr Waite: There would need to be a different piece of legislation essentially.

Dr ROBINSON: I understand that. I am talking about the costings and the figures that Treasury has put forward which includes having some funds up-front in terms of the solvency and looking at issues over time of the increased inputs into the fund. I am not saying it is a formula, but with all those factors built into the scheme is there anything that would prevent an option A with the savings that have just been found?

Mr Waite: I do not believe so, no.

Mr Singleton: Not prevent it, no.

Mr Waite: Both options were based on actuarial advice and calculations so they are sound in their own right. Those savings, as I said, are agnostic of the option selected.

Mr BOOTHMAN: You are saying that the savings in option B would be different from the savings in option A.

Mr Waite: Simply because of the starting point, Mr Boothman.

Mr Singleton: The savings are the same.

Mr Waite: The savings are the same; the starting point was different. That is where the net difference would be.

Mr BOOTHMAN: Didn't option A have a lower starting point? It was \$44 down to \$16.

CHAIR: As there are no further questions, I will close this briefing. I thank Yasmin, Geoff, Neil and Carmel for coming along this morning. I also thank Hansard. A transcript of this briefing will be published on the committee's web page in due course. I declare this briefing of the Education, Tourism, Innovation and Small Business Committee closed.

Committee adjourned at 11.23 am