



Speech By  
**Hon. Curtis Pitt**


**MEMBER FOR MULGRAVE**

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**NATIONAL INJURY INSURANCE SCHEME (QUEENSLAND) BILL**

**Second Reading**

 **Hon. CW PITT** (Mulgrave—ALP) (Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport) (12.35 pm): I move—

That the bill be now read a second time.

The introduction of the National Injury Insurance Scheme (Queensland) Bill 2016 is a significant social reform. It is a scheme designed to deliver better, earlier and lifetime treatment, care and support for people who sustain serious personal injuries in motor vehicle accidents in Queensland. This bill will ensure that people catastrophically injured will receive immediate support for their treatment and care needs following a motor vehicle accident, without having to determine fault. This will lead to improved recovery and health outcomes.

The introduction of the National Injury Insurance Scheme Queensland is one of the most significant reforms since the introduction of compulsory third-party insurance in Queensland in 1936. Queensland's CTP insurance scheme is a common law fault based scheme. An injured person can only make a CTP claim where fault can be established against an owner or driver of an insured vehicle.

There are currently people who sustain catastrophic injuries in motor vehicle accidents who receive no benefit from the CTP scheme. This is because the accident was the driver's fault or because no-one was at fault. People who sustain these injuries need treatment, care and support for their lifetime. Their injuries are life changing and impact not only the injured person but also their family, friends and community.

Currently these Queenslanders have to rely on the support of family, friends and carers, not-for-profit groups, public health and welfare systems. This can lead to compromised care and support, poor recovery and a limited ability to re-engage with their community. Under the National Injury Insurance Scheme Queensland—NIISQ—all people catastrophically injured in a Queensland motor vehicle accident would immediately become participants in a no-fault scheme, with treatment, care and support services managed by a national injury insurance agency instead of through the CTP insurer.

I would like to highlight some specifics regarding the operation of the bill. The main purpose of the bill is to ensure that persons who sustain particular serious personal injuries as a result of a motor vehicle accident in Queensland receive the necessary and reasonable treatment, care and support, regardless of fault. To achieve this purpose, the bill establishes the scheme, the National Injury Insurance Agency and the National Injury Insurance Scheme Fund.

**Mr SEENEY:** I rise to a point of order, Mr Deputy Speaker. I draw your attention to the numbers in the House. You need 16 members. There are fewer than 16 members present.

*(Quorum formed at 12.39 pm)*

**Mr DEPUTY SPEAKER** (Mr Crawford): Thank you. I call the minister.

**Mr PITT:** The bill establishes the National Injury Insurance Agency Queensland to administer the scheme. The agency is to be a statutory body and its role is to ensure that injured people who participate in the scheme receive the necessary and reasonable treatment, care and support they need. The agency will assess participants and make payments in relation to their treatment, care and support. Fault on the part of a participant will not be relevant when the agency assesses a person's eligibility to enter the scheme. Similarly, payments made by the agency to participants will not be discounted for contributory negligence should a participant be at fault, in whole or in part, for their injuries.

A person would be eligible to participate in the scheme if they sustain a serious personal injury in a motor vehicle accident, the scope of which is set out in the bill, and the injury satisfies criteria set out in the bill and the regulation. The injuries must be as a result of a motor vehicle accident that occurs within Queensland on or after 1 July 2016. The act is intended to apply to the same types of accidents as those covered by the Motor Accident Insurance Act 1994.

Consistent with the Motor Accident Insurance Act 1994, the type of vehicle, insurance status of the vehicle and whether the motor vehicle accident occurred on a road or in a public place can affect whether the legislation will apply. Coverage is limited for uninsured motor vehicles and certain other types of motor vehicles such as tractors and agricultural machines.

Eligible people will include those who have sustained permanent spinal cord injuries, traumatic brain injuries, multiple or high-level limb amputations, serious brachial plexus injuries, severe burns and permanent blindness. The inclusion of serious brachial plexus injuries exceeds the coverage required by the agreed national minimum benchmarks and is included based on advice from representatives from the Royal Australasian College of Surgeons that the impact of that injury on a person's functioning is similar to the loss of a limb.

There will be two categories of participants in the National Injury Insurance Scheme Queensland—interim participants and lifetime participants. This will allow for people to access treatment, care and support early and before it is known whether they will need this support for life. Treatment, care and support services provided by the scheme align with entitlements outlined in the agreed national minimum benchmarks for motor vehicle accidents. These were agreed to in principle by the former Queensland government in 2013.

The National Injury Insurance Agency Queensland will provide necessary and reasonable treatment, care and support for the following types of services: medical treatment, pharmaceuticals, dental treatment, rehabilitation, ambulance transportation, respite care, attendant care and support services, aids and appliances, prostheses, educational and vocational training, and home and transport modifications. By exceeding the agreed national minimum benchmarks, the bill allows persons with a pre-existing catastrophic injury to enter the scheme if their subsequent injury is of a different nature and increases their treatment, care and support needs. Similarly, the bill provides that the agency can allow people to buy into the scheme. The buy-in process exceeds the agreed national minimum benchmarks for motor vehicle accidents which only require that care and support be provided to people injured after 1 July 2016.

Consistent with recommendation 6 of the Education, Tourism, Innovation and Small Business Committee report *Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme*, the bill includes provisions that place the participant, so far as is possible, at the centre of the decision-making process and promotes the person's goals, participation in the community, and maximises their independence and dignity. In particular, the bill sets out the general principles that the agency must have regard to when performing its functions. These principles are intended to ensure, to the greatest extent possible, that the focus is on the individual, maximising their health outcomes and community participation, and that dignity, trust and respect are paramount.

Importantly, the bill provides for the assessment of participants' needs for treatment, care and support to be carried out by the agency, in consultation with the participant and their key support people. Consistent with contemporary disability management practices, the bill also makes provision for agreed self-directed funding, where the agency is able to enter into a funding agreement with a person that covers particular expenses, in a stated period, for a participant's treatment, care or support. The committee noted the importance of appropriate safeguards in these arrangements and the bill allows a regulation to prescribe particular requirements around the terms of funding agreements.

This bill also retains participants' common law rights. I note that the opposition is proposing amendments that would strip away these common law rights. This is anti-choice. It is the government's firm view that adopting a hybrid scheme provides greater freedom of choice and self-determination for participants. The bill preserves common law rights and enables participants the freedom to choose whether to receive a lump sum or to remain in the NISQ.

All participants who have a CTP claim can continue to make a common law claim for damages such as non-economic loss and economic loss. In addition, some participants will be able to opt out of the National Injury Insurance Scheme Queensland and pursue a claim for treatment, care and support damages. These damages will be paid by the National Injury Insurance Scheme. The bill aligns NIISQ processes with the CTP claims process under the Motor Accident Insurance Act 1994 so that damages under CTP and damages under the National Injury Insurance Scheme Queensland are settled at the same time.

Where the agency holds concerns regarding a person's ability to manage their damages for their lifetime, the agency can apply to the court for an order that prevents certain persons from seeking an award for treatment, care and support damages. The intent is to ensure that catastrophically injured people have access to treatment, care and support for their lifetime and that their damages are managed efficiently and last for their lifetime. Where a participant is unable to, or does not elect to pursue damages for treatment, care and support, they will remain a participant in the NIISQ.

Where a person was previously a participant in the scheme and has received a lump sum damages payment under the legislation for their future treatment, care and support, the person cannot apply to re-enter the scheme in relation to the same injury for at least five years after they received the damages payment. A regulation may prescribe additional criteria to be satisfied for a re-entry application. The intention is to provide a mechanism for a person to re-enter the scheme in appropriate circumstances—for example, where the person has lived longer than originally anticipated.

Consistent with the recommendations of the Education, Tourism, Innovation and Small Business Committee report *Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme*, the Treasurer can refer a matter about the operation of the scheme to a parliamentary committee. The bill also contains internal and external dispute resolution mechanisms for participants and potential participants regarding eligibility and assessments of treatment, care and support needs. The National Injury Insurance Scheme Fund will cover the costs of the scheme and agency administration.

Turning now to the cost of the proposed scheme, it is proposed that the NIISQ is funded by a levy payable by motorists as part of their CTP insurance premium. This is consistent with all other jurisdictions in Australia. While the NIISQ will commence from 1 July 2016, to allow time for CTP insurers, the National Injury Insurance Agency and the Department of Transport and Main Roads to implement IT system changes, it is proposed the levy for the NIISQ commence from 1 October 2016.

Queensland CTP premiums are based on the class of motor vehicle, whether it is for private or commercial use, the choice of insurer and whether insurance is taken out for 12 months or a shorter period. The original hybrid model for the scheme was actuarially assessed as having a net cost of \$76 per vehicle. This is the net cost I have referred to previously and was used during the parliamentary committee process.

During the course of public consultation with the parliamentary committee, several amendments to the hybrid model were recommended. Subsequent to the committee tabling its report, actuarial costing of the recommended changes came back showing an \$8 reduction compared to the original hybrid model, thereby reducing the net cost to \$68 per vehicle.

For any CTP policy providing cover past 1 July 2016, the CTP insurer has already charged and received the premium for their potential claim liabilities that will now be met by the NIISQ from 1 July 2016. The Motor Accident Insurance Commission—MAIC—and CTP insurers have agreed on a process for insurers to pay this money across to the NIIS Fund. As such, the year one cost of the NIISQ will be reduced, as, quite rightly, motorists should not be expected to have to pay this amount twice.

The MAIC and CTP insurers have held meetings to explore options to reduce premiums from October 2016 in a fair and affordable manner. October premiums are expected to be publicly announced on 29 July 2016. The combined effect of the NIISQ levy introduction, the one-off premium clawback and interim premium savings is aimed at saving \$36 from the cost of the NIISQ for a family car or sedan, ensuring there will be no more than a \$32 increase in premiums for the combined CTP and NIISQ coverage from 1 October 2016. At this cost, the NIISQ will be the most affordable scheme introduced nationally.

Special attention has been given to determining the levy and premium for other vehicle classes where it would be inequitable to charge the NIISQ levy at the same level as a car or sedan. This includes tractors, vintage cars and motorbikes, all of which currently pay a lower CTP premium than a car or sedan. Motorbikes will be monitored closely, as interstate national injury insurance scheme experience is that motorbike riders are overrepresented in their schemes.

The levy for taxis also warrants particular consideration. Taxi premiums are currently 20 times greater than for a family car or sedan, due to their higher claim frequency. Advice from the Motor Accident Insurance Commission is that the many taxi related claims are for minor injuries and not the catastrophic injuries to be covered by the NIISQ. It would therefore be inequitable to require taxi operators to pay a levy 20 times greater than for a family car or sedan.

The actual CTP premium and NIISQ levy for vehicles in Queensland will vary depending on a number of factors including the class of vehicle—car, tractor, taxi et cetera—whether a policy is renewed for 12 months or less and whether the vehicle operator is claiming a GST input tax credit. As I have mentioned already, the outcome for every motorist will reflect the positive efforts of the government to help keep the cost of CTP insurance affordable for motorists.

The alternative design option considered by the parliamentary committee for the NIISQ was a pure no-fault model. This was actuarially costed as being \$8 cheaper than the hybrid scheme—net cost \$60 versus \$68—but this option would see people injured in a motor vehicle accident through the fault of another party lose their common law rights for lifetime care and support damages.

While the government is conscious of cost-of-living pressures, as evidenced by the work being done to reduce the cost of the NIISQ, it is concerned that taking away the common law rights of an injured person is a step too far in implementing a new scheme that is centred around providing choice and flexibility to the injured person. The proposed model for the NIISQ is a sensible balance in protecting the rights of the injured person while keeping the overall cost of the scheme affordable.

As I have previously announced, the passage of the National Injury Insurance Scheme Queensland will see the cost of CTP insurance for a family car or sedan rise by only \$32 for the combined CTP and NIISQ. To keep the overall cost of CTP premiums affordable following the introduction of the National Injury Insurance Scheme Queensland, a CTP scheme review is being commissioned. The review committee will report back to the government with reforms expected to be introduced from 1 July 2017. The focus of this review will be identifying opportunities to improve scheme efficiency and affordability for motorists.

I propose a number of amendments to correct minor drafting errors and clarify the policy intent of certain provisions in the bill. The amendments address issues and stakeholder concerns which were identified during and as a result of the inquiry into the bill by the Education, Tourism, Innovation and Small Business Committee.

In submissions to the parliamentary committee, the legal profession raised concerns regarding restrictions to common law rights of participants with contributory negligence of 25 per cent on the basis that it was unfair. In addition, concerns were raised that a finding of a 25 per cent contribution was relatively common and retaining it in the bill would lead to increased disputes and litigation. On review, it is the government's view that restrictions to damages for treatment, care and support should only apply where contributory negligence is 50 per cent or more. This more appropriately reflects the intent of the bill to restrict access to damages for treatment, care and support where a person has materially contributed to their injuries. A finding of contributory negligence of 50 per cent or more aligns with sections 47, 48 and 49 of the Civil Liability Act 2003, which introduces a presumption of 50 per cent contributory negligence where a driver injured in a motor vehicle accident has a blood alcohol level of .15 or more—three times the legal limit. The relevant clauses in the bill have been amended to restrict a participant's access to damages for treatment, care and support where contributory negligence is 50 per cent or more.

In submissions to the parliamentary committee, the legal profession sought confirmation that a finalised claim did not include a matter which required sanction and where the sanction had not been obtained. The relevant clause has been amended to rectify this. The insurance industry raised concerns directly to the government and through the parliamentary committee about the scope of their liability in relation to payments for medical expenses, rehabilitation expenses and for the payment of treatment, care and support damages for injuries arising from a motor vehicle accident.

To ensure the legislation is clear, a number of clauses have been amended to remove the potential uncertainty about the operation of the bill and make the position clearer that the agency is the sole entity responsible for meeting payments for the participant's medical expenses, rehabilitation expenses and treatment, and care and support damages for all injuries arising in the subject accident and not the CTP insurers.

I would like to thank the Education, Tourism, Innovation and Small Business Committee for its report tabled on 21 March 2016 regarding the inquiry into a suitable model for the implementation of the National Injury Insurance Scheme Queensland and for its further report tabled on 19 May 2016 regarding the National Injury Insurance Scheme (Queensland) Bill 2016. I would like to thank those who made submissions to the committee about the model and the bill, and those who appeared as witnesses during the committee's inquiry.

The committee did provide a number of recommendations about design features for the model. These have been incorporated in the model, evidenced in the bill and noted in the government response. The committee was not able to reach agreement on whether the bill should be passed. This is despite the government being able to identify savings to offset the additional cost of the National Injury Insurance Scheme to keep it at a level that is affordable for Queenslanders and more affordable than any other state or territory in the country.

The committee's recommendation regarding a typographical error has been included as an amendment. Additionally, yesterday I tabled an erratum to the explanatory notes to address a further recommendation by the committee. I am pleased to table the government's response to the committee's report.

*Tabled paper:* Education, Tourism, Innovation and Small Business Committee: Report No. 11—Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme, government response [\[793\]](#).

*Tabled paper:* Education, Tourism, Innovation and Small Business Committee: Report No. 13—National Injury Insurance Scheme (Queensland) Bill 2016, government response [\[794\]](#).

This has been a very important journey that commenced many years ago stemming from the Productivity Commission's inquiry into the lifetime care and support needs of people with disability in this country. The National Disability Insurance Scheme and now the National Injury Insurance Scheme will provide that cover and will be providing the sort of care and support that people expect and deserve over their lifetime. I am pleased, as a former disability services minister involved at the early stage in both the NIIS and the NDIS, to have worked along with people including Jenny Macklin and Bill Shorten on their drive and effort to meet the expectations of the Productivity Commission. I thank them for their early work. I am very pleased and honoured to be able to introduce and, hopefully, pass this bill through the parliament this sitting. It is a milestone for Queenslanders, and I trust that we will have the support of all members in the chamber. I commend the bill to the House.