

Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme

Report No. 11, 55th Parliament

**Education, Tourism, Innovation and Small Business
Committee**

March 2016

Education, Tourism, Innovation and Small Business Committee

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The committee also acknowledges the work undertaken by members of the former Communities, Disability Services and Domestic and Family Violence Prevention Committee in relation to this inquiry.

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Abbreviations

ACT	Australian Capital Territory
Actuarial Reports on Costs	Reports outlining the actuarial estimates of long term costs of possible options for a lifetime care and support scheme for people catastrophically injured in motor vehicle accidents in Queensland provided by the Queensland Treasury on 7 December 2015 and 22 January 2016
ADCQ	Anti-Discrimination Commission Queensland
Agreed Minimum Benchmarks	Minimum national benchmarks for the provision of no-fault lifetime care and support for people with catastrophic injuries from motor vehicle accidents – see Chapter 2.3
ALA	Australian Lawyers Alliance
APA	Australian Physiotherapy Association
COAG	Council of Australian Governments
committee	Education, Tourism, Innovation and Small Business Committee
CONROD	Centre for National Research on Disability and Rehabilitation – Griffith University
CTP Scheme	Compulsory Third Party Insurance Scheme
former committee	Communities, Disability Services, Domestic and Family Violence Prevention Committee
Heads of Agreement	Heads of Agreement on the NDIS signed on 8 May 2013 – see Chapter 2.4
Headway	Headway Gold Coast Inc.
IAG	Insurance Australia Group Limited
ICA	Insurance Council of Australia
Inquiry	Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme
Launch Agreement	Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch signed on 7 December 2012 – see Chapter 2.2
LCSS	Lifetime Care and Support Scheme
LSA	Lifetime Support Authority – South Australia
LSS	Lifetime Support Scheme – South Australia
LTCS NSW	Lifetime Care and Support Scheme – New South Wales
LTCSA NSW	Lifetime Care and Support Authority – New South Wales
MAA	Motor Accidents Authority – New South Wales
MAC	Motor Accident Compensation Scheme – Northern Territory

MAI Act	<i>Motor Accident Insurance Act 1994 (Qld)</i>
MAIB	Motor Accidents Insurance Board – Tasmania
MAIC	Motor Accident Insurance Commission
MCIS Levy	Motor Care and Injury Services Levy – New South Wales
NDIS	National Disability Insurance Scheme
NIIS	National Injury Insurance Scheme
NSW	New South Wales
POQA	<i>Parliament of Queensland Act 2001</i>
Productivity Commission Report	Productivity Commission, <i>Productivity Commission Inquiry Report No.54 – Disability Care and Support</i> , 31 July 2011
QAI	Queensland Advocacy Incorporated
QBISM	Quarterly Brain Injury Services Meeting
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
QPRS	Queensland Paediatric Rehabilitation Service
RACQ	Royal Automobile Club of Queensland
RACS	Royal Australasian College of Surgeons
Spinal Life	Spinal Life Australia
SCFFR	Standing Council on Federal Financial Relations
TAC	Transport Accident Commission – Victoria
TIO	Territory Insurance Office – Northern Territory
VSTORM	Victorian State Trauma Outcomes Registry Monitoring Group
YPINHA	Young People in Nursing Homes National Alliance

Chair's foreword

On behalf of the Education, Tourism, Innovation and Small Business Committee of the 55th Parliament of Queensland, I present this report on the implementation of the National Injury Insurance Scheme.

This inquiry was referred by the Legislative Assembly to the former Communities, Disability Services and Domestic and Family Violence Prevention Committee. After dissolution of that committee the inquiry was referred to the Education, Tourism, Innovation and Small Business Committee. My thanks to the members of the former committee for their work before the inquiry was transferred.

On behalf of the committee, I thank those who made written submissions on this inquiry. Thanks also to officials from the Queensland Treasury and Motor Accident Insurance Commission who briefed the committee on a number of occasions, and to other witnesses who provided evidence at public hearings before the two committees.

Lastly, I thank the other members of the committee for their work on the inquiry, and the committee's staff.

I commend the report to the House.

A handwritten signature in black ink, appearing to read 'Scott Stewart', is positioned below the text of the foreword.

Scott Stewart MP

Chairperson

Committee comment and recommendations

Committee comment

The committee has considered, in the short time available, stakeholders' views on the relative advantages and disadvantages of the options under consideration. The committee has also undertaken independent research into the issues raised by the Terms of Reference.

After considering all of the evidence, the committee was unable to reach a majority decision about which model is the most suitable for the implementation of the National Injury Insurance Scheme in Queensland, as per the Terms of Reference.

Non-government members of the committee did not support the adoption of Option B – a hybrid model, as in their view it did not meet the affordability test.

Committee members did agree unanimously with the recommendations below about certain design features of the scheme to be adopted by the Queensland Government.

Recommendation 1 **66**

The committee recommends that in designing the model for the implementation of the National Injury Insurance Scheme in Queensland, the Queensland Government takes into account the need to build a platform for the other proposed no-fault injury insurance schemes, for example medical and workplace accidents, and explores options for sharing resources and information with the National Disability Insurance Agency.

Recommendation 2 **66**

The committee recommends that the Queensland Government investigate a range of options for funding the lifetime care and support scheme to ensure that it is affordable for Queenslanders, including:

- the inclusion of concessions for pensioners and periodic payments
- possible phasing in of any levy or payments
- consideration of risk-based premiums according to vehicle type, and
- a GST exclusion for the levy or payment.

Recommendation 3 **67**

The committee recommends that the Queensland Government reviews current Building Codes for newly built residential accommodation with due consideration of the accessibility needs of people with a disability.

Recommendation 4 **67**

The committee recommends that the Queensland Government establish a robust and independent review mechanism for decisions taken under the lifetime care and support scheme about:

- whether an injured person is eligible to enter the scheme, or remain in the scheme, and
- the level and type of care and support deemed “reasonably and necessary” for the individual once accepted into the scheme.

Recommendation 5

68

The committee recommends that a parliamentary portfolio committee be given ongoing oversight responsibility for the lifetime care and support scheme, including to review and report to Parliament on the scheme's operations on an annual basis for the first five years after the scheme is established.

Recommendation 6

68

The committee recommends that the Queensland Government when designing the lifetime care and support scheme provide for the maximum level of choice, flexibility and independence for catastrophically injured people about the care and support they receive, subject to appropriate safeguards to ensure the affordability and long term sustainability of the scheme.

Recommendation 7

69

The committee recommends that any dividends from the lifetime care and support scheme in Queensland should not be paid to the State Government, but instead be re-invested in the scheme to the benefit of that scheme; for example, investment in specialised and group housing, road safety education programs and injury prevention, research and early intervention strategies.

1. Introduction

1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee (the committee) was established by resolution of the Queensland Legislative Assembly on 18 February 2016 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹ The committee consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- education
- tourism and major events, and
- innovation, science, the digital economy and small business.²

Section 92 of POQA provides that, in relation to its areas of responsibility, a portfolio committee is responsible for:

- considering legislation and proposed legislation
- considering Appropriation Bills
- performing a public accounts and public works role, and
- dealing with any other issues referred to it by the Legislative Assembly or under another Act of Parliament.

1.2 Referral of the Inquiry

On 11 November 2015, the Legislative Assembly resolved that the former Communities, Disability Services and Domestic and Family Violence Prevention Committee (the former committee) should inquire into and report on the most suitable model for implementing the National Injury Insurance Scheme (NIIS) for motor vehicle accidents in Queensland (the Inquiry) – the terms of reference are outlined at Table 1.

There are four streams of the NIIS currently under consideration in Queensland: motor vehicle accidents; workplace accidents; medical treatment injury; and general accidents occurring in the home or community and criminal assaults. The Terms of Reference for the Inquiry deal solely with the NIIS for motor vehicle accidents.

1 *Parliament of Queensland Act 2001*, section 88 and Standing Rules and Orders of the Legislative Assembly, Standing Order 194

2 Standing Rules and Orders of the Legislative Assembly, Schedule 6

Table 1 – Inquiry terms of reference

1. The Communities, Disability Services and Domestic and Family Violence Prevention Committee inquire into and report, by 7 March 2016, on the most suitable model for implementing the National Injury Insurance Scheme (NIIS) for July 2016 as entered into by Queensland in a Heads of Agreement with the Commonwealth in May 2013 with options including:
 - a) a no-fault lifetime care scheme, or
 - b) a hybrid common law and no-fault care and support arrangement.
2. In undertaking its inquiry, the Committee should consider:
 - a) How the Government can sustainably and affordably meet the NIIS minimum benchmarks for motor vehicle accidents
 - b) Affordability for Queensland taxpayers and motorists
 - c) The long term nature of liabilities in a NIIS, and
 - d) The desire to target full funding of long-term liabilities in accordance with actuarial advice.
3. In undertaking its inquiry, the Committee should:
 - a) Seek public submissions, and
 - b) Consult with key stakeholders and peak representative bodies from the health and disability care sectors, the insurance sector and the legal profession.

On 16 February 2016, the Legislative Assembly passed a number of motions which, in effect, discharged the former committee on 18 February 2016. On 18 February 2016, the Legislative Assembly passed a motion which transferred responsibility for the Inquiry to the Education, Tourism, Innovation and Small Business Committee and extended the date by which the committee must report to the Legislative Assembly from 7 to 21 March 2016.

1.3 Inquiry process

The former committee announced its inquiry on 19 November 2015 by advertising the Terms of Reference on its website. The former committee also wrote to 171 stakeholders and to subscribers to inform them of the Inquiry and invite written submissions.

The former committee sought assistance from the Queensland Treasury on 19 November 2015 in relation to the Inquiry. On 1 December 2015, the Queensland Treasury provided the former committee with a volume of background information about the NIIS. The Queensland Treasury also provided the former committee with two separate reports outlining the actuarial estimates of long term costs of possible options for a lifetime care and support scheme for people catastrophically injured in motor vehicle accidents in Queensland (the Actuarial Reports on Costs) on 7 December 2015 and 22 January 2016, respectively.

Throughout the Inquiry, Queensland Treasury provided both the former and current committee with a number of other information briefs and material which have been published on the committee's website at <http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/09NIIS2015>

Submissions

The closing date for submissions was 8 January 2016. The former committee received 26 submissions and two supplementary submissions from stakeholders which are available at <http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/09NIIS2015>. On 2 February 2016, the Queensland Treasury responded to issues raised in submissions.

On 25 January 2016, the former committee wrote to those stakeholders who had made submissions to the Inquiry to invite their comments on the Actuarial Reports on Costs. The committee received eight supplementary submissions on the Actuarial Reports on Costs which are available at

<http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/09NIIS2015>

On 26 February 2016, the Queensland Treasury responded to the issues raised in the supplementary submissions. A list of all of the submissions received is at **Appendix A**.

Public briefings

On 2 December 2015, the State Actuary, Insurance Commissioner and officials from Queensland Treasury provided a public briefing to the former committee about the NIIS, options for implementation and approaches taken in other jurisdictions.

The committee held a further public briefing on 2 March 2016 to clarify a number of aspects of the Inquiry with officials from the Queensland Treasury, the State Actuary and the Insurance Commissioner.

The transcripts of the public briefings are available at <http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/09NIIS2015>

Public hearings

The former and current committee held the following public hearings:

- 5 February 2016 – to hear from representatives from, and participants in, the Lifetime Support Authority in South Australia, the Lifetime Care and Support Authority in New South Wales, the Insurance Commission of Western Australia and the Transport Accident Commission in Victoria and officials from the Queensland Treasury, the State Actuary and the Insurance Commissioner
- 17 February 2016 – to hear from invited witnesses who had made submissions in relation to the Inquiry. Officials from the Queensland Treasury, the State Actuary and the Insurance Commissioner also provided evidence
- 2 March 2016 – to seek clarification from the Australian Lawyers Alliance about an alternative model it had suggested for the implementation of the NIIS in Queensland, and
- 7 March 2016 – to hear from witnesses from representatives from the insurance and disability services sectors.

A list of all of the witnesses who appeared before the former and current committee in relation to the Inquiry is at **Appendix B**. The transcripts of the public hearings are available at <http://www.parliament.qld.gov.au/work-of-committees/committees/ETISBC/inquiries/current-inquiries/09NIIS2015>

1.4 Structure of this report

Chapters 2 to 4 of this report describe the background and policy context for the development of the NIIS, the current Compulsory Third Party (CTP Scheme) Insurance Scheme in Queensland and the approaches taken in other States and Territories.

Chapter 5 outlines the options considered by the committee for the implementation of a NIIS in Queensland. Chapter 6 discusses the costs, long-term sustainability and affordability of the options.

Chapter 7 summarises stakeholders' views about the relative advantages and disadvantages of the options considered by the committee. Chapter 8 sets out the committee's conclusions in relation to the Inquiry and makes recommendations about certain aspects of the design of a NIIS in Queensland.

2. Background and policy context

In 2011, there were over 20,000 people with a ‘catastrophic injury’ in Australia, with up to 1,000 being injured each year. Around half of all catastrophic injuries are the result of motor vehicle accidents.³

These injuries are mostly experienced by young men under 30 years old. Usually a period of initial acute care is followed by intensive medical and social rehabilitation to return to some level of independence.⁴

In Queensland, approximately three people each week receive life-changing, catastrophic injuries as a result of motor vehicle accidents.⁵ The Queensland Treasury estimates that on average 136 people are catastrophically injured in a motor vehicle accident in Queensland each year.⁶

Currently, almost half of all people catastrophically injured in motor vehicle accidents are not eligible to receive compensation under the existing CTP Scheme – either because they were at-fault or no-one was at-fault for the accident.⁷

If a person is unable to claim compensation under the CTP Scheme, they must rely on sick leave, Centrelink benefits, Medicare and the public health system, unless they have other insurance policies such as income protection or private health insurance.⁸

2.1 Productivity Commission Report

In 2010, the Australian Government asked the Productivity Commission to consider the costs and benefits of replacing the current system of disability services in Australia and to suggest new arrangements, so that all Australians who have significant and ongoing disability would be able to get essential care and support.⁹

On 10 August 2011, the Productivity Commission published its report, *Disability Care and Support* (Productivity Commission Report). The Productivity Commission found that the current disability support system was very poor, unfair and did not work well, did not provide enough money to help people with disabilities, and did not provide people with a disability with a choice about the services they receive.¹⁰

The Productivity Commission also found that the State and Territory arrangements for insuring people for catastrophic injuries had varying levels of coverage, depending on the type of accident, its location and exact circumstances. The Productivity Commission found that a practical consequence of this was that the support provided for people catastrophically injured was similarly dependent on those factors.¹¹

The Productivity Commission considered that existing common law based injury insurance schemes were less effective and efficient than no-fault schemes in delivering care and support, particularly to catastrophically injured people, for the following reasons:

- legal costs can be substantial and lump sum payments for compensation often fall short of meeting people’s lifetime needs

3 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support* (Productivity Commission Report), 31 July 2011, p.793

4 Productivity Commission Report, 31 July 2011, p.793

5 Queensland Treasury, *Response to submissions*, 2 February 2016, p.7

6 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.5

7 Queensland Treasury, *Response to submissions*, 2 February 2016, p.7

8 Motor Accident Insurance Commission, *Who can make a claim?* <http://www.maic.qld.gov.au/ctp-claims/making-a-ctp-claim/who-can-make-a-claim.shtml> (accessed on 18 February 2016)

9 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.1

10 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.1

11 Productivity Commission Report, 31 July 2011, p.790

- court outcomes are uncertain, people's future needs are unpredictable and poorly captured by a once-and-for-all lump sum, compensation is often delayed, and there is a risk that lumps sums are mismanaged
- adversarial processes and delays may hamper effective recovery and health outcomes, and
- in the presence of insurance, especially with little focus on risk-rating, the common law does not provide incentives for prudent behaviour by motorists and other parties.¹²

While accepting that no-fault arrangements reduce people's freedom to the extent that some common law rights are removed, the Productivity Commission considered that no-fault schemes are likely to produce generally superior outcomes compared with fault-based common law systems. The Productivity Commission considered that no-fault schemes:

- provide consistent coverage across injured parties according to injury related needs
- provide much more predictable and coordinated care and support over a person's lifetime
- do not adversely affect people's incentives to improve their functioning following an injury
- are likely to be more efficient
- currently perform no worse at deterring excessively risky behaviour as, despite the appearance of common law, it is the insurer who pays in CTP schemes and not the at-fault driver. In addition, although no-fault arrangements would probably not meet all persons' desire for 'punishment' of an at-fault party, there is no clear evidence that the common law achieves this either.¹³

Accordingly, the Productivity Commission recommended the establishment of the following separate schemes:

- a **National Disability Insurance Scheme** (NDIS) – similar to Medicare, in that all Australians with a significant and ongoing disability would get long-term care and support, and
- a **National Injury Insurance Scheme** – to cover the lifetime care and support needs of people who sustain a catastrophic injury from an accident, based on the motor vehicle accident schemes that operate in some States and Territories.¹⁴

National Injury Insurance Scheme

The Productivity Commission Report recommended that a federated model of separate, state-based schemes be established to provide lifetime care and support to all people newly affected by catastrophic injury, regardless of who was at-fault for the accident. The Productivity Commission considered that this approach would provide for consistent, national minimum care and support arrangements.¹⁵

The Productivity Commission also recommended that the proposed NIIS cover catastrophic injuries caused by four accident types: motor vehicle accidents; workplace accidents; medical accidents and general accidents (occurring in the home or community).¹⁶

The Productivity Commission suggested that the NIIS cover reasonable and necessary attendant care services; medical and hospital treatment and rehabilitation services; home and vehicle modifications; aids

12 Productivity Commission Report, 31 July 2011, p.789

13 Productivity Commission Report, 31 July 2011, p.789

14 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.2

15 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.19

16 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.19

and appliances; educational support; help for people to have a greater role in the workforce and socially; and domestic assistance.¹⁷

The Productivity Commission recommended that the NIIS be separate from the NDIS for the following reasons:

- the NIIS would be a “fully funded scheme” with strong incentives to manage costs over time compared with the NDIS which would be a “pay as you go” system
- the NIIS would cover a variety of health costs associated with catastrophic injuries, such as acute care and rehabilitation
- there is already existing expertise in no-fault schemes in some jurisdictions which can provide a valuable platform for learning and dissemination of skills and expertise, and
- the NIIS would be funded through sources which would send price signals (higher premiums) to encourage improved safety.¹⁸

The Productivity Commission recommended that the NIIS be implemented over three years with a NIIS to cover catastrophic injuries for motor vehicle accidents in all jurisdictions on a no-fault basis by the end of 2013.¹⁹ This implementation timescale was amended, however, for each State and Territory in accordance with their respective Heads of Agreements with the Australian Government to implement the NDIS.

2.2 Intergovernmental Agreement for launch of NDIS

On 7 December 2012, an Intergovernmental Agreement for the NDIS Launch was signed by all States and Territories. The Launch Agreement included the following provisions about support for people who are catastrophically injured in motor vehicle accidents:

Launch

112. All states endeavour to agree minimum benchmarks to provide no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents prior to the commencement of the NDIS launch.

113. If a host jurisdiction is unable to implement minimum benchmarks prior to or during launch, that host jurisdiction will be responsible for 100 per cent of the cost of participants in the NDIS who are in the NDIS because they are not covered by an existing or new injury insurance scheme that meets the minimum motor vehicle benchmarks.²⁰

The Launch Agreement was subject to finalisation of subsequent agreements for the adoption of the full NDIS, with each State and Territory. The committee notes that the Western Australian Government has not signed a Heads of Agreement with the Australian Government to implement the NDIS.

2.3 Agreed Minimum Benchmarks and definition of catastrophic injury

A Council of Australian Governments (COAG) communique of 19 April 2013 reported that minimum national benchmarks (Agreed Minimum Benchmarks) had been developed for the provision of no-fault

17 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Plain English version*, 31 July 2011, p.19

18 Australia Treasury, *National Injury Insurance Scheme*, <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme> (accessed on 4 March 2016)

19 Productivity Commission, *Productivity Commission Inquiry Report No.54 – Disability Care and Support – Overview and recommendations*, 31 July 2011, p.47

20 National Disability Insurance Scheme, *Intergovernmental agreement for the National Disability Insurance Scheme Launch*, 7 December 2012

lifetime care and support for people who are catastrophically injured in motor vehicle accidents.²¹ The rationale for the Agreed Minimum Benchmarks is to ensure consistency between jurisdictions on eligibility for the NIIS and level of benefits and standard of care provided.²²

The COAG communique stated that “Queensland has ... agreed in-principle with the minimum national benchmarks”.²³ A summary of the Agreed Minimum Benchmarks is set out in Table 2 below:

Table 2 – What is a catastrophic injury covered by the NIIS?

At a minimum, jurisdictions should have eligibility rules which include people who suffer the following catastrophic traumatic injuries in motor vehicle accidents:

1. **Spinal cord injury** – based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
2. **Traumatic brain injury** – based on evidence of a significant brain injury which results in permanent impairments of cognitive, physical and/or psychosocial functions. A defined period of post traumatic amnesia plus a Functional Independence Measure (FIM)²⁴ at five or less, or two points less than the age appropriate norm (or equivalent where other assessment tools are used), would be required.
3. **Multiple amputations of upper and/or lower extremities or single amputations** involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or “short” transfemoral amputation involving the loss of 65 per cent or more of the length of the femur.
4. **Burns** – full thickness burns greater than 40 per cent of the total body surface (or greater than 30 per cent in children under 16 years) or full thickness burns to the hands, face or genital area, or inhalation burns causing long term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used).
5. **Permanent traumatic blindness** – based on the legal definition of blindness.

Source: Council of Australian Governments, *Meeting Communique* – Canberra, 19 April 2013

The Agreed Minimum Benchmarks state that each jurisdiction should cover injuries which arise from accidents which:

- involve at least one registrable vehicle
- occur on a public road or other locations where registrable vehicles are commonly driven, including driveways and car parks, and areas adjacent to roads such as nature strips, footpaths and other road related areas, and
- are the result of the driving of the vehicle, the vehicle running out of control, action taken to avoid a collision with the vehicle, or a collision with the vehicle while it was stationary, and includes injuries to pedestrians and cyclists injured as a result of such incidents.²⁵

The Agreed Minimum Benchmarks provide that at a minimum each jurisdiction’s NIIS will cover people who are catastrophically injured in motor vehicle accidents in their jurisdiction, but coverage may be broader. Arrangements are also to be established for State and Territory NIIS schemes to purchase care

21 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

22 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.2

23 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

24 The FIM is a basic indicator of severity of functional limitation that uses a seven point ordinal scale for each of 18 activities of daily living. The scale provides for the classification of individuals by their ability to carry out an activity independently, versus their need for assistance from another person or a device. If help is needed the scale assesses the degree of that need

25 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

and support services from each other when a scheme participant resides in a different jurisdiction to that which is responsible for funding.²⁶

The Agreed Minimum Benchmark is that exclusions from the NIIS should be limited to people who:

- have received a common law compensation payment in respect of their care and support needs resulting from the motor vehicle accident
- have an existing catastrophic injury, or
- are already a participant of the NDIS in respect of the costs of care and support already being provided by the NDIS.²⁷

The minimum level of entitlement includes access to reasonable and necessary care and support for eligible people to the services at Table 3, to the extent they arise for a motor vehicle accident. A NIIS may provide a broader range of services, and may also provide capacity for self-managed funding by participants where appropriate.

Table 3 – Minimum entitlements for NIIS

Medical treatment (including pharmaceuticals) Dental treatment Rehabilitation Ambulance transportation Respite care Attendant care services	Domestic assistance Aids and appliances Artificial members, eyes and teeth Education and vocational training Home and transport modification
Source: Council of Australian Governments, Meeting Communique – Canberra, 19 April 2013	

The Agreed Minimum Benchmarks also include a commitment to collect information in relation to: the number of entrants and their characteristics; classification of the entrant’s injury; the average cost of support of an entrant; the average cost of care in a jurisdiction; and the amount of care per claim overall and by injury classification.²⁸

2.4 Heads of Agreement between the Australian and Queensland Governments

On 8 May 2013, the Australian and Queensland Governments signed the Heads of Agreement on the NDIS (Heads of Agreement). The Heads of Agreement provided that Queensland’s transition to the full NDIS will commence from 1 July 2016 and that the full scheme will be implemented 1 July 2019.²⁹

In relation to the NIIS for motor vehicle accidents, the Heads of Agreement provided that:

Queensland agrees in principle with the National Injury Insurance Scheme (NIIS) minimum national benchmarks that have developed through the SCFFR for the provision of no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents and agrees to undertake work to determine the feasibility of extending its CTP scheme to meet the NIIS minimum benchmarks for motor vehicle accidents. From 1 July 2016, Queensland will be responsible for 100 per cent of

26 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

27 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

28 Council of Australian Governments, *Meeting Communique*, Canberra, 19 April 2013

29 Heads of Agreement between the Commonwealth and Queensland Governments on the National Disability Insurance Scheme, 8 May 2013, p.1

*the costs of NDIS participants who are in the NDIS because they are not covered by an injury insurance scheme that meets the minimum motor vehicle benchmarks.*³⁰

In addition:

*Jurisdictions without equivalent motor vehicle and workplace schemes will be responsible for 100 per cent of the costs of their citizens and visitors who enter the NDIS due to disability caused by relevant accidents within their jurisdictions.*³¹

The current Queensland Government has stated that it “is committed to implementing the scheme after the former LNP government signed Queensland up to a national agreement on minimum benchmarks for insurance coverage”.³²

30 Heads of Agreement between the Commonwealth and Queensland Governments on the National Disability Insurance Scheme, 8 May 2013, p.8

31 Heads of Agreement between the Commonwealth and Queensland Governments on the National Disability Insurance Scheme, 8 May 2013, p.9

32 Queensland Government, *Media Release*, 11 November 2015, [Queensland to protect people catastrophically injured in traffic crashes - The Queensland Cabinet and Ministerial Directory](#) (accessed on 3 March 2016)

3. Current position in Queensland

3.1 Current Compulsory Third Party Insurance Scheme in Queensland

Queensland currently operates a common law “fault” based CTP Scheme administered under the *Motor Accident Insurance Act 1994* (MAI Act) by the Motor Accident Insurance Commission (MAIC). The CTP Scheme was first introduced in 1936. While regulated by the MAIC, the CTP Scheme is underwritten by private insurers³³ licenced under the MAI Act.

The CTP Scheme provides motor vehicle owners, drivers, passengers and other insured people with an insurance policy that covers their unlimited liability for personal injury caused by, through or in connection with the use of the insured motor vehicle in incidents to which the MAI Act applies.

For the injured third party, it provides access to common law rights, where the injured person has a right to approach a law court to seek monetary compensation from the person “at fault” for the personal injury and other related losses (for example, lifetime care and support, economic loss and pain and suffering). As a fault based scheme it requires proof of liability, meaning the injured party must be able to establish negligence against an owner or driver of a motor vehicle.

The private licensed insurers accept applications for insurance and manage claims on behalf of their policy holders. Compensation is paid to accident victims from the respective insurer's premium pool.

The CTP Scheme also includes the Nominal Defendant, a statutory body, which determines liability for, and manages claims by, injured people where the “at fault” vehicle is uninsured or unidentified. It also acts as insurer of last resort if a licensed insurer becomes insolvent.³⁴

How is the CTP scheme paid for?

The CTP Scheme is currently funded via insurance premiums paid by motor vehicle owners when paying their motor vehicle registration. The CTP insurance premiums are calculated in accordance with the type and use of a motor vehicle. There are currently 24 classes of motor vehicle.

The premiums consist of the insurer’s premium, which varies between insurers (within a range determined by the MAIC), and the following levies and administration fees:

- **Statutory Insurance Scheme Levy** – to fund the MAIC in managing the CTP Scheme
- **Hospital and Emergency Services Levy** – to fund a reasonable portion of the cost of the public hospital and emergency services for injured people who may be claimants under the CTP Scheme
- **Nominal Defendant Levy** – to fund the costs of the Nominal Defendant in handling claims where the vehicle causing the accident is either uninsured or cannot be identified or where the CTP insurer becomes insolvent, and
- **Administration Fee** – to fund the cost of collecting insurance and the administration of the CTP Scheme by the Queensland Government.³⁵

The Queensland Treasury advised that the average CTP premium is approximately \$336 per annum for each registered motor vehicle.³⁶

33 The current licensed insurers are: AAI Limited (trading as Suncorp); Allianz Australia Insurance Limited; QBE Insurance (Australia) Limited; and RACQ Insurance Limited (trading as RACQ Insurance)

34 Motor Accident Insurance Commission, *Nominal Defendant*, 12 February 2015, <http://www.maic.qld.gov.au/about-maic/nominal-defendant.shtml> (accessed on 5 January 2016)

35 Motor Accident Insurance Commission, *Levies and Administration Fee*, <http://www.maic.qld.gov.au/ctp-premium/levies-admin-fee.shtml>, 12 September 2011 (accessed on 6 January 2016)

36 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.5

Who can make a CTP claim?

The CTP Scheme is an “at fault” system which means that a person injured in a motor vehicle accident in Queensland due to the fault (total or partial) of another motor vehicle driver, owner or other person insured under a CTP insurance policy can make a CTP claim against the CTP insurer of the vehicle that caused the accident.³⁷ If the claimant was partially at fault, the claim can still be made but the compensation received may be reduced due to the person’s contributory negligence.

If no one was at fault - for example, a motor vehicle colliding with an animal; or a driver experiencing a ‘without warning’ medical emergency while driving, such as a heart attack - no claim can be made.³⁸ In such circumstances, the injured person will be required to rely on their own resources; sick leave entitlements; workplace leave entitlements; Medicare and the public health system; private health insurance (if any); income protection insurance (if any); and the support of family and community organisations. An injured person may also need some form of benefit from Centrelink to support their disability.

Relatives and dependants of a person who was fatally injured in a motor vehicle accident may make a CTP claim for loss or expenses, if the motor vehicle accident was wholly or partly the fault of another person.³⁹

What happens after a claim is made?

Claims for compensation are assessed individually and the amount of compensation paid to the claimant depends on the type and severity of the injuries and whether the claimant was partly at fault.

If a settlement is reached between the claimant and the CTP insurer, the matter is finalised and no further claim can be made from the CTP insurer.⁴⁰ In most cases, the claimant receives a lump sum at settlement as means of compensation for their injury paid by the “at-fault” driver’s insurer.

If the CTP insurer refuses a claim or to accept liability for the accident, the claimant has a common law right to approach a court to seek monetary compensation from the person “at-fault”. If the court determines in the claimant’s favour, they receive lump sum compensation for their injury paid by the “at-fault” driver’s insurance provider.

The amount received depends on factors, including: the type of injury; severity of the injury; the extent of ongoing impairment; future requirements; and the circumstances of the accident.⁴¹

37 Motor Accident Insurance Commission, *Who can make a claim?*, <http://www.maic.qld.gov.au/ctp-claims/making-a-ctp-claim/who-can-make-a-claim.shtml> (accessed on 18 February 2016)

38 Motor Accident Insurance Commission, *Who can make a claim?* <http://www.maic.qld.gov.au/ctp-claims/making-a-ctp-claim/who-can-make-a-claim.shtml> (accessed on 18 February 2016)

39 Motor Accident Insurance Commission, *Who can make a claim?* <http://www.maic.qld.gov.au/ctp-claims/making-a-ctp-claim/who-can-make-a-claim.shtml> (accessed on 18 February 2016)

40 Motor Accident Insurance Commission, *After you lodge your claim*, <http://www.maic.qld.gov.au/ctp-claims/making-a-ctp-claim/after-you-lodge-your-claim.shtml> (accessed on 4 March 2016)

41 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.6

Annual claims under the CTP scheme

Table 4 outlines the number of registered vehicles and CTP claim frequency data for 2005-06 to 2014-15.

Table 4 – CTP claim frequency for 2005-06 to 2014-15

Accident year	Registered vehicles	Claims	Claim frequency (per '000 vehicles)
2005-06	3,026,987	6,663	2.2
2006-07	3,176,383	6,515	2.1
2007-08	3,324,485	6,519	2
2008-09	3,442,572	7,012	2
2009-10	3,492,388	6,560	1.9
2010-2011	3,579,088	7,021	2
2011-2012	3,631,446	6,915	1.9
2012-2013	3,804,655	6,725	1.8
2013-2014	3,897,719	6,275	*
2014-2015	3,967,702	4,731	*

*The recent accident years' data is immature due to the "long tail" nature of CTP claims.

Note: Claim frequency is calculated using the number of CTP claims per '000 registered vehicles.

Source: Office of the Insurance Commissioner, Queensland Treasury, *Statistical Information, 1 January to 30 June 2015*, Motor Accident Insurance Commission, 2015, p.5

4. Approaches in other jurisdictions

No-fault lifetime care and support schemes (LCSS), similar to the scheme envisaged by the Productivity Commission, are available to differing extents in New South Wales (NSW), Victoria, South Australia, Tasmania, the Australian Capital Territory (ACT) and the Northern Territory. The Western Australian Government has also recently introduced legislation into Parliament to establish a “no fault” scheme by 1 July 2016.

Table 5 summarises the different approaches taken in other States and Territories in relation to third party motor vehicle insurance.

Table 5 – Comparison of approaches taken in other jurisdictions

	NSW South Australia ACT	Victoria Tasmania Northern Territory	Western Australia
Who is covered?	Catastrophically injured people – irrespective of fault	Catastrophically and non-catastrophically injured people - irrespective of fault Conviction for specified driving offences affect eligibility for the scheme	Catastrophically injured people. Two elements: <ul style="list-style-type: none"> no fault LCSS for catastrophically injured people who cannot establish fault, and existing CTP for catastrophically injury where another driver at fault
Can a person pursue a common law claim?	Those people who can establish fault may pursue common law claims for economic loss and pain and suffering, but not lifetime care and support	Those people who can establish fault may pursue common law claims for economic loss and pain and suffering, but not lifetime care and support Except for the Northern Territory where all common law rights are extinguished	Those people who can establish fault will seek common law compensation for all heads of damages (lifetime care and support, economic loss and pain and suffering) from the CTP scheme

As can be seen in Table 5, NSW, South Australia and the ACT currently operate no-fault LCSS for people who sustain catastrophic injuries as a result of a motor vehicle accident, irrespective of who was at fault for the accident. The LCSS are underwritten by the government. In these jurisdictions, claims for non-catastrophic injuries are dealt with via a CTP scheme which is underwritten by private insurers.

Victoria, Tasmania and the Northern Territory operate no-fault LCSS for people who sustain injuries in motor vehicle accidents, irrespective of who was at fault. However, the schemes in these jurisdictions cover both catastrophic and non-catastrophic injuries and are wholly underwritten by the Government.

The committee understands that the proposed Western Australian scheme, to commence on 1 July 2016, is a hybrid model which comprises:

- a new no-fault LCSS to provide reasonable and necessary support to people who are catastrophically injured as a result of a motor vehicle accident, and who are not able to assert that their injuries were caused by the fault of another driver, and

- the existing CTP scheme for people who are catastrophically injured in a motor vehicle accident, who are able to assert that their injuries were caused by the fault of another driver. Lump sum payments would be made to people who are catastrophically injured, their family or trustee to manage the investment and expenditure of funds for reasonable and necessary costs for lifetime care and support. Injured people may also make common law claims for other heads of damage.⁴²

The committee notes, however, that most of the detail of the Western Australian model will be set out in subordinate legislation which is not yet available.

Further information about the key attributes of the schemes in each jurisdiction can be found in **Appendix C**.

5. Options for implementing the National Injury Insurance Scheme in Queensland

The Terms of Reference required the committee to consider the most suitable model for implementing the NIIS for people catastrophically injured in motor vehicle accidents in Queensland. The term catastrophically injured is defined in the Agreed Minimum Benchmarks (see Chapter 2.3 of this report).

The two options for the implementation of the NIIS identified in the Terms of Reference are:

- a full no-fault LCSS, irrespective of fault, or
- a hybrid model – a hybrid of the existing common law scheme and LCSS.

The Law Council of Australia, in its submission, suggested that maintaining the “status quo” in Queensland would arguably be the most efficient means of funding full-funded care and support for catastrophically injured people, as it would be provided via the NDIS.⁴³

The Insurance Commissioner advised that the cost of a no-NIIS option, whereby catastrophically injured people who were unable to assert fault would receive care and support via the NDIS was explored, but “government indicated that is not an option it will pursue”.⁴⁴

5.1 Option A – full no-fault lifetime care and support scheme

Option A – a full no-fault LCSS would provide lifetime care and support for all people who sustain a catastrophic injury from a motor vehicle accident, irrespective of fault.

Under this option, catastrophic injury claims and support and care would be managed by the LCSS, instead of through a common law settlement or court process. There would be no lump-sum compensation for the lifetime care and support costs (as is the case with a common law settlement), instead the claimant’s lifetime care and support costs would be met by the LCSS as they arise, over their lifetime.

The injured person would still be able to seek compensation for other heads of damage, including economic loss and pain and suffering, where fault could be established.

Non-catastrophic injuries would continue to be dealt with under the existing CTP Scheme. Eligibility for the LCSS and for the care, treatment and rehabilitation services provided would be based on the Agreed Minimum Benchmarks.⁴⁵

This full no-fault LCSS is similar to the model envisaged by the Productivity Commission and the schemes that are currently in place in NSW, the ACT and South Australia.

5.2 Option B - hybrid common law and no-fault care and support scheme

Hybrid model costed by Queensland Treasury

The Queensland Treasury has costed an example of a hybrid model. Under this model, a person who is catastrophically injured in a motor vehicle accident who can establish that another driver was at-fault for the accident would be eligible to claim from the existing CTP Scheme.

Damages would be paid, mostly as a lump sum payment from the CTP Scheme. However, for partly at-fault claimants the damages paid for lifetime care and support would no longer be subject to a deduction to allow for the claimant’s contributory negligence. Lump sum payments for other heads of

43 Law Council of Australia, Submission no.26, p.2

44 Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 December 2015, p.5

45 Taylor Fry, Motor Accident Insurance Commission – Actuarial estimates of long term costs of possible options for Lifetime Care and Support Scheme for people catastrophically injured in motor accidents in Queensland (Taylor Fry Report), 20 January 2016, p.2

damage, such as economic loss and pain and suffering, would remain subject to deductions for contributory negligence.

A person who is catastrophically injured in an accident in which either they were wholly at fault or were unable to identify an at-fault driver would be eligible for the LCSS described in Option A above.⁴⁶

Further hybrid model – Australian Lawyers Alliance

The Australian Lawyers Alliance (ALA) suggested a variation on the hybrid model, which it considered would provide an element of choice for those people catastrophically injured in a motor vehicle accident who can establish that another driver was at fault to seek lump sum compensation.⁴⁷

Funding arrangements

Under the ALA's model, the private CTP insurer would collect a premium consisting:

- the CTP component – which is kept by the private CTP insurer to meet its obligations, and
- the LCSS levy – which is paid to the lifetime care and support authority to meet its obligations.

The private CTP insurers' obligations would be to meet the fault-based claims of all people injured in a motor vehicle accident, irrespective of severity. For:

- non-catastrophic injuries – all heads of damages (e.g. care and treatment, economic loss and pain and suffering), and
- catastrophic injuries – economic loss and pain and suffering only.

The lifetime care and support authority's obligations would be to meet all care and treatment expenses for the approximately 136 people annually who are catastrophically injured in Queensland in motor vehicle accidents, irrespective of fault.

Under this model, because the lifetime care and support authority has collected the funds to cover liability for care and treatment for all catastrophically injured people, the authority would meet that liability – whether by lump sum payments (an option for those who can establish fault) or lifetime payments.

Scheme design

All catastrophically injured people would initially enter the LCSS, for up to two years, irrespective of fault. After two years a decision would be made about whether the person is eligible to be a lifetime participant in the scheme. If a person is deemed to be a lifetime participant, there would be two separate pathways:

- the LCSS would continue to provide care and support to those people who cannot establish fault, and
- those people who can establish fault would be able to apply to “opt out” of the LCSS and to seek a lump sum compensation payment.

The ALA suggested that the decision to “opt-out” could be subject to judicial approval, whereby the court decides whether it would be appropriate for a person to “opt-out” of the LCSS.⁴⁸ Where an “opt out” occurs, the lifetime care and support authority would become a party to the claimant's compensation claim. The CTP insurer would cover the liabilities for which it had collected premium (pain and suffering and economic loss) and the lifetime care and support authority would cover the liability for which it has collected a levy (care and support needs).

46 Taylor Fry Report, 20 January 2016, p.2

47 Australian Lawyers Alliance (ALA), *Correspondence*, 19 February 2016, p.1

48 Mr Andrew Stone SC, Former National President, ALA, *Public hearing transcript*, 2 March 2016, p.2

Claims may be settled by all parties or, if no agreement is reached, subject to a court decision. As is currently the case under the CTP Scheme, a court may decide that any lump sum payments should be subject to trustee arrangements, if there are concerns about the person's capacity.⁴⁹

⁴⁹ ALA, *Correspondence*, 19 February 2016, p.1

6. Costs, affordability and sustainability

A key aspect of the Terms of Reference is the fiscal affordability of the scheme – for the Government, Queensland taxpayers, and motorists. Underpinning this was a requirement that the committee consider how to sustainably and cost-effectively fund the long-term liabilities associated with meeting the Agreed Minimum Benchmarks for motor vehicle accidents, in accordance with actuarial advice.

The committee notes that it is difficult to accurately predict the cost of a LCSS, as costs are dependent on a number of variables, including the number of people catastrophically injured in any year; the nature of the supports required over their lifetime; the variable costs of providing reasonable and necessary support; liabilities associated with scheme administration; and broader economic conditions, which contribute to fluctuations in inflationary pressures and investment returns.⁵⁰ Given these uncertainties, the committee acknowledges that it may take several decades for a no fault scheme to mature and achieve a reasonable degree of fiscal predictability.

Additionally, the committee notes that the very long duration of scheme liabilities mean that, in time, long-term assets/liabilities are expected to grow to more than thirty times the size of annual levies or costs incurred.

Given the extreme sensitivity of financial markets, as well as the potential for short-term volatility in participant costs and limited scope for short-term funding responsiveness; the committee acknowledges that it is likely that it will not be possible to maintain scheme funding within a narrow target range. Even with informed modelling and prudential approaches to scheme funding and fiscal management, it can be expected that the NIIS implemented in Queensland may spend periods under-funded and over-funded.⁵¹

6.1 Estimated scheme costings

Net cost estimates

The Queensland Treasury provided the committee with Actuarial Reports on Costs which outlined estimates of the long-term costs of the NIIS models under consideration. The cost estimates have three key components:

1. **long-term costs of the LCSS**, including care and support services and case management; administration expenses; and income offsets from returns on invested scheme funds
2. **CTP Scheme cost impacts**, and
3. **additional costs payable by the NDIS and recoverable from the Queensland Government** for people who suffer a catastrophic injury in a Queensland motor vehicle accident and who are not covered by a NIIS scheme which meets the Agreed Minimum Benchmarks.⁵²

Cost estimates were reported both in terms of the overall annual costs and as annual costs with respect to the number of registered vehicles in Queensland, with projections provided through to 2116. The use of a cost-per-vehicle estimate is consistent with the specific jurisdiction of the NIIS for motor vehicle accidents and with other jurisdictions which fund the scheme through motor vehicle registration. While the committee notes that other funding mechanisms are available to the Government; this per-vehicle estimate may be considered indicative of likely cost implications for motorists or taxpayers.

50 The actuarial costings provided by Taylor Fry include a sensitivity analysis outlining the cost implications of possible changes in base case costings as a result of a range of hypothetical events, including: increases in anticipated investment returns; greater than expected claims cost inflation; significant changes in the proportion of people catastrophically injured in motor vehicle accidents who were wholly at-fault; and proportionally higher general operating expenses recovered from the Queensland Government. See: Chapters 11 and 12 of Taylor Fry Report, 8 July 2014 and Chapter 5 of Taylor Fry Report, 20 January 2016

51 Mr Geoff Waite, Assistant Under Treasurer, Corporate Group, Queensland Treasury, *Public hearing transcript*, 5 February 2016, p.10; Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.3

52 Taylor Fry Report, 20 January 2016, p.3

The following estimated annual net increases in costs were calculated for the options under consideration, in 2016 values and based on long-term economic assumptions:

- **Option A – Full Lifetime Care and Support Scheme:** a total annual net increase of **\$253.8 million**, or approximately **\$60 per vehicle** (central estimate), comprised of:
 - an estimated outlay of \$347.6 million or \$82 per vehicle for the LCSS, and
 - offsetting this LCSS cost, an estimated reduction of \$93.8 million or \$22 per vehicle in the cost of the CTP premium, due to the removal of lifetime care and support costs (transferred to the LCSS).
- **Option B – Hybrid Model:** a total annual net increase of **\$319.5 million**, or approximately **\$76 per vehicle** (central estimate), comprised of:
 - \$151.4 million or \$36 per vehicle for the cost of the LCSS for people who are not entitled to claim under the Queensland CTP scheme (i.e. people wholly at fault or for whom no-one was at fault)
 - an increase of \$6.2 million or \$2 per vehicle to the cost of CTP premium, to provide for the removal of contributory negligence for care and support compensation, and
 - an additional \$161.8 million or \$38 per vehicle for lifetime care and support payable by the NDIS and recoverable from the Queensland Government, in relation to people who have exhausted their CTP lump sum for care and support.⁵³

This third cost component for Option B assumes that people who exhaust their CTP lump sum will be able to “fall back” and receive care and support under the NDIS, albeit at a reduced level for the remainder of their lifetime (adjusted in light of their CTP compensation); and that the NDIS costs will be recovered against the State.⁵⁴

Due to the assumptions on which the costings were based, some of which are “inherently highly uncertain”,⁵⁵ the report also provides costings for two alternative Option B scenarios:

- a “low” scenario, where people who exhaust their lump sum CTP payments are not entitled to receive care and support through the NDIS, and so no further costs will be recoverable from the Queensland Government – an estimated overall cost of **\$37 per motor vehicle**, and
- a “high” scenario in which a person who exhausts their lump sum payment will be entitled to receive care and support under the NDIS, except that the reduction in the amount of support they may receive (e.g. preclusion/adjustment) is applied only during the first 10 years after the accident. Accordingly, during the rest of the person’s life, the costs recoverable from the Queensland Government would be higher – an estimated overall cost of **\$82 per motor vehicle**.⁵⁶

On 15 March 2016, the Queensland Treasury provided the committee with a copy of an external actuary’s report on the possible estimated costs of the hybrid model proposed by the ALA. The report stated that:

53 Taylor Fry Report, 20 January 2016, pp.7-8

54 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Correspondence*, 22 January 2016, p.2

55 The Actuarial Reports on Costs state that “...Given the current early stage of implementation of the NDIS and complexities of the NDIA’s Operational Guidelines, it is unclear how recovery of past amounts and reduction of future supports to allow for compensation payments received by NDIS participants will be applied in practice”, Taylor Fry Report, 20 January 2016, p.27

56 Taylor Fry Report, 20 January 2016, p.27

*The combination of uncertainty about how the ALA Hybrid Option C might operate, and the inherent complexity of the issues, mean that we cannot provide a detailed analysis and estimates of costs for the ALA Hybrid in the very limited time available.*⁵⁷

The report advised that “... our tentative general conclusion is that it appears that the net increase in cost for the ALA Hybrid Option ... would be closer to our previous estimate for the Original Hybrid Option B ... than to our estimate for Option A”.⁵⁸

As actuarial costings for the ALA’s model were not available, the committee focused on the costings provided for Options A and B in its consideration of scheme funding and affordability. In doing so, the committee noted the external actuary’s advice that additional charges associated with the ALA model would be closer to those estimated for Option B.

LCSS Costs

The net annual LCSS cost estimates in the Actuarial Reports on Costs – \$348 million or \$82 per vehicle for Option A and \$151million or \$36 per vehicle for Option B – are made up of three cost components:

- participant care, support and case management expenses
- general operating/administrative expenses, and
- investment return during the period between the receipt of a levy amount by a LCSS and the payment of LCSS expenses.⁵⁹

Estimates of the LCSS component costs and the overall cost of the scheme are summarised in Table 6.

57 Taylor Fry, *Comments on estimated costs of possible alternative models for a Queensland lifetime care and support scheme* (“LCSS”), 15 March 2016, p.7

58 Taylor Fry, *Comments on estimated costs of possible alternative models for a Queensland lifetime care and support scheme* (“LCSS”), 15 March 2016, p.7

59 Taylor Fry Report, 20 January 2016, p.3

Table 6– Central estimates of the net present value of an LCSS for the accident year commencing 1 July 2016, in 2016 present values

	Option A – a "full" Queensland LCSS (\$ million)	Option B – a "hybrid" Queensland LCSS (\$ million)
Estimated number of participants⁽ⁱ⁾	135.5	65.5
Participant care, support and case management⁽ⁱⁱ⁾		
<i>Attendant Care</i>	230.4	96.0
<i>Hospital</i>	22.7	9.5
<i>Medical</i>	9.9	4.1
<i>Rehabilitation</i>	19.6	8.1
<i>Home modifications</i>	6.4	2.7
<i>Equipment</i>	13.5	5.6
<i>Case management</i>	13.6	5.7
Total participant care, support and case management expenses	316.0	131.7
General operating expenses⁽ⁱⁱⁱ⁾		
	31.6	19.8
Overall annual LCSS cost		
	347.6	151.4
Cost per registered vehicle^(iv)		
	82.3	35.9

(i) Estimated number of participants derived from patient data, CTP claim data and NSW LTCSA data, adjusted for Queensland registered vehicles and traffic fatalities.

(ii) Care, support and case management estimates exclude GST

(ii) General operating expenses include staffing and information technology costs, professional advice fees, and other expenses associated with the administration of an entity responsible for the management of a LCSS. Expenses are calculated as a proportion of care, support and case management costs based on 2013 valuation reporting for the NSW LCSS (9.3%), adjusted for Queensland (Option A – 10%, Option B – 15%).

(iv) Based on reported vehicle registrations, excluding trailers.

Source: Actuarial Reports on Costs, July 2014 and January 2016.

The estimates reflect an average estimated lifetime care cost per participant of approximately \$2.3 million in Queensland. Table 7 outlines the average estimated costs for lifetime care and support in other Australian jurisdictions.

Table 7 – Average estimated costs of lifetime care and support per participant in Australian jurisdictions

New South Wales	Queensland	South Australia	Victoria	Western Australia
\$2.7 million	\$2.3 million	\$2.5 million	\$1.0 million	\$4.0 million

Note: Figures are calculated as an annual average of estimated lifetime care and support costs per participant, which exhibit high quarter to quarter volatility subject to variation in distributions of participant age, injury type and severity.

Source: Lifetime Care and Support Authority, *Annual Report, 2014-15*, State of New South Wales, 2015, p.30, 92; Actuarial Reports on Costs, July 2014 and January 2016, Productivity Commission Report, 31 July 2011, p.839; Ms Lois Boswell, Chief Executive, Lifetime Support Authority, South Australia, *Public hearing transcript*, 5 February 2016, p.2; Mr Rod Whithear, Chief Executive and Managing Director, Insurance Commission of Western Australia, *Public hearing transcript*, 5 February 2016, p.16 and 18.

Stakeholders' views

Stakeholders acknowledged the high levels of uncertainty associated with costing the scheme models due to complex variables, including: individuals outliving their life expectancies and changes in care needs, carer award rates and costs of living.⁶⁰ On balance, the insurance and disability service sectors considered that the costings constitute reasonable estimates of annual and ongoing scheme liabilities under the models.⁶¹

Concerns were raised that some of the assumptions used in the actuarial costings may have contributed to an overstatement or understatement of certain costs or a failure to adequately account for potential cost offsetting effects of certain scheme benefits or conditions.

Cost of people returning to the NDIS

The QLS and ALA raised concerns about “unsound” and “extreme” modelling assumptions for Option B in relation to the estimated “fall back” on the NDIS by some individuals who have received a lump sum CTP payment and subsequently exhausted this amount.⁶² The QLS submitted:

The Taylor Fry Report appears to assume that, under a hybrid system, a significant number of claimants will exhaust their lump sum payments and be forced back onto the NDIS for care and support, and that any payments made by the NDIS will be recoverable from the State government.

There would appear to be no examples from other jurisdictions which substantiate this, and ... in the absence of other evidence to which the Society has not been made a party, this assumption would appear to be utterly baseless...⁶³

The Queensland Treasury clarified that the costings do not assume that *all* lump sum recipients will access the NDIS, but rather that *on average* they will seek support equivalent in value to the gap between the estimated value of lifetime care and the value of the benefits received for lifetime care and support under the CTP Scheme.⁶⁴

The Quarterly Brain Injury Services Meeting (QBISM) considered that the estimated NDIS-related liabilities may in fact be more likely to exceed the central cost estimate:

The potential for functional deterioration under option 2 [hybrid model] could also significantly increase lifetime care costs for people with catastrophic injury who enter the NDIS at a later stage. These increased costs would be borne by the Queensland state government...⁶⁵

The committee notes that the costing for Option B of approximately \$76 was accompanied by alternative scenarios (low scenario of \$37 and high scenario of \$82) which provide a cost range to cover a range of service levels under the NDIS.

60 Ms Amanda Aitken, General Insurance Practice Committee Member, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27; Mr Angus Cairn, General Manager, CTP Claims, RACQ, *Public hearing transcript*, 7 March 2016, p. 5; Ms Lois Boswell, Chief Executive, Lifetime Support Authority (LSA), South Australia, *Public hearing transcript*, 5 February 2016, p.3; Dr Ros Harrington, Centre for National Research on Disability and Rehabilitation (CONROD), Griffith University, *Public hearing transcript*, 17 February 2016, p.22

61 Ms Vicki Mullen, General Manager, Consumer Relations and Market Development, Insurance Council of Australia (ICA), *Public hearing transcript*, 17 February 2016, p.6; Mr Bradley Heath, Chief Executive Officer, RACQ Insurance, *Public hearing transcript*, 17 February 2016, p.6.

62 Queensland Law Society (QLS), Supplementary Submission no.2s, p.2; ALA, Supplementary Submission no.19s, p.4

63 QLS, Submission no.2, p.1

64 Queensland Treasury, *Response to supplementary submissions*, 26 February 2016, pp.3-4.

65 QBISM, Submission no.17, Appendix, p.12

Operating expenses

The ALA raised concerns about the estimated level of general operating expenses under Options A and B, and the assumption that a larger scheme may have a reduced administrative burden (as a proportion of overall claims costs), due to likely economies of scale. Mr Andrew Stone SC, former National President, ALA, stated that “Treasury have asserted that the administration costs of this scheme are pretty cheap” when “the experience of long-tail schemes is the contrary”.⁶⁶

Other stakeholders considered the estimated general operating expenses to be “slightly excessive”.⁶⁷ Headway Gold Coast Inc. (Headway) and the Australian Physiotherapy Association (APA) submitted that while “there is a risk that the NIIS will increase red tape”;⁶⁸ there is significant scope to reduce costs through the engagement of integrated service delivery frameworks, which needs to be factored into these staffing and general expense estimates.⁶⁹

Service delivery costs

Stakeholders, including the APA, questioned whether lifetime care and support estimates included appropriate allowance for likely cost reductions or increases as a result of technological and service innovation in health care, and accompanying improvements in patient outcomes.⁷⁰ APA expressed a specific concern that the long term smoothing of estimates may fail to sufficiently capture the necessary upfront investments in physiotherapy needed to facilitate the rehabilitation and general health and wellbeing of a person in the scheme.⁷¹

In response, the Queensland Treasury stated:

*Queensland Treasury believes that the NSW LTCS provides a reasonable basis from which to calibrate expected costs for the Queensland NIIS, including the costs of physiotherapy, home modification and ongoing equipment costs. Taylor Fry's report has in fact assumed an increase in care rates with both age and duration since injury, consistent with the assertion of the APA.*⁷²

In relation to the accommodation of potential service improvements and benefits in the actuarial costings, the State Actuary advised that “the expected cost of NIIS benefits is very difficult to quantify as there is limited experience with which to calibrate it and, due to the very long duration of the benefit liabilities, [and] high levels of sensitivity to key assumptions”.⁷³ Further, while costings do not allow for “technological change that is unforeseeable”, modelling and costings can continue to be refined and developed over time to reflect this type of change.⁷⁴

66 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.7

67 Mr Russell Nelson, Chief Operational Officer, Headway Gold Coast Inc. (Headway), *Public hearing transcript*, 17 February 2016, p.18

68 Mr Russell Nelson, Headway, *Public hearing transcript*, 17 February 2016, pp.18; APA, Submission no.23, p.5

69 Mr Russell Nelson, Headway, *Public hearing transcript*, 17 February 2016, pp.18-19; Headway, Supplementary Submission no.13s; APA, Submission no.23, p.5; Queensland Paediatric Rehabilitation Service (QPRS), Submission no.16, p.4

70 Mr Michael Roth, Executive Manager, Public Policy, RACQ, *Public hearing transcript*, 17 February 2016, p.3; RACQ, Submission no.11, p.6

71 Australian Physiotherapy Association (APA), Supplementary Submission no. 23s, p.1

72 Queensland Treasury, *Response to supplementary submissions*, 26 February 2016, p.6

73 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.2

74 Mr Wayne Cannon, State Actuary, *Public hearing transcript*, 2 March 2016, p.8

6.2 Scheme funding and sustainability

Underwriting of the scheme

Stakeholders generally supported the State Government underwriting and funding the scheme.⁷⁵ The committee notes that private insurers have indicated that they have no desire to underwrite the NIIS, given “the very long tail nature of the scheme is not suitable to a private underwriter in terms of how much capital it would need to put aside and the uncertainty of such a long tail scheme”.⁷⁶ Suncorp explained that government underwriting of LCSS is “necessary” because:

The shareholders of a private-sector insurer require an adequate return on this capital to maintain profitability, which accordingly puts upward pressure on the premiums motorists would be required pay. The public sector is not subject to the same APRA [Australian Prudential Regulation Authority] requirements and, due to the strength of a State Government’s balance sheet, is better placed to underwrite high-cost, long-term, volatile risks of this sort....Put simply, it is generally more expensive for motorists to have their catastrophic care underwritten by private insurers...

*The annual cost paid by motorists for this level of assurance is minimised when provided by an efficient lifetime care scheme.*⁷⁷

Estimates provided by the State Actuary suggest that the average premium increase associated with a privately underwritten NIIS, would be “\$110 - \$180 per vehicle higher than the \$82 [excluding CTP Scheme cost offsets] indicated ...for a publicly underwritten scheme”.⁷⁸ The State Actuary noted that “presumably” for this reason “all other States that have implemented or announced a NIIS have publicly underwritten the scheme”.⁷⁹

Submitters highlighted various other reasons why government would be best placed to underwrite the State’s LCSS. QBE, for example, submitted that the establishment of an “independent but Government-backed authority”:

*... would ensure that the claims process remains a two way interaction primarily between the customer and the Government body. Private insurers then are able to deal with the customer and the Government separately as required in each case.*⁸⁰

Financial management and governance

The Treasury advised that:

*... it is estimated that 136 people will be catastrophically injured in road traffic crashes in Queensland in 2016-17 ... Working off 136 people injured after they had entered the NIIS, it would result in the liability of Queensland of approximately \$470 million. After 10 years the estimated costs of this liability could be in the order of \$4.5 billion.*⁸¹

The long-tailed nature of this liability means that, as the Executive General Manager of the NSW Lifetime Care and Support Authority (LTCSA), Mr Don Ferguson, stated:

The key mechanics of the funding of the scheme is a reliance on investment return. The outgoings are spread over such a long period of time that it enables the amount that

75 Queensland Treasury, *Response to submissions*, 2 February 2016, p.12

76 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 2 December 2015, p.5

77 Suncorp, Submission no. 18s, Appendix, p.8

78 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.4

79 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.4

80 QBE, Submission no.14, p.2

81 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.5

*we collect in any one year to only account for about 20 per cent of the amount that it will cost to provide the services to the people injured that year.*⁸²

It is anticipated that, in Queensland, the pool of funding accumulated to meet outstanding claims liabilities would reach more than \$20 billion within 25 years;⁸³ and will progressively increase to more than 30 times annual levy amounts.⁸⁴

Given the size of this asset pool, the risk to Government as the underwriter of the scheme and the associated cost implications for motorists and taxpayers, the committee considers that the Queensland Treasury will wish to ensure appropriate governance arrangements and sound investment and funding policies are put in place to facilitate the sustainable management of assets.

The State Actuary submitted that the characteristics of the scheme suggest its governance should have similar status to that underlying defined benefit superannuation assets. Accordingly, the State Actuary suggested:

*...the asset pool should be set up similarly to the superannuation and government insurance fund assets, under the oversight of the Long Term Asset Advisory Board (LTAAB) of the Queensland Treasury Corporation, chaired by the Under-Treasurer.*⁸⁵

Such arrangements are similar to those established in Victoria, as Transport Accident Commission (TAC), Chief Executive Officer, Mr Joe Calafiore advised:

*... Victorian Funds Management Corporation invests on behalf of the agency—so ourselves, WorkCover and the DTS statutory insurers. In effect, we set the objectives and the expected returns, but the actual investment itself is an outsourced function by the Victorian Funds Management Corporation. That is a central government process that we adhere to.*⁸⁶

Mr Ferguson, Executive General Manager, LTCSA NSW, advised that the Lifetime Care and Support Scheme (LTCS) in NSW has a board and investment committee that is responsible for the governance of the investment of the fund – investments in bonds, equities, infrastructure and some kept in cash.⁸⁷ Investment allocations are made on the basis of “a strategic asset allocation with assets in a range of different classes according to the advice of our fund managers”.⁸⁸

The State Actuary stated that such an investment advisory committee, statutory body or other governance arrangement would also be “plausible” options for Queensland.

Investment and funding policies

The Actuarial Reports on Costs highlighted that while long term estimates were based on a long term investment return rate of six per cent, there are a wide range of investment strategies that could be contemplated for the fund. The State Actuary noted that this might range from “liability driven asset allocations to aggressive portfolios with heavy equity and other risk asset exposures”.⁸⁹ Closely related to this chosen strategy is the funding policy that will be employed.⁹⁰

82 Mr Don Ferguson, Executive General Manager, Lifetime Care and Support Authority (LTCSA), NSW, *Public hearing transcript*, 5 February 2016, p.13

83 Taylor Fry Report, 8 July 2014, Appendix Q.1, Q.2 and Q.3

84 Taylor Fry Report, 8 July 2014, p. 67

85 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.3

86 Mr Joe Calafiore, Chief Executive Officer, Transport Accident Commission (TAC), Victoria, *Public hearing transcript*, 5 February 2016, p.24

87 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.13

88 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.13

89 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.3

90 Taylor Fry Report, 8 July 2014, pp.66-68

The Terms of Reference express a preference for the scheme to be fully funded on the basis of actuarial advice, much as currently occurs with other large government liabilities.⁹¹ This position was also echoed by stakeholders including the Insurance Council of Australia (ICA), Insurance Australia Group (IAG), Queensland Advocacy Incorporated (QAI), RACQ, QBE and Suncorp, all of whom highlighted the importance of ensuring that the no-fault scheme is fully funded to meet all required treatment and care for its participants.⁹² The committee notes that LCSS in other States and Territories are consistently operated on the basis of full funding of long-term liabilities in accordance with actuarial advice.

Ms Boswell, Chief Executive of the Lifetime Support Authority (LSA) in South Australia, advised the committee that the Lifetime Support Scheme (LSS) "... was modelled by actuaries ... as a break-even scheme" and "This is the longest tail form of insurance you can have because it pays for life and on a pay-as-needs basis".⁹³ The LSA also advised that its levy projection models include health and superimposed inflation and that it is modelled in a way "that it is expected that whatever has been collected will last for the lifetime of participants". The LSA stated that its current modelled levy income is approximately \$168 million and its current liabilities are \$144 million – resulting in a positive funding position of approximately \$24 million.⁹⁴

In addition, the LSA highlighted that it has a number of levers to control its net position, including the LSS eligibility criteria and recommendations to the Minister to adjust the levy costs.⁹⁵ The operation of these adjustment mechanisms is subject to an underlying principle "that it be a financially responsible scheme that is sustainable into the future".⁹⁶

In relation to long-term sustainability of the NSW scheme, LTCS, Executive General Manager, Mr Ferguson advised that the LTCS' "liabilities are approximately \$2.6 billion and the fund is in the vicinity of \$4 billion".⁹⁷ Mr Ferguson stated that "It is important, given the prematurity of the scheme, to ensure that we have sufficient margin there [between assets and liabilities] to not have to be concerned about raising levies into the future to ensure that we can provide adequate levels of support of people over the rest of their life".⁹⁸

Funding mechanism

The approach taken in the majority of jurisdictions (Table 8) is to fund the Government's liabilities as scheme underwriter by way of a levy on CTP premiums.⁹⁹

91 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 2 December 2015, p.4

92 ICA, Submission no.3, p.2; Insurance Australia Group (IAG), Submission no.7, p.3; Queensland Advocacy Incorporated (QAI), Submission no.8, p.3; RACQ, Submission no.11, p.2; QBE, Submission no.14, p.2; Suncorp, Submission no.18, p.3

93 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.2

94 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.3

95 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.3

96 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.1

97 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.11

98 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.11

99 Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 December 2015, p.4; ICA, Submission no.3, pp.1-3; QBE, Submission no.14, p.2; RACS, Submission no.15, p.1

Table 8 – Funding mechanisms for lifetime care and support schemes in Australia

Funding mechanism	Jurisdiction						
	NSW	ACT	VIC	SA	WA	TAS	NT
Medical Care and Injury Services Levy; paid with the purchase of CTP insurance		Levy on CTP insurance; level set by Commissioner	Levy – vehicle registration; varies by type and location of vehicle. Concessions for pensioners	Levy – vehicle registration			

All jurisdictions’ schemes are in keeping with the Productivity Commission’s view that a LCSS for motor vehicle accidents should be funded from existing insurance products that are mandatory for owners of motor vehicles (namely compulsory third party motor vehicle insurance).¹⁰⁰ The Insurance Commissioner stated that the use of a motor vehicle-based charge is a “fit-for-purpose costing model”, noting that the benefits of the scheme generally arise from the use of a motor vehicle, and concordantly; that the use of such a levy provides a clear price signal as to the overall costs incurred in providing these benefits.¹⁰¹

The committee notes that the Productivity Commission’s Report acknowledged that “as individual jurisdictions would be responsible for underwriting their own scheme, it would be a matter for each to choose between alternative sources of financing NIIS”.¹⁰² Additionally, at the public hearing on 2 December 2015, the Under Treasurer noted that “the government has made it clear that there will be no additional fees and charges—that was one of their election commitments in this term of government”.¹⁰³

Whilst noting stakeholder support for the common, CTP-based levy approach, the committee considered it prudent to consider a range of different financing options (see Chapter 8.3 of this report). The committee considered that possible alternative methods for charging for the LCSS include:

- a charge on the budget met through taxes or other incoming receipts,¹⁰⁴ and
- levies on other general insurance levies or charges may offer scope to broaden the funding base.

Whichever funding mechanism is chosen, the committee noted the advice of the State Actuary that the charge “should not be considered as a charge that is indexed by a certain amount each year”.¹⁰⁵ Rather, while “the levy will need to adjust over time with the emerging experience of the scheme”, “the levy setting framework will need to incorporate substantial smoothing to minimise the inconvenience to all stakeholders of annual volatility in the levy”.¹⁰⁶

The committee also noted that the GST treatment both of various scheme payments and of the scheme funding source merits scrutiny by government. The Chief Executive of the LSA in South Australia advised the committee that because the LSS is not an insurance scheme, it was able to attain a ruling from the

100 Productivity Commission Report, 31 July 2011, p.869

101 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 7 March 2015, p.26

102 Productivity Commission Report, 31 July 2011, p.869

103 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.5

104 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.10

105 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 2 December 2015, p.4

106 Mr Wayne Cannon, State Actuary, *Correspondence*, 4 December 2015, p.2

Australian Tax Office for its scheme levy not to include GST. The LSA also advised that not being an insurance scheme enables the LSS to be more flexible with discount rates.¹⁰⁷

More specific design elements of funding mechanisms as they effect the affordability of levied amounts for motorists and taxpayers, are considered further in Chapter 8 of this report.

6.3 Affordability – costs for motorists and taxpayers

While the exact funding mechanism established to finance the LCSS is a matter for government for comparative purposes, it is useful to consider the cost implications for motorists and taxpayers in terms of the CTP/vehicle registration framework, and the estimated per-vehicle costs.

The cost impact of the NIIS on motorists was a primary concern for the committee, which was conscious of cost of living pressures and that Queensland motorists faced a 3.5 per cent increase in fixed annual vehicle fees at the beginning of 2015.¹⁰⁸

Stakeholders highlighted that affordable motoring is of particular importance for Queensland given the State's decentralised population. As the RACQ stated, for Queenslanders in rural, regional outer suburb areas:

*...limited public transport combined with a higher proportion of low income households and the need to travel considerable distances to reach employment or services, can result in transport being a significant financial burden.*¹⁰⁹

Additionally, the RACQ noted that “affordability is also key in maintaining a high proportion of insured and registered vehicles, without which the [CTP] scheme could be compromised”.¹¹⁰

The Queensland Treasurer advised that currently, CTP premiums levied by the State's private insurers averaged around \$336, and base registration fees (including the traffic improvement fee) are approximately \$328. The net costs of registering a vehicle are upwards of \$670.¹¹¹ While the level of any additional LCSS levy amount is a decision for the Government, an assumption of full funding suggests additional costs for motorists will be equivalent to the per-vehicle cost estimates of \$60 (Option A) or \$76 (Option B).

These fee increases are broadly in line with those imposed in other jurisdictions that have introduced no fault schemes over the last decade.¹¹² For a variety of reasons, including differing treatment of risk margins or GST, and various additional reforms to CTP, these figures are not directly comparable.

The committee notes that in South Australia, the establishment of the LSS in 2014 introduced a \$110 Lifetime Care Levy payable with registration, which was offset by an estimated \$44 reduction in CTP premiums, for an additional net cost of approximately \$65 associated with the scheme.¹¹³

In NSW, the Motor Care and Injury Services Levy (MCIS Levy) was set at \$66 when the LTCS Scheme commenced in 2006. The accompanying scheme offset was amplified, because the Motor Accidents Authority (MAA) also “negotiated” for insurers to reduce their CTP premiums as the scheme was being introduced. Prior to the changes, CTP insurers had been making super-profits of up to 40 per cent of CTP premiums, as opposed to the eight per cent profit level expected by the MAA (the equivalent target in

107 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.3

108 RACQ, Submission no.11, p.3

109 RACQ, Submission no.11, p.5

110 RACQ, Submission no.11, p.5

111 Mr Jim Murphy, Under Treasurer, Queensland Treasury, *Public briefing transcript*, 2 December 2015, p.5

112 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 5 February 2016, p.31

113 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.2

Queensland is 7.75 per cent). The \$47 reduction in CTP premiums that occurred resulted in a net additional cost to motorist of \$19 per vehicle and “this remains the case nearly 10 years on”.¹¹⁴

In Western Australia, commencement of a no fault scheme from 1 July 2016 will be accompanied by an additional \$99 levy for each vehicle and motorcycle. This estimate is materially larger than that modelled for Queensland, due largely to the inclusion of a risk margin and 10 per cent GST, as well a range of differing assumptions as to care costs and the age and injury severity distribution of claimants.¹¹⁵ The Queensland Insurance Commissioner stated that these allowances would “add \$20 or so to their cost”.¹¹⁶

Currently, annual vehicle registration fees in Queensland are lower than in most other jurisdictions for light and small cars; but rank as the third highest for medium-sized “family” cars, and second highest for large cars.

The committee notes that the addition of estimated scheme costs to registration fee totals will serve to further consolidate the Queensland’s position as one of three most expensive jurisdictions in which to register a vehicle (see Table 9).

Table 9 – Annual vehicle registration fees, including LCSS costs from 1 July 2016

	QLD (A)	QLD (B)	NSW	VIC	SA	WA	TAS	NT	ACT	Ave. (excl. QLD)
<i>Light car</i>	\$730.11	\$745.70	\$819.00	\$771.60	\$705.00	\$641.29	\$574.46	\$664.15	\$916.00	\$727.36
<i>Small car</i>	\$730.11	\$745.70	\$871.00	\$771.60	\$705.00	\$681.27	\$574.46	\$703.15	\$954.70	\$751.60
<i>Med. car</i>	\$899.20	\$914.80	\$1,020.00	\$771.60	\$830.00	\$741.24	\$605.46	\$820.15	\$1,105.40	\$841.98
<i>Large car</i>	\$1,082.95	\$1,098.55	\$1,020.00	\$771.60	\$938.00	\$801.21	\$663.46	\$958.15	\$1,105.40	\$893.97

Note: Figures include stated registration, metropolitan CTP charges and related annual fees as at September 2015. Fee amounts are full prices for private use assuming a 12 month registration renewal, not including concessions available to some motorists. Higher charges are associated with vehicles used for business purposes. Registration fees amount for Western Australia includes a \$99.10 levy (average) applicable from 1 July 2016.

Source: RACQ, Submission no.11, p.3; Actuarial Reports on Costs, July 2014 and January 2016; Hon Colin Barnett, Premier, Minister for State Development and Science, “Our State Budget 2015-16 – Protecting and supporting our community: WA to adopt no-fault catastrophic injury cover”, Media Statement, 14 May 2015.

In terms of the relative affordability of the charges under the proposed LCSS, the committee notes that the total cost of registering a small car under Options A and B respectively constitute approximately 51 per cent and 52 per cent of average weekly earnings in Queensland.¹¹⁷ Registering a medium-sized family car is likely to impose a significantly higher budgetary impost on Queenslanders, at 62 per cent (Option A) and 63 per cent (Option B) of average weekly earnings (Figure 1).¹¹⁸

114 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.9

115 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.2

116 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 5 February 2015, p.31

117 Figure calculated as a ratio of: stated annual vehicle registration fees (small car) as at September 2015 plus estimated additional scheme costs; to average weekly earnings per person for Queensland as at November 2015. RACQ, Submission no.11, p.3; Taylor Fry Report, July 2014 and January 2016; Australian Bureau of Statistics, *6302.0 – Average Weekly Earnings, Australia*, November 2015, 25 February 2016

118 Figure calculated as at footnote 117 using annual registration vehicle fees (medium car) as at September 2014. RACQ, Submission no.11, p.3; Taylor Fry Report, July 2014 and January 2016; Australian Bureau of Statistics, *6302.0 – Average Weekly Earnings, Australia*, November 2015, 25 February 2016

Figure 1 – Estimated cost of annual motor vehicle registration for a medium-sized family car (including no fault CTP insurance) from 1 July 2016 and percentage of State/Territory average weekly earnings per person



Note: Annual registration fee amounts calculated as sum of annual vehicle fees for a 6 cylinder 3.5 litre car weighing 1,500kg as listed September 2015 and advertised additional LCSS cost or levy amounts for Queensland and Western Australia.

Source: RACQ, Submission no.11, p.4; Australian Bureau of Statistics, 6302.0 – Average Weekly Earnings, Australia, November 2015, 25 February 2016; Queensland Treasury, *Response to Questions*, 23 February 2016

Affordability measures

The committee understands that under the Heads of Agreement, the Queensland Government will be liable for the full cost of meeting the Agreed Minimum Benchmarks from 1 July 2016 (see Chapter 2.3), and that this liability will immediately flow through to the Government’s income and balance sheet.¹¹⁹

At the public hearing on 2 March 2016, the Insurance Commissioner provided advice that “it would not be practical to have a levy in place for 1 July 2016”, given the Government is yet to settle on the design of the scheme, let alone to proceed with the determination of the structure and level of the funding mechanism (based on chosen framework). The committee, therefore, understands that the scheme will essentially be commencing operation underfunded and “running on deficit” for an initial period.¹²⁰

The committee was cognisant that a significant one-off increase in charges associated with the establishment of a LCSS levy or other levy increases may be difficult for consumers to accommodate at limited notice. Accordingly, the committee considers that there may be merit in exploring a phased or graduated approach to the imposition of any levy or payments on the consumer, with payment increases accommodated over a medium term period.

119 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 7 March 2016, p.22

120 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 2 March 2016, p.9

RACQ submitted that “in order to help maintain the affordability of car registration and CTP”, the government should “freeze vehicle registration charges on private-use vehicles for three years once the no-fault scheme starts in July 2016”.¹²¹ In addition, RACQ suggested that “some existing CTP levies, namely the Statutory Insurance Scheme Levy and the Hospital and Emergency Services Levy, be removed along with the administration fee and stamp duty on CTP”.¹²² RACQ stated that reform of the registration regime is also necessary to address the “regressive” nature of existing charges, which “account for a greater share of income for low-income households than for wealthier households.”¹²³

As a corollary measure, the committee considers that the use of periodic payment options may assist in spreading the effects of increased costs over time. The committee understands that the Government has introduced a direct debit scheme which gives motorists the option of paying their registration by direct debit every three months, six months or yearly.¹²⁴ The Young People in Nursing Homes Alliance (YPINHA) suggested that concessions should also apply for those on low incomes.¹²⁵

Risk ratings

The RACQ stated that the fairness of fixed charges for vehicle registration and CTP fees should be considered. RACQ stated that Queensland registration and CTP charges are applied to classes of vehicles at a fixed rate, regardless of how frequently they are driven. RACQ claimed that “This results in infrequent drivers being overcharged and subsidising higher distance drivers”.¹²⁶

Youngcare suggested that risk ratings be used to assess NIIS levies to reflect the increased probability of risky behaviour and the safety rating of the car being driven.¹²⁷ Youngcare considered that “those deemed more at risk or statistically more likely to be involved in a MVA [motor vehicle accident], should be paying a higher premium for coverage”.¹²⁸ LSA, Chief Executive Officer, Ms Lois Boswell advised that the levy employed in South Australia is charged on a basis of relativities of risk across different classes of vehicles.¹²⁹

The Insurance Commissioner stated that:

*You can either take an approach of saying everyone pays the same price or, as we take in a CTP scheme environment, someone who owns a motor vehicle pays a certain premium and someone who owns a taxi pays a higher premium. So in effect reflect the different risk profile of that particular vehicle” or you can keep it very “simple and say, ‘No, the community bears an equal share of the cost’.*¹³⁰

The Queensland Treasury considered that “Given the third party aspect of CTP and a NIIS, the transmission mechanism of risk signalling through pricing is dampened substantially, so that risk rating does not have a strong deterrent effect”.¹³¹ Accordingly, the Queensland Treasury proposed maintaining the simplicity of

121 RACQ, Submission no.11, p.5

122 RACQ, Submission no.11, p.5

123 RACQ, Submission no.11, p.3

124 Queensland Government, *Pay your registration renewal by direct debit*, webpage, last updated 4 March 2016 (accessed March 2016). Available at:

<https://www.qld.gov.au/transport/registration/fees/pay/directdebit/paying/index.html>; RACQ, “Qld motorists win with new car rego options”, Media release (online), 19 May 2015 (accessed March 2016).

Available at: <http://www.racq.com.au/about/news-and-community/media-releases/qld-motorists-win-with-new-car-rego-options>

125 Young People in Nursing Homes National Alliance (YPINHA), Submission no.24, p.11

126 RACQ, Submission no.11, p.5

127 Youngcare, Submission no.21, p.8

128 Youngcare, Submission no.21, p.18

129 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.3

130 Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 December 2015, p.9

131 Queensland Treasury, *Response to submissions*, 2 February 2016, p.17

a single levy in the early stages of a NIIS, until the scheme experience has built to a level that may allow consideration of risk rating.¹³²

Introduction of thresholds and exclusions

The committee is aware that other States, for example South Australia, introduced thresholds for claims for non-catastrophic injuries in order to reduce CTP premium costs prior to the introduction of a LCSS for catastrophic injuries.¹³³

The ALA, QLS and Mr Greg Spinda opposed the introduction of any thresholds in Queensland above which injuries incurred must impair a person before they can access either scheme.¹³⁴ The QLS stated that “Although the imposition of thresholds often appeals as a cost management tool it inevitably disenfranchises injured people who suffer economic loss following apparently minor injuries”.¹³⁵

The YPINHA did not support the introduction of exclusions, similar to those adopted in the Tasmanian model, for example where the injured person has committed a motoring offence. The YPINHA stated that:

*While exclusions play to the desire of some in the community to blame and punish and look to contain potential costs, the integrity of a no-fault model will be undermined if such exclusions are entertained in the new scheme ... Excluding people from this scheme will not save money, but merely shift the cost the community bears elsewhere – and sometimes to higher cost alternatives.*¹³⁶

In response, the Queensland Treasury clarified that “Broader reforms to the existing Queensland CTP scheme have not been flagged in the committee’s Terms of Reference, nor elsewhere”.¹³⁷

Stakeholders’ views

The ICA noted that the Actuarial Reports on Costs contain “a number of estimates that support Option A as the most appropriate model” and indicate that the net increase in the annual cost per vehicle would likely be less under Option A than under Option B.¹³⁸

RACQ submitted that based on the modelling, “Option A provides the most affordable implementation of the NIIS and greater certainty for recipients and insurers”.¹³⁹ Mr John Walsh AM stated that in terms of the total aggregate cost to the system, no fault models offer a better solution to motorists.¹⁴⁰ IAG submitted that, based upon its experience in NSW, the benefits of a full LCSS to the motorists and the community of Queensland will outweigh its costs.¹⁴¹

A number of stakeholders highlighted the relatively lower administrative expenses modelled for Option A. Suncorp submitted that hybrid schemes allow legal fees to eat into lump sum care and support settlements, while lifetime care schemes can administer funds and meet NIIS minimum benchmarks more cheaply and effectively, resulting in “lower increases to CTP premiums for motorists”.¹⁴² Suncorp identified

132 Queensland Treasury, *Response to submissions*, 2 February 2016, p.17

133 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.2; Mr Rod Whithear, Chief Executive and Managing Director, Insurance Commission of Western Australia, *Public hearing transcript*, 5 February 2016, p.16

134 ALA, Submission no.19, p.10; QLS, Submission no.2, p.5; Mr Greg Spinda, Submission no.9, p.4

135 QLS, Submission no.2, p.5

136 YPINHA, Submission no.24, p.8

137 Queensland Treasury, *Response to submissions*, 2 February 2016, p.17

138 ICA, Supplementary Submission no.3s, p.1

139 RACQ, Supplementary Submission no.11s, p.1

140 Mr John Walsh AM, Peer Review Actuary, Lifetime Support Authority – South Australia and Associate Commissioner, Productivity Commission Inquiry into Disability Care and Support, *Tabled paper*, 5 February 2016, p.2

141 IAG, Submission no.7, pp.3-4

142 Suncorp, Supplementary Submission no.18s, p.2

that reduction of the “administrative costs component” or “friction costs” under Option A can support better allocation of resources and ensure the premiums paid by motorists are more efficiently directed to injured individuals.¹⁴³

Suncorp, QBE and Mr John Walsh AM also submitted that the Actuarial Reports on Costings highlight that calculating care and support costs on a lump sum basis is highly inexact, and results in significant over and under-payments as well as the potential for poor management of funds; with long term cost implications for taxpayers.¹⁴⁴

The ALA stated that the hybrid model WA scheme “... required a modest increase of premiums of no more than a cup of coffee a week”;¹⁴⁵ while the Law Council of Australia stated that “even if a levy in the estimated range were imposed ... average CTP costs to Queensland motorists would remain among the most affordable in the country”.¹⁴⁶ The ALA and Law Council of Australia also stated that independent actuarial advice estimated that the Western Australian hybrid model will cost less than a pure no-fault scheme.¹⁴⁷ Additionally, the QLS stated that international experience, including the example of the New Zealand Accident Compensation Commission, reveals that “schemes which remove common law rights invariably encounter financial difficulty”.¹⁴⁸

In relation to affordability for motorists, the ALA contended that Option A was neither “prudent nor wise” as it would mean that the taxpayer would be meeting the cost of the scheme that would otherwise be met by insurers and indirectly by their policy holders.¹⁴⁹ Mr Greg Spinda submitted that a hybrid scheme bolting on the NIIS to Queensland’s CTP scheme, is “by all accounts, estimates and comparisons a cost effective scheme” which “makes economic sense”.¹⁵⁰

Committee comment

Given the significant increase in costs attributed to the introduction of the LCSS, regardless of whether Option A or B is adopted, the committee considers that it is critical that key affordability mechanisms or options be built into the design of the funding mechanism and payment options for a LCSS (see Chapter 8 of this report).

143 Suncorp, Supplementary Submission no.18s, p.1

144 Suncorp, Supplementary Submission no.18s, p.2

145 ALA, Submission no.19, p.5

146 Law Council of Australia, Submission no.26, pp.4-5.

147 ALA, Submission no.19, p.11; Law Council of Australia, Submission no.26, p.3.

148 QLS, Submission no.2, p.3

149 ALA, Submission no.19, p.12

150 Mr Greg Spinda, Submission no.9, p.8

7. Analysis and consideration of options

The committee notes that the relative advantages and disadvantages of no-fault and at-fault schemes for catastrophically injured people were discussed, at length, in Chapter 17 of the Productivity Commission Report which recommended the establishment of a NIIS, and have been debated extensively since the publication of that report.

The question before the committee was what is the most suitable way to implement the NIIS in Queensland?

7.1 Summary of stakeholder's views

All of the submissions received by the committee supported the introduction of a scheme to provide care and support to those people who are catastrophically injured in motor vehicle accidents who cannot establish that another driver was at fault and, therefore, are not covered by the current CTP scheme.

However, the submissions expressed differing views about how this should be achieved and which model for implementing the NIIS should be adopted in Queensland.

The majority of submissions from the health and community services, insurance and medical sectors supported the adoption of Option A – a full no-fault LCSS. Six other submissions from this group of stakeholders did not express a preference.¹⁵¹

All of the submissions received from the legal sector and one member of the public supported the implementation of Option B – a hybrid model.¹⁵²

The submissions outlined a number of advantages and disadvantages of the models under consideration:

- **Supporters of Option A** – a full no-fault LCSS – emphasised the certainty, timeliness and quality of care and support provided by a LCSS and equity of treatment under such schemes. They also argued that LCSS achieve better recovery and health outcomes as the injured person and their support network, are focussed fully on recovery and rehabilitation, rather than the process of obtaining compensation, and
- **Supporters of Option B** – a hybrid model – highlighted the importance of maintaining existing common law rights and argued that the lump sum payments obtained under the existing CTP Scheme represent the ultimate in patient-centred care and choice as envisaged under the NDIS.

7.2 Choice of schemes versus equity and consistency of treatment

Choice of scheme

Supporters of a hybrid model, including the ALA, QLS, Law Council of Australia and Mr Spinda, generally accepted that a LCSS should be established as a “safety-net” for those catastrophically injured people who are not currently covered by the CTP scheme because they cannot identify an at-fault driver.¹⁵³ Mr Rod Hodgson, Queensland President, ALA, highlighted at the public hearing on 2 March 2016 that:

*... everyone is in furious agreement that the policy initiative will provide a welcome safety net for care and equipment for life. The divergence of views only occurs with respect to the existing rights of those who can prove fault.*¹⁵⁴

151 Queensland Treasury, *Response to submissions*, 2 February 2016, p.1

152 Queensland Treasury, *Response to submissions*, 2 February 2016, p.1

153 QLS, Submission no.2, p.2; ALA, Submission no.19, p.4; Law Council of Australia, Submission no.26, p.4; Mr Greg Spinda, Submission no.9, p.2

154 Mr Rod Hodgson, Queensland President, ALA, *Public hearing transcript*, 2 March 2016, p.1

Those stakeholders who supported a hybrid model, however, considered that the existing CTP scheme did not need to be replaced as it “is stable, solvent and allows for insurers to maintain healthy profits”¹⁵⁵ and “is in very good shape in terms of the damages that it provides to injured people who can show that they have been injured through the fault of another”.¹⁵⁶

Supporters of a hybrid model also considered that it is “essential to allow people the independence of choice”, where fault can be established.¹⁵⁷ The ALA, QLS and Mr Spinda considered that catastrophically injured people, who can prove fault by another driver, should have a choice to:

- enter the no-fault LCSS for their care, support and equipment needs and maintain a claim for compensation under the CTP scheme for other heads of damages, such as general damages (for example pain and suffering) and economic loss, or
- solely pursue a claim for compensation under the CTP scheme for all existing heads of damage, including lifetime care and support.¹⁵⁸

Mr Andrew Stone SC, ALA stated that:

*We support option B because it is not a diminution of existing rights. It gives those who can prove fault a choice. Some will choose the government scheme ... Others who can and will handle a lump sum responsibly ought to be given the chance to do so ... You cannot underestimate the importance of that freedom and the dignity that comes with self-determination.*¹⁵⁹

The ALA considered that, in contrast, Option A would remove rights and choice and force all people who can prove fault on to a “drip-feed scheme and a bureaucratic scheme”.¹⁶⁰

The Anti-Discrimination Commission Queensland (ADCQ) and QLS contended that the removal of common law rights and freedom of choice from critically injured people whose injuries result in a disability would also be in contravention of the *United Nations Convention on the Rights of Persons with Disabilities*, which includes the freedom for people with a disability to make their own choices.¹⁶¹

The ALA considered that Western Australian Government has developed a system that provides for the protection of existing legal rights and a safety net for the cohort who cannot demonstrate fault.¹⁶² The committee notes that hybrid model proposed by the ALA builds on the Western Australian model to provide catastrophically injured people, who can establish that another driver was at-fault, with the choice of seeking a lump sum compensation payment under the exist CTP scheme or to remain in the LCSS.

Consistency and equity of treatment

Supporters of Option A, including the Actuaries Institute and IAG, considered that a full LCSS would provide consistent treatment to catastrophically injured people, regardless of the nature or cause of the injury.¹⁶³ Spinal Life Australia (Spinal Life) considered that a full LCSS would also resolve equity issues related to different payouts being made to catastrophically injured people under the existing at-fault CTP scheme.¹⁶⁴

155 Mr Greg Spinda, Submission no.9, p.2

156 Mr Michael Garbett, Chair, Accident Compensation/Torts Law Committee, QLS, *Public hearing transcript*, 17 February 2016, p.7

157 Mr Greg Spinda, Submission no.9, p.3; Law Council of Australia, Submission no.26, p.3

158 Mr Greg Spinda, Submission no.9; ALA, Submission no.19; QLS, Submission no.2

159 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.8

160 Mr Rod Hodgson, ALA, *Public hearing transcript*, 2 March 2016, p.2

161 Anti-Discrimination Commission Queensland (ADCQ), Submission no.4, p.5, QLS, Submission no.2, p.3

162 Mr Rod Hodgson, ALA, *Public hearing transcript*, 2 March 2016, p.1

163 Actuaries Institute, Submission no.5, p.2 and IAG, Submission no.7, p.2

164 Spinal Life Australia, Submission no.6, p.4

At the public hearing on 17 February 2016, Ms Amanda Aitken, Actuaries Institute, provided the following example of potential inequality and unfairness under a hybrid model:

*... imagine a situation where a drunk driver hits a child and catastrophically injures both themselves and the child. Under option B the drunk driver would be provided with lifetime care and support, while the child would be provided with a potentially inadequate lump sum settlement that would need to be managed possibly over the next 60 to 70 years of their life.*¹⁶⁵

Proponents of Option A also raised concerns that a hybrid model would not meet the principles of simplicity, consistency and fairness, as it would have the potential to create inconsistencies in the level of support provided to catastrophically injured persons.¹⁶⁶

In addition, the Actuaries Institute and Insurance Commissioner raised concerns that a hybrid model may not meet the Minimum Benchmarks agreed to, in principle, by the Queensland Government to provide no-fault lifetime care and support for people who sustain catastrophically injured from a motor vehicle accident. This is because the amount of money received by a person, at common law, may not be sufficient to cover a person's care and support needs over their lifetime.¹⁶⁷

7.3 Certainty, timeliness and quality of care and support

A number of stakeholders, including the YPINHA, Actuaries Institute, Centre for National Research on Disability and Rehabilitation (CONROD) and Suncorp considered that Option A – a full LCSS would promote early intervention and provide certainty and timeliness in relation to the provision of care, support and rehabilitation services.¹⁶⁸ For example, the QBISM stated that:

*The flexible individualised lifelong funding delivered under a LTCS enable a focus on optimising independence, supporting opportunities for participation and responding proactively to changes in individuals, their environments and life stages over time.*¹⁶⁹

Supporters of Option A highlighted the following benefits of a LCSS:

- immediate access to care and rehabilitation following an injury, removing the uncertainty and stress of common law calculations about how long care will be needed and how much¹⁷⁰
- co-ordinated care and case management for all catastrophically injured people to ensure appropriate services are available¹⁷¹
- regular review of participant's care needs, and adjustments based on participant's requests and self-assessment, to ensure that the support meets the participant's needs throughout their lives¹⁷²

165 Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27

166 ICA, Submission no.3, p.1; QBE, Submission no.14, p.2; Suncorp, Submission no.18, p.2

167 Actuaries Institute, Submission no.5, p.2; Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 December 2015, p.6

168 YPINHNA, Submission no.24, Actuaries Institute, Submission no.5; Suncorp, Submission no.18; CONROD, Submission no.20

169 QBISM, Submission no.17, p.1

170 Suncorp, Submission no.18, p.2; Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27; Ms Vicki Mullen, ICA, *Public hearing transcript*, 17 February 2016, p.2

171 Actuaries Institute, Submission no.5, p.2

172 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.13

- investment in early intervention technology and rehabilitation services, which may reduce an injured person's future care needs, in particular expensive attendant care, and liabilities for future costs on the scheme¹⁷³, and
- earlier social, community and economic participation for the injured people and their carers.¹⁷⁴

CONROD and YPINHA, supported the introduction of an interim eligibility period in Queensland, similar to those in NSW, South Australia and the ACT, to ensure that "all people seriously injured in MVAs [motor vehicle accidents] receive timely and coordinated access to disability minimising acute care and rehabilitation services".¹⁷⁵ In those jurisdictions, at two years post injury (three years in South Australia), there is an assessment of the injured person: if the person has recovered sufficiently and no longer deemed catastrophic they will exit the LCSS, if they are assessed to have a catastrophic injury, they will remain in the LCSS.

CONROD also recommended the development of structured processes to ensure early notification of potential scheme participants by hospital staff, including the establishment of information management and billing systems and funding to cover the increased administration demands of supporting LCSS participants.¹⁷⁶

Headway recommended the establishment of a Community Lifetime Care and Support Scheme based on the principles of Community Based Rehabilitation to further enhance quality of care. Headway envisaged a scheme where specialist community service providers work together under the supervision and guidelines of the MAIC. Headway stated that the benefits of such a scheme would include "immediate, short and long term rehabilitation benefits and a significant cost reduction".¹⁷⁷

Supported decision-making and case management

At the public hearing on 5 February 2016, the Insurance Commissioner described Option A, as:

*... very much person centred and focussed on the lifetime care and support of the injured person rather than a common law focus on determining a lump sum as once-and-for-all settlement and the person then being left to their own devices as to how their care and support is administered.*¹⁷⁸

The Chief Executive of the LSA, South Australia, Ms Lois Boswell, highlighted the benefits of a case management model, under Option A, over that of a claims management model:

*... clients suffer significantly less secondary psych [psychiatric] injuries because they do not feel as though they are regularly being doubted. They are instead receiving rehabilitation and support. They are also not in that doctor push-pull that is involved in civil liability law.*¹⁷⁹

At the public hearing on 5 February 2016, Ms Tabatha Cox, a scheme participant in South Australia, described her experience, as follows:

Prior to LSA becoming involved my brain was all messed up and fuzzy, and I was just so overwhelmed that I did not feel like I was able to arrange any appointments for my

173 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.5; Actuaries Institute, Submission no.5, p.2

174 Suncorp, Submission no.18, p.2; Ms Frances Porter, Executive Manager, Member and Client Services, Spinal Life Australia, *Public hearing transcript*, 17 February 2016, p.17; Mr Alan Blackwood, Policy and Innovation Director, YPINHA, *Public hearing transcript*, 17 February 2016, p.21

175 CONROD, Submission no.20, p.3; YPINHA, Submission no.24, p.7

176 CONROD, Submission no.20, p.3

177 Headway, Submission no.13, p.5

178 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 5 February 2016, p.25

179 Ms Lois Boswell, LSA, South Australia, *Public hearing transcript*, 5 February 2016, p.3

*health care, rehab or anything. Of course this added a lot of extra pressure on my family. Once LSA got involved, they took the pressure away from me and away from my family so that I could fully focus on my recovery and healing my body and my brain. I also have a CTP claim which I find a very stressful process in that it focusses on my difficulties rather than how I can get better. This constantly reminds me of the problems that I now have. If it were not for LSA I would have to deal with the insurer, all my rehabilitation and all my recovery needs by myself, which would have a huge impact on my future.*¹⁸⁰

Ms Cox also described how the LSA had organised taxi vouchers for her travel and an account at her local chemist in order for her to get painkillers without needing to pay upfront and claim the money back from the LSA.¹⁸¹

The Queensland Paediatric Rehabilitation Service (QPRS) highlighted the importance of supported decision-making for children, young people, adolescents and young adults who are catastrophically injured. The QPRS stated that “families have great difficulty in adjusting their family function in order to promote independence in the young person who has sustained a catastrophic brain injury”.¹⁸² The QPRS stated that:

*Families who have been provided with a lump sum in our experience are less likely to recognise the needs and desires of an adolescent or young adult to socialise with age appropriate peers, explore leisure activities and as a much as possible be independent ...*¹⁸³

The QPRS stated that it is “extremely difficult for families to predict their needs” and therefore manage lump sum funds for a child and coordinate the necessary supports. The QPRS provided the example of the difference between a 30kg child who may be easily managed for dressing and transfers who grows into a 80kg adult with unpredictable movements and/or behaviour.¹⁸⁴

In addition, QPRS raised concerns about children and young adults’ vulnerability to financial exploitation by family members or carers. The QPRS considered that the risk of such exploitation is reduced when a structured lifetime care and support service/program and multidisciplinary specialist rehabilitation service is in place to provide guidance, assessment and planning to ensure a client’s needs are being met.¹⁸⁵

Certainty of care and support for lifetime

The Productivity Commission, and the majority of non-legal representative submitters to the inquiry, considered that common law regimes are not always effective at assessing lifetime care and support needs, as compensation is determined at a snapshot in time even though needs and costs span many years or even decades into the future – this issue is discussed in more detail at Chapter 7.5.¹⁸⁶

In contrast, supporters of Option A considered that a LCSS can take into account a person’s lifespan, the extent of care they will need as they age and the impacts of technological advances. Submitters also raised concerns about delays and uncertain outcomes in court proceedings for compensation under the CTP Scheme.

180 Ms Tabatha Cox, Lifetime Support Scheme, South Australia, Scheme Participant, *Public hearing transcript*, 5 February 2016, p.5

181 Ms Tabatha Cox, Lifetime Support Scheme, South Australia, Scheme Participant, *Public hearing transcript*, 5 February 2016, p.6

182 QPRS, Submission no.16, p.2

183 QPRS, Submission no.16, p.2

184 QPRS, Submission no.16, p.2

185 QPRS, Submission no.16, p.3

186 Productivity Commission Report, 31 July 2011, p.802; IAG, Submission no.7, p.2; Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27

Furthermore, the Actuaries Institute considered that Option A ensures that participants receive the care and support they need for the remainder of their lives and removes the significant investment and mortality risks for individuals, such as experienced during the Global Financial Crisis.¹⁸⁷ The Actuaries Institute considered such risks were compounded for those people who suffer brain injury and diminished capacity to deal with such issues.¹⁸⁸

At the public hearing on 17 February 2016, Dr Harrington, CONROD, stated that:

*The benefit of a lifetime care and support scheme is that it becomes an individualised funding model. Therefore, the lifetime care and support authority would be paying directly for rehabilitation admission within a public hospital service, which also provides an incentive for the scheme to promote timely discharge because costs may be significantly less once somebody re-enters the community and you can provide community based rehabilitation services which we know promote good outcomes.*¹⁸⁹

Impacts on quality of care and timely resolution

Stakeholders who supported a hybrid model asserted that future governments will attempt to run a LCSS as “leanly as possible” to minimise costs.¹⁹⁰ They also considered that there is a risk that when LCSS experience financial difficulties, governments tend to reduce or delay the care and support provided to injured people and centralise services.¹⁹¹ The QLS stated that:

*History shows that governments generally achieve savings by centralising services, limiting the pool of providers, capping entitlements and ... falling back on an overloaded public health system ... It is inevitable this will result in sub-optimal care being provided to claimants, and also require them to relocate to service hubs in larger metropolitan areas.*¹⁹²

The QLS raised concerns about the Victorian TAC Scheme. The QLS stated that “The practical effect of this system is that a claimant can only obtain services within legislative definitions, regardless of the value of the service to the claimant. The claimant is also forced into a lifelong dependency on the scheme and must continually justify the need for a particular service”.¹⁹³

The QLS also stated that in Victoria “the entitlement amount approved for a given service is not based on the actual cost of that service in the market”. Therefore, the injured person must pay the gap between the entitlement and actual cost of service.¹⁹⁴

At the public hearing on 17 February 2016, the ALA stated that in their experience catastrophically injured people would much prefer to have all of the disputation over and done with so that they can return to leading independent and dignified lives, controlling their own destiny to the greatest extent possible.¹⁹⁵

Mr Stone SC, ALA, explained that his clients advise him to settle, and “Get me the hell out of here. I have had enough of dealing with the insurance company that I have had to deal with over my treatment expenses up to the time the case settles. I want my life back. I want to stop dealing with an insurer”.¹⁹⁶

187 Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27

188 Actuaries Institute, Submission no.5, p.2

189 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.24

190 Mr Greg Spinda, Submission no.9, p.4

191 Mr Greg Spinda, Submission no.9, p.4

192 QLS, Submission no.2, p.2

193 QLS, Submission no.2, p.6

194 QLS, Submission no.2, p.6

195 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.8

196 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.8

Mr Stone SC considered that Option A would mean that a catastrophically injured person would spend their entire life dealing with the equivalent of an insurance company – the LCSS.¹⁹⁷

Similarly, QAI considered that “The great virtue of common law remedies is that they provide certainty, closure and control”.¹⁹⁸

7.4 Recovery and health outcomes

Stakeholders, including the Actuaries Institute, Spinal Life, YPINHA and CONROD, considered that one of the benefits of a LCSS is that it focusses on early intervention, with an emphasis on rehabilitation, and improving a person’s situation after discharge from hospital to try to improve their ability to either re-enter society or return to work.¹⁹⁹ Spinal Life stated that:

*Injured individuals have worse rehabilitation and return to work outcomes after lump sum payments and as time passes, becomes less satisfied with their payout as the money diminishes. Periodic payments guarantee participants will have their care needs secured over their lifetime.*²⁰⁰

The Actuaries Institute, CONROD and Headway considered that a full LCSS would avoid the adversarial nature of common law compensation claims and associated delays, allowing the injured person to focus on recovery, rather than the amount they may be awarded via lump sum compensation which is dependent on the extent of their injury.²⁰¹

The Productivity Commission Report considered that the adversarial nature of the common law process and delays in reaching a settlement may hamper effective recovery and health outcomes for catastrophically injured people.²⁰² The Productivity Commission reported that on average, between 2006-07 and 2010-2011, the time between a motor vehicle accident to the resolution of a common law claim for compensation under the Victorian TAC scheme was four years and four months.²⁰³

In its submission, CONROD cited research which demonstrated that the common law compensation process was perceived to interfere with an injured person’s re-adjustment process and delay rehabilitation, and its adversarial nature compounded the experience of stress and trauma after injury. The research cited by CONROD found that participants

- reported negative interactions with doctors and lawyers
- were unable to move on with life during the claims process
- reported an extreme dislike of medico-legal assessments
- reported prolonged delays reaching settlements and associated financial strain, and
- experience delays obtaining CTP insurer funding approval to access required services and supports during the pre-settlement period.²⁰⁴

Dr Harrington, CONROD, raised the prospect of families of injured people restricting access to necessary services in the post settlement period due to fears that the lump sum payment is not going to last.

197 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.8

198 QAI, Submission no.8, p.5

199 Actuaries Institute, Submission no.5, p.2; Spinal Life Australia, Submission no.6, p.5; YPINHA, Submission no.24, p.7; CONROD, Submission no.20, p.3

200 Spinal Life Australia, Submission no.6, p.5

201 Actuaries Institute, Submission no.5, p.2; Headway, Submission no.13; CONROD, Submission no.20, p.7

202 Productivity Commission Report, 31 July 2011, p.789

203 Productivity Commission Report, 31 July 2011, p.804

204 CONROD, Submission no.20, p.7

Dr Harrington stated this may lead to limited opportunities for individuals to develop independence and participate in the community outside of their family which could be detrimental to their recovery.²⁰⁵

At the public hearing on 17 February 2016, Dr Harrington raised concerns that the proposal to remove contributory negligence for care and support payments under a hybrid model may “encourage engagement in adversarial common law claim settlement processes which we know are damaging to health”.²⁰⁶ Dr Harrington was concerned that “Access to rehabilitation services may be denied or delayed where there are liability issues that are being determined”.²⁰⁷ The Queensland Treasury agreed that claims with large components of contributory negligence will become more attractive under a hybrid model with the removal of any deductions in lifetime care and support payments for contributory negligence.²⁰⁸

7.5 Hybrid model and lump sum payments

Choice, flexibility and independence

Supporters of a hybrid model considered that a full LCSS (such as Option A) would deny catastrophically injured people flexibility and freedom of choice, encouraging dependency and delivering poor quality services.²⁰⁹

Those stakeholders considered that, in contrast, common law lump sum compensation payments represent the ultimate in patient centred care and choice, empowering injured people to decide how to use their funds to meet their care and support needs.²¹⁰ The QLS observed that:

*Post-accident, much of what happens to a critically injured person will be beyond their control; it is vital to their dignity and mental health that they have as much control over their lives as possible in the circumstances.*²¹¹

The ALA considered that “The best decisions for Queenslanders suffering catastrophic injuries will almost always be made by them, their families and those who live in their communities”²¹² while Option A creates a system that says “For every treatment you need for the rest of your life here are a bunch of bureaucrats you have to go to and ask”.²¹³

At the public hearing on 17 February 2016, Mr Stone SC, ALA, gave the example of a client in regional NSW who was experiencing difficulties in securing an appropriate carer under the LTCS in NSW. Mr Stone SC stated that:

*Some of the carers being sent into the home included 19 year olds in their first job with no training, being asked to deal with somebody with a traumatic brain injury and cope with it and help them through the various issues they confronted.*²¹⁴

Mr Stone SC contended that “... individuals exercise much better control over their own staffing. Here [under Option B], the client, in combination with a trustee and her husband, would have been out hiring better staff because they do not have to necessarily hire the cheapest tender rate that the government hires at”.²¹⁵

205 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.23

206 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.23

207 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.23

208 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.1

209 QAI, Submission no.8, p.4

210 QAI, Submission no.8, p.3; QLS, Submission no.2, p.7

211 QLS, Submission no.2, p.5

212 ALA, Submission no.19, p.4

213 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 2 March 2016, p.3

214 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.9

215 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.9

The ALA also highlighted that in largely decentralised states, such as Queensland, with people living significant distances from major centres, it is critical for people to be able to make decisions locally about care and equipment.²¹⁶

Adequacy of lump sums to provide care and support over a person's lifetime

Supporters of a full LCSS raised concerns about the adequacy of common law lump sum payments to meet a catastrophically injured person's care and support needs over their entire lifetime.

Stakeholders highlighted the following difficulties in accurately estimating lump sum payments for lifetime care costs:

- the individual's life expectancy
- the amount and type of care required – both in the short term and over the longer term as a person's needs may increase with age
- the average cost of that care taking into account increased societal expectations about what constitutes "reasonable and necessary" care
- the cost of living which may change considerably and unexpectedly overtime, and
- technological change and medical advancements that tend to increase the overall cost of care.²¹⁷

In its submission, the IAG stated that common law lump sum payments are:

*at best educated guesses on the duration and levels of care an injured person may need. This estimate is best educated guess on duration, levels of care at a point in time and may underestimate or overestimate the extent of a person's care needs as they age.*²¹⁸

The Productivity Commission Report also raised concerns about the adequacy of lump sum payments. The Report stated that court outcomes are uncertain, people's futures are unpredictable and poorly-captured by a once-and-for-all lump sum, compensation is often delayed and there is a risk that lump sums may be mismanaged.²¹⁹

The committee notes that common law lump sums are subject to a number of deductions and preclusion periods from benefits such as Centrelink and Medicare. These deductions include: legal costs and the five per cent discount rate on claim amounts. The Queensland Treasury advised that research by MAIC has indicated that up to 48 per cent of a claimant's compensation can be paid to lawyers for their costs and for statutory refunds.²²⁰

Preclusion periods

Dr Harrington stated that concerns about the ability of the common law to estimate accurately a person's lifetime care and support needs are aggravated by the fact that preclusion periods during which a person may not receive benefits from Medicare or Centrelink are based on the entire settlement sum awarded, not what an individual actually receives in their hand after the reduction of costs.²²¹

The committee notes that the preclusion periods apply where a person receives a lump sum compensation payment which includes a component for lost earnings or lost capacity to earn. In essence, preclusion periods are put in place to prevent a claimant who receives common law damages from "double-dipping" by also receiving welfare benefits, such as Centrelink payments.

216 ALA, Submission no.19, p.6

217 Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27; Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22

218 IAG, Submission no.7, p.2

219 Productivity Commission Report, 31 July 2011, p.789

220 Queensland Treasury, *Response to submissions*, 2 February 2016, p.17

221 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22

Dr Harrington advised that under the “50 per cent rule”, preclusion periods for government benefits are calculated on the assumption that 50 per cent of compensation settlements are for income loss and that individuals should use these funds for their income needs. Dr Harrington noted that the 50 per cent rule may significantly disadvantage those with catastrophic injuries for whom awards for future care and support are significantly greater than 50 per cent of their settlement.²²²

Discount rates

Section 61 of the *Civil Proceedings Act 2011* (Qld) provides that an award for damages for economic loss is subject to a discount rate of five per cent. At the public hearing on 2 March 2016, Mr Stone SC explained that the discount rate is based on “an assumption when you get a lump sum up-front that you will invest it and earn compound interest upon it” and the legislation “assumes that somebody investing this money can make a five per cent return above inflation and tax”.²²³

At the public hearing on 5 February 2016, Mr Walsh AM raised concerns about the effect discount rates may have on the adequacy of a lump sum to cover an injured person’s lifetime care and support needs. Mr Walsh AM stated that the five per cent per annum discount in Queensland on a large settlement would have the impact of at least halving the amount available to the injured persons”.²²⁴

The Actuaries Institute, at the public hearing on 17 February 2016, provided the following example of the effect of the discount rate on an injured person’s lump sum payment:

*... if we assume that an individual with a life expectancy of 50 requires attendant care 24 hours a day at a cost of approximately \$6,000 per week, if you were to calculate the lump sum using the five per cent real discount rate that would give you a present value of about \$6 million. Those same care requirements valued using the assumptions underlying the NIIS actuarial costings result in a present value of approximately \$10 million.*²²⁵

The Actuaries Institute pointed out that this is a significant difference, as the lump sum is 60 per cent of the present value using the assumptions under the NIIS costings. The Actuaries Institute considered, therefore, that lump sum payments place “enormous responsibility on an individual and/or their family members to adequately manage their finances to earn five per cent above inflation for life”.²²⁶

The State Actuary stated that the benefits payable to a participant for lifetime care and support under a LCSS are estimated to be greater than the lump sum payments generally paid under the CTP Scheme, mostly because of the discounting rate.²²⁷ At the public briefing on 2 March 2016, the State Actuary estimated that the actual average cost of lifetime care and support was \$3.8 million, while the average lump sum payment for lifetime care and support, after the statutory discount reduction, is \$1.5 million.²²⁸

Mr Stone SC, ALA, acknowledged that the amount received in lump sum payments for lifetime care and support is less than the actual estimated cost of lifetime care and support needs. However, he considered that participants would make an informed choice of “I know it is less than I would get in terms of actual value if I stayed in the system, but I value that gap less than I value the freedom and choice of making my own decision and I am going to husband my money to make it last”.²²⁹

222 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22

223 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 2 March 2016, p.4

224 Mr John Walsh AM, *Public hearing transcript*, 5 February 2016, p.5

225 Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27

226 Ms Amanda Aitken, Actuaries Institute, *Public hearing transcript*, 17 February 2016, p.27

227 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 2 March 2016, p.3

228 Mr Wayne Cannon, State Actuary, *Public briefing transcript*, 2 March 2016, p.4

229 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 2 March 2016, p.4

Other factors

In addition, stakeholders stated that there is anecdotal evidence that lump sum payments may be exhausted for the following reasons:

- lack of experience of managing and investing large monetary sums
- the repayment of debts, including for rehabilitation and medical costs prior to receiving the lump sum payment
- poor returns on investments, unwise investment decisions or failed business ventures
- the development of drug, alcohol or gambling addictions
- unrecoverable gifts and loans to family members and friends, and
- the risk of financial exploitation by family members, friends and carers.²³⁰

Dr Harrington highlighted that even if estimates of future care are accurate, a claimant may be under significant financial pressure to settle for a lesser sum due to disputes over what level of care is considered reasonable, including penalty rates which apply to matters brought to court.²³¹

At the public hearing on 7 March 2016, Mr Blackwood, YPINHA, and Dr Harrington highlighted potential outcomes for those injured people who exhaust their lump sum payments, including having to reside in aged care facilities, state funded group homes or even homelessness.²³²

Prevalence of lump sum exhaustion

The ALA, QLS and Mr Spinda considered that there is little evidence to demonstrate that lump sums are inadequate to provide lifetime care and support for catastrophically injured people and often run out.²³³

The ALA stated that “The assertion of recipients “squandering” their lump sums is purely and mischievously anecdotal, and there is no empirical data that we are aware of that supports the assertion”.²³⁴ At the public hearing on 2 March 2016, Mr Rod Hodgson, ALA, stated that “our experience at the coalface is that, due to trustee arrangements and significant family supports, lump sum sums are spent wisely and prudently by people with catastrophic injuries”.²³⁵

Dr Harrington, provided the committee with evidence that the exhaustion of lump sum payments does occur. The committee understands that there is currently no published empirical evidence as to the frequency and scale of lump sum exhaustion. Dr Harrington advised that there was a lack of empirical evidence because “we do not track people after they get their common law settlement so we do not have an accurate estimation of how prevalent lump sum dissipation is”.²³⁶ The Queensland Treasury also noted the difficulties in obtaining empirical evidence given that “lump sum payments are not routinely followed up by lawyers or insurers after their settlement is completed”.²³⁷

Safeguards – financial planners and trustees

The supporters of a hybrid model noted that safeguards already exist to ensure that lump sum payments are not exhausted and are used appropriately.

230 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22; Mr John Walsh AM, *Public hearing transcript*, 5 February 2016, p.5

231 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22

232 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 7 March 2016, pp.12-13; Dr Ros Harrington, CONROD, *Public hearing transcript*, 7 March 2016, p.14

233 ALA, Submission no.19, QLS, Submission no.2 and Mr Greg Spinda, Submission no.9

234 ALA Submission no.19, p.13

235 Mr Rod Hodgson, ALA, *Public hearing transcript*, 2 March 2016, p.2

236 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.23

237 Queensland Treasury, *Response to Supplementary Submissions*, 26 February 2016, p.3

The ALA noted that in Queensland “a significant proportion of those with a catastrophic injury have a trustee”. The ALA advised that catastrophically injured people:

- have their settlements vetted and sanctioned by Courts - for those without trustees
- regularly access Certified Financial Planners, and
- access publicly available financial products such as Superannuation products”.²³⁸

The committee heard that approximately two-thirds of catastrophically injured people have trustee arrangements under the current CTP scheme.²³⁹

At the public hearing on 17 February 2016, Mr Hodgson, ALA, described two cohorts of injured people when considering the issue of capacity:

- a person who does not have legal capacity and who does not have the intellectual capacity typically due to a brain injury, and
- a person who may have some other vulnerabilities that mean their capacity to manage a lump sum is diminished.

The ALA explained that in either scenario, the Court may put in place trustee arrangements in relation to a settlement.²⁴⁰

Mr Hodgson, ALA, described the trustee arrangements as follows:

*After the settlement the trustees have a fiduciary duty and in fact operate on the basis that the case is case managed. So it is a hub-and-spoke approach where the trustee company appoints a case manager sometimes in-house but typically external. That case manager determines periodically the evolving ... needs for the injured person and adjusts the amount of care required per week and equipment and also operates as a liaison between other key parties including doctors and other family members.*²⁴¹

Mr Hodgson stated that there is a series of safeguards, such as the Adult Guardian and Queensland Civil and Administrative Tribunal (QCAT), to ensure that trustees are discharging their obligations to the injured person and their family.²⁴²

The QLS considered that trustee arrangements and advice from certified financial planners “... ensure that they [injured people] obtain sufficient money for care throughout their life and that the money is expended on the advice of appropriately qualified professionals”.²⁴³

The ALA also supported the introduction of additional safeguards to ensure lump sum payments are managed in a sustainable and responsible way, including mandatory referral of catastrophically injured people for expert financial advice by Certified Financial Planners and the appointment of independent panels to assist injured people to manage their lump sums.²⁴⁴

At the public hearing on 17 February 2016, Mr Angus Cairn of RACQ highlighted that:

*... not all the funds will be going to the Public Trustee. Certainly in the case of people with brain injuries, then you would expect that that money would be invested with the Public Trustee. But if people are of sound mind, then they are free to deal with their own financial management.*²⁴⁵

238 ALA, Submission no.19, p.13

239 Mr Rod Hodgson, ALA, *Public hearing transcript*, 2 March 2016, p.6

240 Mr Rod Hodgson, ALA, *Public hearing transcript*, 17 February 2016, p.9

241 Mr Rod Hodgson, ALA, *Public hearing transcript*, 17 February 2016, p.9

242 Mr Rod Hodgson, ALA, *Public hearing transcript*, 17 February 2016, p.9

243 QLS, Submission no.2, p.5

244 ALA, Submission no.19, pp.9 and 15

245 Mr Angus Cairn, RACQ, *Public hearing transcript*, 17 February 2016, p.3

The QLS believed that “the rights of catastrophically injured people to choose their own carers and health professionals, and to be able to be cared for in their own communities rather than institutionalised in a central location should override the risk to the scheme”.²⁴⁶

Some stakeholders drew parallels between the role of trustees under the CTP scheme and case managers in a LCSS. Ms Julie Williams, Headway, and Mr Angus Cairn, RACQ, noted that in both scenarios a catastrophically injured person’s care is being managed by someone else and that service is being paid for – either the LCSS or trustee.²⁴⁷

Risk of injured people returning to the NDIS

The Insurance Commissioner advised that the Queensland Government has a commitment, under the Heads of Agreement, to provide lifetime funding for care and support for injured people. The Insurance Commissioner stated that “If someone receives a lump sum and that is dissipated or exhausted, that guarantee appears to still stand”. Accordingly, if such a person comes back to the scheme – either the NIIS or NDIS – for further compensation or funding, then the Queensland Government is liable for those costs.²⁴⁸

The Insurance Commissioner advised that “If any money was paid, we would imagine the NDIS would come back to the State and say ‘Under the terms of the heads of agreement, the State is liable to reimburse the Commonwealth’”.²⁴⁹

The QLS, however, stated that “the funding of the scheme could clearly be calculated to accommodate a small percentage of common-law claimants needing to return to the scheme”.²⁵⁰ The QLS considered that given how rare this would be in practice, it should not add significantly to the cost of the scheme.²⁵¹ As noted earlier, there is no published empirical evidence about the prevalence of lump sum exhaustion.

The issue of making provision to cover the costs of injured people returning to the NDIS is discussed in more detail at Chapter 6 of this report.

7.6 Full lifetime care and support scheme – choice, flexibility and independence

During its Inquiry, the committee heard concerns that a LCSS would mean that care and support was “drip-fed” to participants and there would be limited choice or scope for participant involvement in decision-making.²⁵²

The committee notes, however, that choice, flexibility and independence can be achieved in the design of a LCSS. The State Actuary advised the committee that a LCSS would adopt “the more modern mechanism that is used to provide care and support championed by the NDIS and implemented by them, run by the Lifetime Care and Support, the TAC and South Australia ... one that where it is individually directed to a very great degree”.²⁵³

The Queensland Treasury advised that under any LCSS established in Queensland individuals will be offered a choice as to how their care and support services are delivered and will be able to participate in decisions about how and when they receive care and support services.²⁵⁴ The Queensland Treasury gave the following examples:

246 QLS, Submission no.2, p.5

247 Ms Julie Williams, General Manager, Headway, *Public hearing transcript*, 17 February 2016, p.20; Mr Angus Cairn, RACQ, *Public hearing transcript*, 7 March 2016, p.9

248 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 17 February 2015, p.29

249 Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 December 2015, p.6

250 QLS, Submission no.2, p.5

251 QLS, Submission no.2, p.5

252 Mr Rod Hodgson, ALA, *Public hearing transcript*, 2 March 2016, p.2

253 Mr Wayne Cannon, State Actuary, *Public hearing transcript*, 17 February 2016, p.30

254 Queensland Treasury, *Tabled Paper*, 7 March 2016, p.1

- **NIIS Co-ordinated Care and Support** – care and support funded on an ongoing, periodic and structured basis.

Individuals would be supported to participate in decisions about how their care, choice of carer, selection of accommodation to suit their needs and the types of community activities they wish to participate in. A participant may have as much or as little support as they choose. Participants may be assisted in implementing their care package through a preferred NIIS provider or a registered provider they select.

This approach has been implemented in Victoria where the TAC scheme supports a model of self-directed funding, known as Self-Purchasing. Under Self-Purchasing, a participant receives a direct monthly payment from which they purchase services directly or with the assistance of a broker.

The LTCSA NSW is trialling self-directed funding models where participants are able to select their carer from an approved provider list or organisation or directly employ a carer. The participant pays for services via their bank account from monies provided by the authority two weeks in advance and the participant provides monthly statements back to the authority.²⁵⁵

In South Australia, participants may elect to manage all or part of their funding for treatment, care and support services through an agreement with the LSA for services which are reasonable and necessary under section 27(5) of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (South Australia).

The Queensland Treasury advised that this “self-directed management approach” is consistent with Queensland’s Disability Services policy, such as ‘Your Life Your Choice’.²⁵⁶

- **Self-directed Fund Management** – where a participant has capacity and a desire to self-manage their own care and support over longer periods, they could be provided with a sum of funds to enable them to do so.

The sum provided could cover a period of several months, a year or many years, and the participant could spend the money on care and supports as they see fit. This approach would provide greater flexibility allowing an individual to choose the types of care, timing of care and choice of provider from the NIIS preferred providers or another registered provider from the open market. Participants will also be able to choose their accommodation and types of community activities in which to participate.

A participant may also elect to use the lump sum to purchase a house and have their care provided gratuitously by family and friends. A participant may also elect to bank hours of care to go on holiday. A participant may also choose to vary the level of care they receive in a week to reflect their lifestyle and activities.

The Queensland Treasury considered that this approach “removes the risk of a once-off lump sum amount being inadequate to cover the care and support needs for a person’s life”.²⁵⁷

The Queensland Treasury advised that the design of the scheme will need to strike the right balance between an individual’s freedom to choose and the financial sustainability and affordability of the scheme through the inclusion of appropriate expert and stakeholder reference groups and monitoring and reporting on spending. The Queensland Treasury noted that such safeguards may include: criteria for the approval of registered service providers; reconciliation

255 Mr Don Ferguson, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.9; Queensland Treasury, *Tabled Paper*, 7 March 2016, p.2

256 Queensland Treasury, *Tabled Paper*, 7 March 2016, p.2

257 Queensland Treasury, *Tabled Paper*, 7 March 2016, p.3

practices; administrative arrangements and eligibility criteria to support self-directed funding and dispute resolution mechanisms.²⁵⁸

Spinal Life considered that periodic payments are preferable for the long term financial and mental wellbeing of participants compared to those who receive lump sum payments and guarantees participants will have their care needs secured over their lifetime.²⁵⁹

The QPRS and QBISM also noted that under the TAC scheme catastrophically injured people who are unable to establish another person's fault are entitled to receive a "no-fault" lump sum impairment benefit up to the value of \$333,630.²⁶⁰ QBISM considered that the "Adoption of similar entitlements in Queensland would enhance opportunities for choice and control".²⁶¹

The committee notes that there has been a low rate of uptake of self-management options, and that the experience in other States has been that most catastrophically injured claimants prefer their care to be managed by the scheme.²⁶² As a comparison, Spinal Life advised that it is expected that only "five percent to eight per cent of people to take up the self-managed options in the NDIS".²⁶³ Mr Stone SC, ALA, also highlighted that the LTCS in NSW has not to date successfully transitioned a single person on to the self-directed funding arrangements.²⁶⁴

Notwithstanding the relatively low take up rates, Dr Harrington advised that "... in Victoria and New South Wales – particular in Victoria – they found that people spend less ... when they are given periodic payments to cover their care and support needs from the scheme. When they self-manage their funding they are generally happier, and in the small pilot study they have achieved better outcomes".²⁶⁵ The QBISM also advised that under the TAC Scheme those clients who receive monthly payments report high satisfaction levels, demonstrate improved outcomes and spend less than other clients.²⁶⁶

7.7 Access to other heads of damages under common law

Stakeholders, including QAI, Spinal Life, YPINHA, ICA and RACQ, highlighted the importance of allowing those injured people, who are able to assert fault, to utilise common law to pursue damages for other heads of damage, such as pain and suffering and economic loss.²⁶⁷

Spinal Life stated that "Access to elements of the common law could be used to maintain a sense of justice, or fairness, for those who have been injured by someone at fault".²⁶⁸ The YPINHA considered that "Access to common law is a civic right and is important to retain in the scheme design for injured people to seek redress for loss in those other areas [economic loss and pain and suffering]".²⁶⁹

The ICA noted that "those catastrophically injured people who do have an at-fault claim can still get a quite significant lump sum amount for their general damages and for their economic loss to the tune of hundreds of thousands of dollars, if not millions of dollars in certain cases".²⁷⁰

258 Queensland Treasury, *Tabled Paper*, 7 March 2016, p.3

259 Spinal Life Australia, Submission no.6, p.5

260 QPRS, Submission no.16, p.2

261 QBISM, Submission no.17, p.1

262 Queensland Treasury, *Response to Supplementary Submissions*, 26 February 2016, p.5

263 Ms Frances Porter, Executive Manager, Member and Client Services, Spinal Life Australia, *Public hearing transcript*, 17 February 2016, p.19

264 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 2 March 2016, p.5

265 Dr Ros Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.26

266 QBISM, Submission no.17, p.1

267 QAI, Submission no.8, p.5; YPINHA, Submission no.24, p.7; Ms Vicki Mullen, ICA, *Public hearing transcript*, 7 March 2016, pp.1-2; Mr Angus Cairn, RACQ, *Public hearing transcript*, 7 March 2016, p.2

268 Spinal Life Australia, Submission no.6, p.5

269 YPINHA, Submission no.24, p.8

270 Ms Vicki Mullen, ICA, *Public hearing transcript*, 7 March 2016, p.2

The committee notes that Option A – a full LCSS does not extinguish a person’s common law rights entirely. Under Option A, a person who is catastrophically injured where someone else is at-fault will still be able to pursue a lump sum payment for other heads of damages, including general damages (pain and suffering) and economic loss. As noted by the Queensland Treasury, a catastrophically injured person can choose to spend these funds however they see fit.²⁷¹

7.8 Importance of appropriate housing and accommodation

During the Inquiry, the committee heard from a number of stakeholders about a chronic shortage of suitable housing and accommodation which meets the needs of catastrophically injured people. Mr John Mayo, Spinal Life stated that:

*... a result of the housing difficulty is that people who go to that unit [Princess Alexandra Hospital’s Spinal Injuries Unit] complete their rehabilitation but may well be required to remain in hospital paying hospital bed day costs simply because of the fact they cannot be discharged because they have no accessible accommodation to go to.*²⁷²

Mr Mayo highlighted that the problem was particularly acute in regional and remote areas where there is “little – in some cases no – accessible social housing and there is always the difficulty of trying to address the issue of modifying an existing dwelling”.²⁷³

Mr Blackwood, YPINHA, stated that the joint standing committee on the NDIS had undertaken an inquiry into housing for people with disability. Mr Blackwood stated that “There has been a figure mentioned of 120,000 people needing accessible accommodation the scheme [NDIS] rolls out”.²⁷⁴

Mr Blackwood noted that “There are probably some tens of thousands of new dwellings every year being built in Queensland, and that is the point where the government has to intervene and say that they want them to be universally designed because it will reduce the cost of home modifications”.²⁷⁵ Mr Blackwood quoted a 2010 study in Victoria which found that changing the building regulations to require that buildings included five accessibility features would have added \$900 in costs per house, while retrofitting homes to include those five features would cost \$14,000 per house.²⁷⁶

The ALA and QLS also raised the importance of securing appropriate housing and accommodation. The ALA stated that:

*Our history of work with injured Queenslanders informs us that lump sums enable the purchase of a new property that is appropriate for the new, specific needs of the individual. It provides a sense of security and safety as they commence the long journey of rebuilding their lives or creating a new life.*²⁷⁷

The committee notes that the Agreed Minimum Benchmarks provide for reasonable and necessary home modifications. However, certain stakeholders noted that necessary home modifications are not always an option – for example, where a catastrophically injured person is a tenant.²⁷⁸

The State Actuary acknowledged that the purchase of a house “is a very important part of the recovery process and the provision of support to injured parties”. The State Actuary suggested that those catastrophically injured people who can establish that another driver was at-fault may wish to use the

271 Queensland Treasury, *Tabled Paper*, 7 March 2016, p.3

272 Mr John Mayo, General Manager, Community Development, Spinal Life Australia, *Public hearing transcript*, 17 February 2016, p.17

273 Mr John Mayo, Spinal Life Australia, *Public hearing transcript*, 17 February 2016, p.17

274 Mr Blackwood, YPINHA, *Public hearing transcript*, 17 February 2016, p.25

275 Mr Blackwood, YPINHA, *Public hearing transcript*, 17 February 2016, p.25

276 Mr Blackwood, YPINHA, *Public hearing transcript*, 17 February 2016, pp.25 and 26

277 ALA, Submission no.19, p.14

278 Mr Rod Hodgson, ALA, *Public hearing transcript*, 17 February 2016, p.7

lump sum payments for other heads of damages (for example, general damages and economic loss) to purchase a house. The State Actuary advised that the average lump sum payments for general damages and economic loss is \$650,000.²⁷⁹

Other stakeholders recommended that the Queensland scheme include a no-fault lump sum payment similar to the Victorian TAC Scheme impairment benefit (currently between \$300,000 and \$400,000) which could be used by a participant to purchase accommodation.²⁸⁰

The Queensland Treasury advised that once a house was purchased any “modifications required to accommodate the person’s needs, arising from their injuries, would then be met by the NIIS entity”.²⁸¹ The Insurance Commissioner clarified that if a home needs to be changed over time, as a participant’s injury improves or deteriorates, the house may need to be remodified, and this is covered by the Agreed Minimum Benchmarks.²⁸²

Spinal Life highlighted that if a catastrophically injured person chose to spend the element of their lump sum payment allocated for lifetime care and support to buy a house this will impact on their lifetime care and support in later life.²⁸³ Dr Harrington considered that people using the lump sum to purchase housing and modified vehicles were at risk of having to sell those assets to fund care and support needs at a later date where preclusion periods for Centrelink payments are not waived.²⁸⁴ Dr Harrington noted that “if you spend your money purchasing a house, you will not have that money to fund your care”.²⁸⁵

Mr Heath, RACQ, considered that Option A would potentially enable the government to invest in better quality accommodation for catastrophically injured people.²⁸⁶ Stakeholders noted that the lifetime care and support schemes in Victoria and South Australia had invested directly in housing to provide suitable accommodation for catastrophically injured people.²⁸⁷ The ALA noted that the LTCSA NSW has started to devote its surplus funds to invest in accessible accommodation.²⁸⁸ Mr Blackwood, YPINHA, advised that the TAC Scheme in Victoria had invested \$33 million to set up a residential independence property trust to develop housing options for catastrophically injured people.²⁸⁹

7.9 Innovation in service delivery and economic benefits

Stakeholders considered that Option A would allow the government to better invest in the infrastructure necessary to provide care and support, particularly in regional and rural areas of Queensland, and better coordinate and supply resources to a greater number of users, rather than individuals needing to source and fund services from their own individual funds.²⁹⁰ The IAG stated:

*Since the LTCS scheme has been in operation in NSW, a distinct increase in innovation and service development within the serious injury sector has occurred. Specific examples of this include: the up-grading of sporting facilities to provide modern and safe facilities for wheelchair sports, the provision of purpose-built accommodation for scheme participants who would otherwise have had to reside in nursing homes and increased engagement for scheme participants in paid employment.*²⁹¹

279 Mr Wayne Cannon, State Actuary, *Public hearing transcript*, 17 February 2016, p.30

280 Dr Harrington, CONROD, *Public hearing transcript*, 7 March 2016, p.15

281 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.7

282 Mr Neil Singleton, Insurance Commissioner, *Public briefing transcript*, 2 March 2016, p.7

283 Ms Francis Porter, Spinal Life Australia, *Public hearing transcript*, 17 February 2016, p.18

284 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.22

285 Dr Harrington, CONROD, *Public hearing transcript*, 7 March 2016, p.12

286 Mr Bradley Heath, RACQ Insurance, *Public hearing transcript*, 17 February 2016, p.2

287 Dr Harrington, *Tabled Paper*, 7 March 2016, p.2

288 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 17 February 2016, p.13

289 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 7 March 2016, p.14

290 Mr Bradley Heath, RACQ Insurance, *Public hearing transcript*, 17 February 2016, p.2

291 IAG, Submission no.7, p.2

At the public hearing, the Insurance Commissioner referred to the NSW scheme which started as “a Sydney-centric” office, but has now developed regional offices. The Insurance Commissioner stated that he “... would picture Queensland having a similar system where you would have case co-ordination centres probably in ... regional centres like Townsville and ... Mackay and Rockhampton area”. The Insurance Commissioner advised that “As you get into the much more rural remote areas, it becomes a question of scale, but you can do things once you start bring those larger numbers together rather than leaving each individual person to have to find their own resources”.²⁹²

Mr Blackwood, YPINHA, stated that the benefit of having one funder for the whole pathway of care and rehabilitation is the scale on which the scheme can negotiate with hospitals. Mr Blackwood stated that the scheme can put in place hospital liaison staff to provide information to injured people, to assess how the person may get discharged and organise necessary home modifications, whereas dealing on the scale of one person at a time it is very difficult to systematise anything.²⁹³ Dr Harrington agreed that a LCSS “will promote development within public and private sector services as the scheme looks at what services are not available that can promote better long-term outcomes and care costs in the long term for people”.²⁹⁴

Dr Harrington stated that one of the great benefits of a government administered scheme is the capacity to negotiate with other government departments to improve pathways. Dr Harrington cited an example of Victoria where the TAC scheme invested in the trauma registry – VSTORM which “has enabled looking at the pathway of people with traumatic injury and how that can be improved”.²⁹⁵

The Queensland Treasury stated that “The consolidation of services under one scheme for all people who are catastrophically injured will lead to growth and improved health service delivery for all Queenslanders”, which “... is expected to provide jobs growth in the health and disability sectors for Queenslanders”.²⁹⁶ For example, the NDIS is expected to create up to 13,000 additional jobs in Queensland when it is fully implemented, including support workers, allied health professionals, support co-ordinators and administrators.²⁹⁷ The Queensland Treasury stated that the employment of participants, after rehabilitation, and their family members would provide significant social and economic benefits for the Queensland economy.²⁹⁸

7.10 Administrative and dispute costs

The ALA raised concerns about the creation of “a major bureaucracy to make both the large and small decisions about the daily lives of people with catastrophic injuries”.²⁹⁹ The QLS noted that “The ongoing management of a lifetime support and care scheme will carry an administrative burden”.³⁰⁰ The ALA stated that:

*... Treasury ... advocated both the establishment of a new, significant authority with an accompanying cost in the vicinity of \$450 million (i.e. 10% of \$4.5b) over the ten year period. If the administration cost is closer to the problematic New South Wales average (35%) the amount spent on administration could top \$1.5b over the next decade.*³⁰¹

292 Mr Neil Singleton, Insurance Commissioner, *Public hearing transcript*, 5 February 2016, p.29

293 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 17 February 2016, p.24

294 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.25

295 Dr Harrington, CONROD, *Public hearing transcript*, 17 February 2016, p.25

296 Queensland Treasury, *Tabled Papers*, 7 March 2016, p.4

297 Queensland Treasury, *Response to Questions on Notice*, 23 February 2016, p.10

298 Traumatic Injury and Disability Insurance Summit, *The Business Case for an NDIS and NIIS*, PwC Paper, 17 February 2011

299 ALA, Submission no.19, p.12

300 QLS, Submission no.2, p.3

301 Queensland Treasury, *Response to Submissions*, 2 February 2016, p.15

The QLS suggested that maintaining common law as an option for those catastrophically injured people who can establish another driver was at-fault may assist in keeping the numbers of people assisted by a LCSS smaller, therefore, requiring less administration and reducing costs.³⁰²

The QLS stated that Option A may lead to an increased number of disputes and administrative reviews of decisions. The QLS noted that if all claims for catastrophically injured people were funnelled into the NIIS, the resultant increase in applications for QCAT reviews would be devastating. The QLS also considered that the “cost to government of absorbing those reviews can be conservatively estimated in the millions of dollars”.³⁰³ The Queensland Treasury advised that increased disputes are not evident in schemes in other States and Territories.³⁰⁴

Supporters of a full LCSS considered that the scheme would reduce friction costs associated with the court process.³⁰⁵

7.11 Financial difficulties experienced by no fault schemes

The ALA and QLS considered that schemes which remove common law rights invariably encounter financial difficulty and cited the New Zealand Accident Compensation Commission and the South Australia WorkCover scheme as examples.³⁰⁶

In response, the Queensland Treasury stated that financial unsustainability can occur in common law schemes as readily as in no-fault schemes. The Queensland Treasury advised that the New Zealand Accident Compensation Commission has recently announced material reductions in levies and provides no indication of financial distress or unstainability. In addition, the Queensland Treasury stated that “NSW, SA, ACT, TAC are all financially viable schemes”.³⁰⁷

7.12 Alignment with other States and Territories and establishment of other NIIS streams

A further benefit of Option A identified by stakeholders was that it will ensure alignment with LCSS in other jurisdictions - for example NSW, ACT and South Australia.³⁰⁸

The ICA, IAG, Allianz and QBE considered this would prevent cross border complications and provide greater certainty for insurers and motorists who operate across states,³⁰⁹ while Suncorp considered that it would enable a comparison of scheme performance and reduce costs caused by legal activity.³¹⁰ The APA highlighted the cost savings which could be achieved by harmonisation of arrangements across schemes.³¹¹

In addition, YPINHA and ADCQ considered that a benefit of Option A is that it would provide a platform for a full NIIS in Queensland to cover the other injury types, for example general accidents, workplace accidents and medical accidents.³¹² At the public hearing on 7 March 2016, Mr Blackwood stated that:

Unless we actually create a platform to bring in those other injury types – where someone gets a brain injury from a one-punch attack or where someone has a fall or suffers any number of other sporting injury – unless there is the capacity to bring those

302 QLS, Submission no.2, p.3

303 QLS, Submission no.2, p.4

304 Queensland Treasury, *Response to Submissions*, 2 February 2016, p.11

305 Suncorp, Supplementary Submission no.18s, p.1

306 QLS, Submission no.2, p.5 and ALA, Submission no.19, p.10

307 Queensland Treasury, *Response to Submissions*, 2 February 2016, p.15

308 ICA, Submissions no.3; IAG, Submission no.7; QBE, Submission no.14; Suncorp, Submission no.18

309 ICA, Submission no.3, p.2; IAG, Submission no.7, p.1; QBE, Submission no.14, p.2; Mr Tony Mobbs, General Manager, CTP, Allianz, *Public hearing transcript*, 7 March 2016, p.4

310 Suncorp, Submission no.18

311 APA, Submission no.23, p.4

312 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 17 February 2016, p.21; ADCQ, Submission no.4, p.5

*people in and provide the same level of cover regardless of cause, we are going to end up with another group of Queenslanders who will be disadvantaged.*³¹³

The YPINHA suggested that the MAIC could “incubate the NIIS” until the architecture, skills and capacities for the full NIIS are established.³¹⁴

313 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 7 March 2016, p.17

314 YPINHA, Submission no.24, p.3

8. Which model is the most suitable for Queensland

8.1 Introduction

The committee has considered, in the short time available, stakeholders' views on the relative advantages and disadvantages of the options under consideration. The committee has also undertaken independent research into the issues raised by the Terms of Reference.

After considering all of the evidence, the committee was unable to reach a majority decision about which model is the most suitable for the implementation of the National Injury Insurance Scheme in Queensland, as per the Terms of Reference.

Non-government members of the committee did not support the adoption of Option B – a hybrid model, as in their view it did not meet the affordability test.

Committee members did agree unanimously with the recommendations below about certain design features of the scheme to be adopted by the Queensland Government.

8.2 Interaction with the NDIS and other NIIS streams

The committee recognises that the establishment of the NIIS in Queensland, regardless of which model is adopted, must be consistent and able to interact with the NDIS, during the transition phase and once it has been implemented in full in July 2019. The committee considers that the implementation of the NDIS, including the associated administration and development of approved service providers, will provide opportunities for the NIIS authority to work with the National Disability Insurance Agency (NDIA) to achieve savings and efficiencies.

The committee also noted that there is a wealth of experience in other States and Territories about the implementation and operation of a LCSS which the Queensland Treasury can draw upon when designing the scheme to be implemented in Queensland.

The Queensland Treasury acknowledged the need for a NIIS to be aligned to interstate models and the NDIS. The Queensland Treasury advised that during the implementation of a NIIS, collaboration and coordination between the NIIS, NDIS and relevant Queensland Government services will be recommended to facilitate a streamlined provision of care and support.³¹⁵

The Queensland Treasury also recognised that the NIIS entity will need to work with non-government community organisations to provide integrated support and services. The Queensland Treasury considered that as Queensland is the last state to implement a NIIS, Queensland will benefit from the experience and lessons learnt from interstate jurisdictions to establish the optimal Queensland NIIS.³¹⁶

The committee also noted YPINHA's comments about the NIIS for motor vehicle accidents providing a platform for the other NIIS streams, for example, general, workplace and medical accidents.³¹⁷

In designing the NIIS scheme, including its funding mechanism, the committee recommends that the Queensland Government take account of the proposed future injury insurance schemes (e.g. for medical and workplace accident compensation) and the possibility of sharing resources and information with the NDIA.

315 Queensland Treasury, *Response to submissions*, 2 February 2016, p.18

316 Queensland Treasury, *Response to submissions*, 2 February 2016, p.18

317 Mr Alan Blackwood, YPINHA, *Public hearing transcript*, 7 March 2016, p.17

Recommendation 1

The committee recommends that in designing the model for the implementation of the National Injury Insurance Scheme in Queensland, the Queensland Government takes into account the need to build a platform for the other proposed no-fault injury insurance schemes, for example medical and workplace accidents, and explores options for sharing resources and information with the National Disability Insurance Agency.

8.3 Affordability and funding arrangements

The committee notes that the Productivity Commission Report recommended that the NIIIS for motor vehicles should be funded from existing insurance products that are mandatory for owners of motor vehicles (namely, compulsory third party motor vehicle insurance).³¹⁸ The committee notes that all other States and Territories have taken this approach.

The committee notes, however, that the decision about how to fund the scheme rests with the Queensland Government. The committee notes that part of the Terms of Reference was affordability for Queensland taxpayers and motorists.

The committee considers that as the new scheme has the potential to benefit all Queenslanders, the responsibility for paying for the scheme could be borne by a broad section of the Queensland community.

Accordingly, the committee recommends that the Treasurer investigate a range of options to fund the scheme to ensure that it is affordable for Queenslanders - for example:

- the inclusion of concessions for pensioners and periodic payments
- possible phasing in of any levy or payments
- consideration of risk-based charges according to types of vehicle, and
- a GST exclusion for the levy.

Recommendation 2

The committee recommends that the Queensland Government investigate a range of options for funding the lifetime care and support scheme to ensure that it is affordable for Queenslanders, including:

- the inclusion of concessions for pensioners and periodic payments
- possible phasing in of any levy or payments
- consideration of risk-based premiums according to vehicle type, and
- a GST exclusion for the levy or payment.

8.4 Provision of suitable accommodation

The committee notes stakeholders' concerns about the lack of suitable accommodation for people who have suffered catastrophic injuries in Queensland (see Chapter 7.8 of this report). In particular, the committee notes the cost effectiveness of designing in accessibility features when building homes, as opposed to making subsequent modifications once a home is built.

The committee recommends that the Queensland Government reviews current Building Codes for newly built accommodation with due consideration of the accessibility needs of people with a disability.

318 Productivity Commission Report, 31 July 2011, p.869

Recommendation 3

The committee recommends that the Queensland Government reviews current Building Codes for newly built residential accommodation with due consideration of the accessibility needs of people with a disability.

8.5 Review mechanism

The committee notes stakeholders' views about the importance of ensuring that a robust and independent review mechanism is put in place to review the LCSS' decisions about eligibility for the scheme and the provision of care and support.³¹⁹

The committee notes that submitters to the Productivity Commission also stated that because no-fault compensation systems take away people's common law rights, they must include a review mechanism that maintains practically enforceable rights regarding whether or not a particular treatment, rehabilitation or type of care is needed.³²⁰

The Queensland Treasury advised that it is proposed that legislation and regulations will set out the dispute resolution framework for the scheme. The Queensland Treasury stated that:

It is anticipated that this will provide for reviews of eligibility decisions, treatment, care and support assessments and determination of disputes. It is proposed to be modelled on dispute processes in other states to allow for internal and external review through the relevant tribunals and Courts, legal representation and legal costs.³²¹

The committee recommends that the Queensland Government establish a robust and independent review mechanism for decisions taken under the LCSS. The committee considers that the review mechanism should cover decisions about whether an injured person is eligible to enter the scheme, or remain in the scheme, and about the level and type of care and support deemed "reasonably and necessary" for the individual once accepted into the scheme.

Recommendation 4

The committee recommends that the Queensland Government establish a robust and independent review mechanism for decisions taken under the lifetime care and support scheme about:

- whether an injured person is eligible to enter the scheme, or remain in the scheme, and
- the level and type of care and support deemed "reasonably and necessary" for the individual once accepted into the scheme.

8.6 Parliamentary oversight, monitoring and review

During its inquiry, the committee heard from various stakeholders about the need to ensure that appropriate review and oversight mechanisms are in place to ensure that the LCSS is operating efficiently and effectively.³²²

CONROD suggested that the scheme's performance should be continuously reviewed on the basis of participant outcomes and satisfaction and scheme viability. CONROD considered that the outcomes of these reviews should be made publicly available to ensure transparency, accountability and community acceptance of the scheme. CONROD suggested the adoption of the following review mechanisms currently utilised by the LTCSA in NSW:

319 QAI, Submission no.8; ALA, Submission no.19; Suncorp, Submission no.18; CONROD, Submission no.20, p.5

320 Productivity Commission Report, 31 July 2011, p.827

321 Queensland Treasury, *Tabled Papers*, 7 March 2016, p.4

322 CONROD, Submission no.20, p.6; YPINHA, Submission no.24, p.11

- regular client satisfaction surveys
- actuarial reviews
- an independent advisory panel to review scheme performance and meet quarterly, and
- parliamentary reviews of the scheme's performance.³²³

The YPINHA suggested that the scheme should be required to report to Parliament annually to ensure transparency and accountability for its funding and operations.³²⁴

The committee notes that the LTCS in NSW has been reviewed a number of occasions by the NSW Upper House Standing Committee on Law and Justice. The committee considers that a similar arrangement in Queensland would provide an important accountability mechanism and provide a forum for stakeholders and the public to provide feedback on the operation and performance of the scheme in Queensland.

Given the uncertainties surrounding the costs of the scheme and the important role it will play in the lives of some of the most vulnerable members of the Queensland community, the committee recommends that a parliamentary portfolio committee should have ongoing responsibility for oversight of the LCSS.

The committee considers that the LCSS should be reviewed annually for the first five years, to enable any necessary modifications to be made as data and feedback about its operation becomes available.

Recommendation 5

The committee recommends that a parliamentary portfolio committee be given ongoing oversight responsibility for the lifetime care and support scheme, including to review and report to Parliament on the scheme's operations on an annual basis for the first five years after the scheme is established.

8.7 Patient-centred care and choice

The committee acknowledges the views of stakeholders about the important role independence, flexibility and choice plays in the lives of catastrophically injured people and its impact on the chances of recovery.

The committee notes the Queensland Treasury's comments about the various options for providing choice and independence in a full LCSS – see Chapter 7.6 of this report. These options include:

- co-ordinated support, and
- self-directed fund management.

Accordingly, the committee recommends that the Queensland Government when designing the LCSS provide for the maximum level of choice and independence for those catastrophically injured people, subject to appropriate safeguards to ensure the affordability and long term sustainability of the scheme.

Recommendation 6

The committee recommends that the Queensland Government when designing the lifetime care and support scheme provide for the maximum level of choice, flexibility and independence for catastrophically injured people about the care and support they receive, subject to appropriate safeguards to ensure the affordability and long term sustainability of the scheme.

8.8 Use of dividends

The committee notes that no-fault LCSS in other jurisdictions, for example the TAC scheme in Victoria pay a dividend to the Government.

The committee recommends that any dividends from the LCSS in Queensland should not be paid to the State Government, but instead be re-invested in the scheme to the benefit of that scheme; for example,

323 CONROD, Submission no.20, p.6

324 YPINHA, Submission no.24, p.11

investment in specialised and group housing, road safety education programs and injury prevention, research and early intervention.

Recommendation 7

The committee recommends that any dividends from the lifetime care and support scheme in Queensland should not be paid to the State Government, but instead be re-invested in the scheme to the benefit of that scheme; for example, investment in specialised and group housing, road safety education programs and injury prevention, research and early intervention strategies.

Appendix A – List of submissions

Sub #	Submitter
1	Vision Australia
2	Queensland Law Society
2s	Queensland Law Society (Supplementary)
3	Insurance Council of Australia
3s	Insurance Council of Australia (Supplementary)
4	Anti-Discrimination Commission Queensland
5	Actuaries Institute
6	Spinal Life Australia
7	Insurance Australia Group Limited (IAG)
8	Queensland Advocacy Incorporated
9	Greg Spinda
10	Sunshine Coast Independent Living Service Inc. (SCILS)
11	RACQ
11s	RACQ (Supplementary)
12	Quality Lifestyle Support
13	Headway Gold Coast Inc.
13s	Headway Gold Coast Inc. (Supplementary)
14	QBE Australia
15	Royal Australasian College of Surgeons
15s	Royal Australasian College of Surgeons (Supplementary)
16	Queensland Paediatric Rehabilitation Service
17	Quarterly Brain Injury Services Meeting
18	Suncorp
18s	Suncorp (Supplementary)
19	Australian Lawyers Alliance
19s1	Australian Lawyers Alliance (Supplementary 1)
19s2	Australian Lawyers Alliance (Supplementary 2)

20	Centre for National Research on Disability and Rehabilitation (CONROD) Griffith
21	Youngcare
22	Dinesh Palipana
23	Australian Physiotherapy Association
23s	Australian Physiotherapy Association (Supplementary)
24	Young People In Nursing Homes National Alliance
24s	Young People In Nursing Homes National Alliance (Supplementary)
25	George Ratnavale
26	Law Council of Australia

Appendix B – List of witnesses at public briefings and public hearings

Public briefing 2 December 2015
Mr Jim Murphy, Under Treasurer, Queensland Treasury
Mr Dennis Molloy, Acting Deputy Under Treasurer, Queensland Treasury
Mr Wayne Cannon, State Actuary, Queensland Treasury
Mr Neil Singleton, Insurance Commissioner, Motor Accident Insurance Commission

Public hearing 5 February 2016
Ms Lois Boswell, Chief Executive, Lifetime Support Authority, South Australia
Mr John Walsh AM, Peer Review Actuary, Lifetime Support Authority, South Australia, Scheme Actuary, Lifetime Care and Support Authority, NSW and Associate Commissioner, Productivity Commissioner Inquiry into Disability Care and Support
Ms Tabatha Cox, Scheme Participant, Lifetime Support Authority, South Australia
Mr Don Ferguson, Executive General Manager, Lifetime Care and Support Authority, NSW
Ms Suzanne Lulham, General Manager, Service Delivery, Lifetime Care and Support Authority, NSW
Mr Stuart Hume, Scheme Participant, Lifetime Care and Support Authority, NSW
Mr Rod Whithear, Chief Executive and Managing Director, Insurance Commission of Western Australia
Mr Joe Calafiore, Chief Executive Officer, Transport Accident Commission, Victoria
Mr Wayne Cannon, State Actuary, Queensland Treasury
Mr Neil Singleton, Insurance Commissioner, Motor Accident Insurance Commission
Mr Geoff Waite, Assistant Under Treasurer, Corporate Group, Queensland Treasury

Public hearing 17 February 2016
Mr Angus Cairn, General Manager – CTP Claims, Royal Automobile Club Queensland
Mr Bradley Heath, Chief Executive Officer of RACQ Insurance, Royal Automobile Club Queensland
Mr Tony Mobbs, General Manager – CTP, Allianz
Ms Vicki Mullen, General Manager, Consumer Relations and Market Development, Insurance Council of Australia

Mr Michael Roth, Executive Manager, Public Policy, Royal Automobile Club Queensland
Mr Shane Budden, Senior Policy Advisor, Queensland Law Society
Mr Michael Garbett, Chair – Accident Compensation/Torts Law Committee, Queensland Law Society
Mr Rod Hodgson, Queensland President, Australian Lawyers Alliance
Mr Andrew Stone SC, Former National President, Australian Lawyers Alliance
Ms Kay Noonan, Chief Executive Officer, Headway Gold Coast Inc.
Mr Russell Nelson, Chief Operational Officer, Headway Gold Coast Inc.
Ms Julie Williams, General Manager, Headway Gold Coast Inc.
Ms Thea Isles, Support Services Manager, Headway Gold Coast Inc.
Mr John Mayo, General Manager – Community Development, Spinal Life Australia
Ms Frances Porter, Executive Manager – Member and Client Services, Spinal Life Australia
Mr Alan Blackwood, Director – Policy and Innovation, Young People In Nursing Homes National Alliance
Dr Ros Harrington, Senior Research Fellow, Centre for National Research on Disability and Rehabilitation, Griffith University
Ms Amanda Aitken, General Insurance Practice Committee Member, Actuaries Institute
Mr Wayne Cannon, State Actuary, Queensland Treasury
Mr Neil Singleton, Insurance Commissioner, Motor Accident Insurance Commission
Mr Geoff Waite, Assistant Under Treasurer, Corporate Group, Queensland Treasury

Public briefing 2 March 2016
Mr Wayne Cannon, State Actuary, Queensland Treasury
Mr Neil Singleton, Insurance Commissioner, Motor Accident Insurance Commission
Mr Geoff Waite, Assistant Under Treasurer, Corporate Group, Queensland Treasury

Public hearing 2 March 2016
Mr Rod Hodgson, Queensland President, Australian Lawyers Alliance
Mr Andrew Stone SC, Former National President, Australian Lawyers Alliance

Public hearing 7 March 2016
Mr Angus Cairn, General Manager – CTP Claims, Royal Automobile Club of Queensland
Mr Stephen McPhee, National Technical Manager - CTP, QBE
Mr Richard Mayo, National Product Manager – CTP, QBE
Mr Tony Mobbs, General Manager – CTP, Allianz
Ms Vicki Mullen, General Manager, Consumer Relations and Market Development, Insurance Council of Australia
Mr Daniel Wilkinson, Executive Portfolio Manager – Queensland CTP, Suncorp
Mr Alan Blackwood, Director – Policy and Innovation, Young People In Nursing Homes National Alliance
Dr Ros Harrington, Senior Research Fellow, Centre for National Research on Disability and Rehabilitation, Griffith University
Mr Wayne Cannon, State Actuary, Queensland Treasury
Mr Neil Singleton, Insurance Commissioner, Motor Accident Insurance Commission
Mr Geoff Waite, Assistant Under Treasurer, Corporate Group, Queensland Treasury

Appendix C – Summary of approaches taken in other jurisdictions

New South Wales

NSW currently operates a “no fault” lifetime care and support scheme for all people who sustain catastrophic injuries as a result of a motor vehicle accident, regardless of fault – the Lifetime Care and Support Scheme (LTCS NSW).

Claims in relation to non-catastrophic injuries sustained from a motor vehicle accident may be made through a separate, fault-based CTP claims system, which is underwritten by private insurers, where an at-fault party can be identified.³²⁵

The LTCS NSW is administered by the Lifetime Care and Support Authority (LTCSA), a statutory authority which was established on 1 July 2006 under the *Motor Accidents (Lifetime Care and Support) Act 2006*.

The LTCS NSW is funded through the Medical Care and Injury Services Levy (MCIS Levy) paid by motorists when they purchase a CTP (Green Slip) insurance policy. The MCIS Levy contributions are adjusted over time in order to remain sufficient to fund the full cost of providing lifetime care and treatment to scheme participants and other scheme expenses.³²⁶ The 2014-15 Annual Report reported that the total annual levy collected in the most recent financial year was \$411.8 million.³²⁷

The amount of money collected by the MCIS Levy each year reflects the full cost of providing support to participants for the rest of their lives. However, the amount paid out in one year is not commensurate with the amount collected, because most of the money collected must be put aside for the costs of future care.³²⁸ The size of the liability to the annual revenue cash flow is currently 6:1, but in future years will increase to 25:1.³²⁹ At the public hearing on 5 February 2016, LTCSA, stated that “The liabilities are approximately \$2.6 billion and the fund is in the vicinity of \$4 billion”.³³⁰

People are eligible to enter the LTCS NSW if they have sustained a spinal cord injury, moderate to severe brain injury, multiple amputations, severe burns or permanent blindness, in line with the Agreed Minimum Benchmarks.³³¹

Assessment of eligibility for the LTCS is a two-stage process. Everyone who is accepted into the LTCS NSW commences a two-year interim eligibility period. The interim period takes account of possible improvements to an individual’s health and allow those who make a good recovery to leave the LTCS NSW. After the end of the interim period, the person’s current and expected future needs are assessed to determine whether they meet the criteria to become a lifetime participant.³³² The LTCSA estimate that approximately 180 people enter the Scheme each year as interim participants and after two years approximately 120 continue as lifetime participants.³³³

325 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.39

326 Lifetime Care and Support Authority (LTCSA), NSW, *Annual Report 2014/15*, p.6

327 LTCSA, NSW, *Annual Report 2014/15*, p.50

328 LTCSA, NSW, *Annual Report 2014/15*, p.30

329 LTCSA, NSW, *Annual Report 2014/15*, p.30

330 Ms Suzanne, General Manager, Service Delivery, LTCSA, NSW, *Public hearing transcript*, 5 February 2016, p.11

331 LTCSA, NSW, *Annual Report 2012/13*, p.4

332 Standing Committee on Law and Justice, NSW Legislative Council, Fifth Review of the exercise of the functions of the Lifetime Care and Support Authority, Report 52, July 2014, p.3

333 LTCSA, NSW, *Annual Report 2014/15*, p.6

A person who was injured prior to the commencement of the LTCS NSW may buy-in to the Scheme by contributing an amount determined by the LCTSA.³³⁴ The committee understands, however, that no one has requested to buy-in back into the Scheme.³³⁵

The LTCS NSW meets the Agreed Minimum Benchmarks as it pays for “reasonable and necessary” medical treatment, rehabilitation and attendant care services that are related to the motor accident injury.³³⁶

Participants are supported by a LTCSA coordinator who assists them to plan their rehabilitation and care, as needed. The LTCS NSW also funds the development of programs and research to assist injured people and their families deal with the impacts of traumatic injury, explore the effectiveness of rehabilitation; and provide health professionals with best practice information.³³⁷ The LTCSA has also piloted a direct funding model for attendant care to support participants to independently manage their funding to appoint the support they need.³³⁸

The LTCSA has established a disputes review mechanism which people may use if they disagree with a decision or assessment of the LTCSA.

The LTCS NSW extinguishes common law rights for ongoing care and support; however, catastrophically injured people retain the right to pursue common law claims for income loss or pain and suffering incurred, where someone else was at-fault.³³⁹

Australian Capital Territory

The ACT established the Lifetime Care and Support Scheme on 1 July 2014 under the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (ACT). The LCSS is a no-fault scheme for people who sustain a catastrophic injury in a motor vehicle accident.

For non-catastrophic injuries, the ACT Compulsory Third-Party Insurance Regulator administers an at-fault CTP insurance scheme which is underwritten by private insurers.³⁴⁰

The LCSS is funded by a levy on CTP insurance policies. The Levy is set independently from Government by the ACT Lifetime Care and Support Commissioner. In 2014, the levy was \$34 for an annual CTP policy.³⁴¹ The ACT Government has estimated that between three and six people will access the scheme each year, at an average lifetime cost of \$2.3 million per person.³⁴²

The LTCSA in NSW has an agreement with the ACT Lifetime Care and Support Commissioner to provide treatment, rehabilitation and care for participants of the ACT LCSS on behalf of the ACT based on the ACT

334 *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW), section 7A

335 Mr Andrew Stone SC, ALA, *Public hearing transcript*, 2 March 2016, p.5

336 LTCSA, NSW, *Annual Report 2014/15*, p.6

337 LTCSA, NSW, *Annual Report 2014/15*, p.6

338 LTCSA, NSW, *Annual Report 2014/15*, p.8

339 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.39

340 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.40

341 ACT Treasury, *Levy in the ACT*, <http://apps.treasury.act.gov.au/lcscs/levy-in-the-act>, (accessed on 15 March 2016)

342 K Cutter, *d’finitive: CTP News*, Finity CONSULTING, March 2014, p.10

Lifetime Care and Support Guidelines and ACT legislation.³⁴³ The Scheme pays for “reasonably necessary” treatment, rehabilitation and care which meet the Agreed Minimum Benchmarks.³⁴⁴

Similar to the LTCS NSW, injured people are initially accepted into the scheme as an “interim participant” for two years. After two years, the person’s current and expected future needs are assessed to determine if they meet the criteria to become a lifetime participant. There is no provision to allow a person injured before 1 July 2014 to buy-in to the LCSS.

A participant in the LCSS who is able to prove that someone else is at-fault in a motor vehicle accident may make a CTP insurance claim for compensation for economic loss (for example loss of earnings and earning capacity) and non-economic loss (general damages or pain and suffering); but not lifetime care and support.³⁴⁵

South Australia

South Australia operates a no-fault scheme for people who sustain a catastrophic injury in motor vehicle accidents based on the LTCS Scheme in NSW. The Lifetime Support Scheme (LSS) commenced on 1 July 2014. The LSS is administered by a statutory authority, the Lifetime Support Authority (LSA) under the *Motor Vehicles Accidents (Lifetime Support Scheme) Act 2013*.³⁴⁶

Like NSW and the ACT, South Australia has a separate CTP scheme for non-catastrophic injuries which is underwritten by private licensed insurers and administered by the Motor Accident Commission.

The LSS is a no-fault scheme which pays for necessary and reasonable treatment, care and support for participants who have a serious spinal cord injury, brain injury, amputations, burns or blindness from a motor vehicle accident in South Australia occurring on or after 1 July 2014. A person injured before that date may buy into the Scheme based on a contribution amount determined by the LSA.³⁴⁷

The rules of the LSS are set out in delegated legislation, made by the Governor of South Australia on the recommendation of the LSA. The LSS Rules spell out the conditions of benefits for the scheme, for example, eligibility and the outcomes to be achieved.³⁴⁸

The LSS levy was applied to all South Australian motor vehicle registrations from 1 July 2014. Levies on motor vehicle registrations collected by the Registrar of Motor Vehicles are paid into the LSS Fund. The levy is assessed each year by an independent actuary, who calculates the present and likely future liabilities of the scheme. The LSA invests the levies with the Superannuation Funds Management Corporation of South Australia until needed to pay for the treatment, care and support of participants and other costs of operating the LSS.³⁴⁹

343 LTCSA, NSW, *The ACT Lifetime Care and Support Scheme*, <http://www.lifetimecare.nsw.gov.au/lifetime-care-and-support-scheme/the-act-lifetime-care-and-support-scheme> (accessed on 4 March 2016)

344 *Lifetime Care and Support (Catastrophic Injuries) Act 2014* (ACT), section 9

345 ACT Treasury, *Frequently Asked Questions*, <http://apps.treasury.act.gov.au/lcscs/frequently-asked-questions>, (accessed on 14 March 2016)

346 Lifetime Support Authority (LSA), South Australia, *What is the Lifetime Support Scheme?* Information Sheet, <http://lifetimesupport.sa.gov.au/wp-content/uploads/A1.pdf> (accessed on 29 January 2016)

347 LSA, South Australia, *What is the Lifetime Support Scheme?* Information Sheet, <http://lifetimesupport.sa.gov.au/wp-content/uploads/A1.pdf> (accessed on 29 January 2016)

348 Ms Lois Boswell, LSA, *Public hearing transcript*, 5 February 2016, p.2

349 LSA, South Australia, [https://www.audit.sa.gov.au/Portals/0/Documents/Audit%20Reports/2014-15/Part%20B/Agency/Part B 2015 Lifetime Support Authority of South Australia.pdf](https://www.audit.sa.gov.au/Portals/0/Documents/Audit%20Reports/2014-15/Part%20B/Agency/Part%20B%202015%20Lifetime%20Support%20Authority%20of%20South%20Australia.pdf) (accessed on 4 March 2016)

In its first year of operation, the LSA supplied \$2.3 million in treatment, care and support services and the LSS actuary estimated a liabilities valuation of \$93 million for participant treatment, care and support as at 30 June 2015.³⁵⁰

Once an injured person has been accepted by the LSA, they become an “interim participant” for up to three years. An injured person can be accepted as a “lifetime participant” at any time during the interim period following an assessment.³⁵¹

Lifetime participants may elect to manage all or part of their funding for treatment, care and support services under a self-management option. To be eligible for self-management, lifetime participants will need to enter into an agreement with the LSA, have completed a service delivery plan and not be insolvent. The LSA will also assess whether allowing the person to self-manage would represent an “unreasonable risk” to the person.³⁵²

The LSS does not pay for income support to participants, nor damages for pain and suffering. Participants in the LSS are able to sue for damages from the CTP scheme for their non-economic loss (pain and suffering) and loss or impairment of earning capacity, where someone is at-fault.³⁵³

Victoria

Victoria has operated a no-fault scheme since 1987 – the Transport Accident Commission (TAC). The TAC pays for reasonable medical treatment and certain other services needed as a result of a person’s injuries which are directly caused by a transport accident, provided they are not convicted of certain driving offences.³⁵⁴ Unlike other jurisdictions, the TAC covers both at-fault and no-fault claims and both catastrophic and non-catastrophic injuries.

The TAC’s key functions are to pay for treatment and support services for people injured in transport accidents, promoting road safety in Victoria and improving the State’s trauma system.³⁵⁵

The Government underwrites both the no-fault and at-fault schemes. The TAC is a state owned enterprise of the Victorian Government which operates as a commercial insurer and is funded by both premiums and investment income generated on reserves.

The TAC is funded via the Transport Accident Charge which Victorian motorists pay in their annual vehicle registration.³⁵⁶ The charge varies depending on the type of vehicle and where the vehicle is usually kept. Concessions apply to eligible pensioners.³⁵⁷

In 2014-15, the TAC provided \$1.1 billion in services and supports to 47,204 people, a slight increase from 47,115 people on 2013-14. Of that number, 22,138 were new claimants.³⁵⁸

350 LSA, South Australia, *Annual Report 2014-15*, September 2015, p.16

351 LSA, South Australia, *What is the Lifetime Support Scheme?* Information Sheet, <http://lifetimesupport.sa.gov.au/wp-content/uploads/A1.pdf> (accessed on 29 January 2016)

352 LSA, South Australia, *Self-management*, Information Sheet, <http://lifetimesupport.sa.gov.au/wp-content/uploads/P13.pdf> (accessed on 29 January 2016)

353 LSA, South Australia, *Scheme Participants*, <http://lifetimesupport.sa.gov.au/scheme-participants/> (accessed on 14 March 2016)

354 State Government Victoria, Transport Accident Commission (TAC), *About the TAC*, 1 July 2014, p.3

355 State Government Victoria, TAC, *Annual Report 2014-15*, p.8

356 State Government Victoria, TAC, *About the TAC*, 1 July 2014, p.3

357 State Government Victoria, TAC, *Transport Accident Charge*, <https://www.tac.vic.gov.au/about-the-tac/our-organisation/transport-accident-charge> (accessed on 29 January 2016)

358 State Government Victoria, TAC, *Annual Report 2014-15*, p.6

The TAC can pay for: ambulance services; hospital services; medical services (however a medical excess may apply); pharmaceuticals; therapy services; dental services (a medical excess may apply) and nursing services.³⁵⁹ The TAC may also pay for other services, such as: travel to attend treatment; rehabilitation and disability services; home support; child care and equipment (however a medical excess may apply).³⁶⁰ In addition, the TAC may be able to pay income support for loss of earnings.³⁶¹ A lump sum payment may also be made by the TAC to people who have a permanent impairment.³⁶²

If a client does not accept a decision by the TAC they can request an informal review by TAC; a review under the No Fault Dispute Resolution Protocols; or a review by the Victorian Civil and Administrative Tribunal.³⁶³

The scheme allows injured people to pursue additional compensation through common law actions for pain and suffering, financial loss and loss of enjoyment of life.³⁶⁴

Tasmania

Tasmania operates a no-fault system which provides benefits including lifetime care and support for both catastrophic and non-catastrophic injuries, subject to acts of illegality.³⁶⁵ The Motor Accidents Insurance Board (MAIB) was established in 1974 under the *Motor Accidents (Liabilities and Compensation) Act 1973*.

The MAIB is a Tasmanian Government Business Enterprise which operates the CTP insurance scheme. The MAIB administers the funding and payment of CTP motor accident compensation to eligible people who have been injured in a motor vehicle accident.

The MAIB is funded through compulsory premiums paid on registered motor vehicles.³⁶⁶ Based on actuarial advice, the MAIB has maintained a target funding ratio range of 120 to 145 per cent which reflects the volatility of financial results and the desire to maintain a funding ratio of at least 100 per cent.³⁶⁷

The Tasmanian scheme is designed to provide incentives to law abiding motorists by exclusions for claimants who were injured while committing a serious traffic offence. In this regard, the Tasmanian scheme does not meet the Agreed Minimum Benchmarks, so in these circumstances the NDIS will fund supports costs for such drivers.³⁶⁸

The MAIB provides for a range of supports and services including: reasonable medical and hospital costs; ambulance transport; rehabilitation treatment; long term care for the seriously injured; a disability allowance; and in the case of fatalities, funeral expenses and dependency benefits.³⁶⁹

359 State Government Victoria, TAC, *About the TAC*, 1 July 2014, p.4

360 State Government Victoria, TAC, *About the TAC*, 1 July 2014, p.7

361 State Government Victoria, TAC, *About the TAC*, 1 July 2014, p.4

362 State Government Victoria, TAC, *About the TAC*, 1 July 2014, p.16

363 State Government Victoria, TAC, *Annual Report 2014-15*, p.21

364 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.39

365 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.39

366 Motor Accidents Insurance Board (MAIB), Tasmania, *Annual Report 2014-15*, p.2

367 MAIB, Tasmania, *Annual Report 2014-15*, p.3

368 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.15

369 MAIB, Tasmania, *Annual Report 2014-15*, p.2

Injured people can take action to obtain damages under common law where the fault of another party can be established.³⁷⁰

Northern Territory

The Motor Accident Compensation Scheme (MAC) is a no-fault scheme. However, some exclusions and reductions to benefits may apply if: the driver was affected by alcohol or drugs; was unlicensed to drive; or was involved in criminal or reckless conduct. A reduction in benefits may also apply if the injured person failed to wear a seatbelt or safety helmet where required by law – which is contributory negligence.³⁷¹ The Scheme covers both catastrophic and non-catastrophic injuries.

The Territory Insurance Office (TIO) was established under the *Territory Insurance Office Act 1979*, as a statutory corporation owned by the Northern Territory Government which is responsible for administering the MAC scheme. While the TIO is “guaranteed” by the Government, the organisation operates on a commercial basis and is fully committed to complying with prudential standards and achieving key industry performance benchmarks.³⁷² The MAC scheme is funded through a portion of motorists’ vehicle registration charge.

The MAC scheme provides benefits to compensate for the necessary and reasonable costs of medical, rehabilitation and associated treatment, and loss of earning capacity. Benefits include: ambulance services; medical and hospital services; rehabilitation and therapy services; pharmacy expenses; dental services; nursing services; return to work programs; equipment; attendant care services; loss of earning capacity benefit; and death and dependency benefits. Individuals may also be eligible for a lump sum payment if they have sustained a permanent impairment as a result of the injury.³⁷³

If there is a dispute about benefits and entitlements, an injured person may use the MAC Dispute Resolution process.

Unlike many other jurisdictions, if a person is paid injury benefits under the MAC, there is no right to bring a common law action against anyone for damages, such as loss of earnings or pain and suffering.

Western Australia

Western Australia currently operates an at-fault CTP insurance scheme for motor vehicle accidents administered and underwritten by the Insurance Commission of Western Australia.

The Western Australia Government recently introduced legislation to establish a no-fault CTP catastrophic injury scheme on 1 July 2016.³⁷⁴ The proposed Western Australia scheme comprises:

- a new no-fault LCSS to provide reasonable and necessary support to people who are catastrophically injured, as a result of a motor vehicle accident, and who are not able to assert that their injuries were caused by the fault of another driver, and
- the existing CTP scheme for catastrophically injured people who are able to assert that their injuries were caused by the fault of another driver. Lump sum payments would be made to people

370 MAIB, Tasmania, *About the Scheme*, <http://www.maib.tas.gov.au/about-maib/about-the-scheme/> (accessed on 29 January 2016)

371 Territory Insurance Office (TIO), Northern Territory, *Motor Accidents Compensation, General Information – Factsheet*, 1 July 2014, p.1

372 PwC, *National Injury Insurance Scheme: Motor Vehicle Accidents – Consultation Regulation Impact Statement*, April 2014, p.39

373 TIO, Northern Territory, *Motor Accidents Compensation, General Information – Factsheet*, 1 July 2014, p.2

374 Motor Vehicle (Catastrophic Injuries) Bill 2016 (Western Australia)

who are catastrophically injured, their family or trustee to manage the investment and expenditure of funds for reasonable and necessary costs for lifetime care and support.³⁷⁵

It is proposed that the new no fault scheme will provide reasonable and necessary care and support for people with catastrophic injuries, including: medical treatment and pharmaceuticals; dental; rehabilitation; ambulance transportation; respite care; attendant care services; domestic assistance and aids and appliances; education and vocational training; and home and transport modifications.

The cost of the proposed scheme has been estimated at \$202 million in the first year. The Government of Western Australia announced that there will be an additional CTP premium of a maximum of \$99 for vehicle registration renewals (including GST and insurance duty) from 1 July 2016. The cost of CTP insurance including no-fault will be approximately \$409 from 1 July 2016.³⁷⁶

375 Government of Western Australia, *Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme – Green Paper*, 2014, p.24

376 Government of Western Australia, *Media Statements*, Western Australian motorists covered in new Bill, 24 February 2016, <https://www.mediastatements.wa.gov.au/Pages/Barnett/2016/02/Western-Australian-motorists-covered-in-new-Bill.aspx> (accessed on 25 February 2016)

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Statements of Reservation

Statement of Reservation – Non-Government Members

As the Deputy Chair of the Education, Tourism, Innovation & Small Business (ETISB) Committee, and on behalf of the LNP Opposition members of the Committee, I write to register a statement of reservation with respect to the National Injury Insurance Scheme (NIIS) Inquiry.

I wish to make a Statement of Reservation with the NIIS Inquiry in two respects: "The Rushed Timeframe", and "The Failure to Agree on a Suitable Affordable Model" for the Scheme.

1. The Rushed Timeframe

The poor planning of the Government regarding the NIIS Inquiry created substantial problems, resulting in the Committee being subjected to limited time frames and rushing critical decisions at the last hour.

First, the NIIS Inquiry in Queensland has lagged behind all other States. There was plenty of time in 2015/16 for this Inquiry to proceed to reach its conclusions. All other States have achieved results on the NIIS Inquiry in a timely manner, with the exception of Queensland. The Queensland Labor Government is the only Government that has not dealt with the Inquiry in a timely manner and has handled the Inquiry in such a disorganised way.

Second, a previous time extension to early 2016 put the Inquiry behind schedule, pushing it back even further behind other States.

Third, with the reporting date to the Parliament set at 7 March 2016, the responsibility for the Inquiry was shifted to the ETISB Committee. It must be noted that key industry and services stake-holders had already given evidence at the Public Hearings of the previous Committee.

While the ETISB Committee did not have to go all the way back to the drawing board, as some information (like written submissions) carried forward, we had to digest a huge volume of information hastily, re-interview some stakeholders, suddenly schedule additional meetings and had to work under unreasonable time-frames. The Committee was forced to rush through vast amounts of material to make up for a short reporting time frame.

The Government's failure to plan caused extensive problems for the Committee. The Government should be condemned for its lack of planning and its disorganisation on what is such an important matter to the individuals affected. Particularly considering that the NIIS Scheme has implications for the NDIS Scheme. The Government certainly cannot afford to fail to properly plan for the NDIS Scheme as they have with the NIIS Scheme.

2. The Failure to Agree on a Suitable Affordable Model

The Committee did not reach agreement on the main part of the Terms of Reference of the Inquiry which was to choose a suitable model for the Scheme that achieved the minimum benchmarks set down by the Commonwealth Heads of Agreement, to which Queensland is a signatory, and the affordability of the Scheme.

The Committee started out considering two options, Option A and Option B. A third Option (a variant of Option B - hybrid option) and a last minute fourth Option (a further hybrid model) were considered.

Statement of Reservation – Non-Government Members (cont)

The Government members of the Committee eventually put forward 'Option B'. The Non-Government members could not agree with Option B as the price hike of \$76 fails the 'affordability' test of the terms of reference for the Scheme in our view.

Treasury estimated that Option B (a hybrid model) could cost at least an average extra \$76 every year for every registered vehicle in Queensland.

The LNP Opposition members felt that figure was not affordable and would cause a 'bill-shock' for many Queenslanders already struggling with high costs of living. Many young people, seniors, low income earners and other battlers would find this cost unbearable. Such a price hike in this levy, would be seen as an additional tax on top of what is already one of the most expensive vehicle registration costs in Australia and would have negative impacts on businesses with multiple vehicles. Many jobs would be lost and the businesses themselves placed at risk.

While the Non-Government members could not agree to accept the Government members of the Committee's proposed Model for the NIIS Scheme (Option B - a hybrid model) due to it failing the affordability test, the LNP Opposition members were supportive of all other sensible and reasonable recommendations.

I want to thank the various stakeholder groups for their submissions and time, the Committee Chair Scott Stewart, all Committee members and the Secretariat for their work.

Regards,
Mark

Dr Mark Robinson MP
Member for Cleveland
Deputy Chair - ETISB Committee

Statement of Reservation on behalf of Government Members of the Committee

I write to lodge a statement of reservation with respect to the Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme. I will briefly detail some of the Government member's concerns with respect to the report. The areas of concern listed below are not exhaustive and Government members will detail additional concerns during the parliamentary debate on the Bill when it is introduced.

Suitable Option for Implementation

Government members believe that no one should be left behind and are committed to ensuring that at least the minimum benchmarks of care are provided to Queenslanders catastrophically injured.

Due to the Committee being unable to recommend a suitable option to implement the NIIS, the Government members collectively determined a model that addressed key concepts:

- A model that ensured all affected by catastrophic injury have immediate access to appropriate levels of treatment that meets agreed minimum benchmarks by qualified practitioners;
- The ability for a person or persons to pursue a common law compensation payment in respect of their care and support needs resulting from the motor vehicle accident;
- Ensures a lifetime care model that is sustainable and meets the needs of the individual over their lifetime;
- Provides for the opportunity for an individual, where capable, to receive a form of lump sum payment to enable the individual to self-manage their needs and service;
- Affordability for the public to fund and sustain the NIIS in the immediate and long term of the program.
- Maintains existing rights for a person to demonstrate fault, with inbuilt safeguards.

The most suitable model determined by the Government members is outlined in Appendix 1 and implements the key concerns listed above.

Consideration for Funding the Model

During the committee discussion on the report, a motion from the Government members recommended that the Treasurer investigate a range of options for funding the model. This discussion included that the Government investigates the possibility for underwriting the CTP insurance scheme in Queensland in much the same way as the Victorian Government is the underwriter for the CTP motor vehicle insurance scheme in their state. This would provide the State Government with the ability to reduce the costs of CTP insurance to motor vehicle owners, reinvest back into the scheme, thereby providing the opportunity to sustain the long term financial implications for funding the NIIS given the 'long tail' nature of the scheme.

Initial and subsequent discussion by all Committee members highlighted the need to keep CTP insurance affordable and have the least amount of financial impact to motor vehicle owners. The recommendation for the Treasurer to investigate the viability and impact of the Government

**Statement of Reservation
on behalf of Government Members of the Committee (cont)**

assuming the role of underwriter for the CTP insurance was initiated by an Opposition members and supported by all Committee members.

The motion was unsuccessful in gaining enough votes to recommend to the Treasurer to pursue this avenue despite being initially supported by members on both sides of the house.

All Government members of the committee would recommend to the Treasurer that he investigates the possibility of the State Government underwriting the CTP insurance scheme in Queensland as a viable option for funding the NIIS.

While much time and consideration was given to the models and the cost of each, I would like to draw the house's attention to the Actuaries scale pertaining to the cost of a hybrid design. The Committee had requested that Treasury cost the model that the Government members are supporting, however, that was not provided within the timeframes afforded to the Committee.

The house will find bipartisan support for minimising the cost of any scheme to Queensland motorists.

Conclusion

Government members are of the view that the cornerstone of the NDIS is to provide people with choice and control. This should also be a cornerstone of the NIIS. As such, Government members support a hybrid scheme that allows catastrophically injured people to opt in or out of the scheme with a common law avenue (if eligible). We are also of a view that this scheme should have inbuilt safeguards to minimise, as much as possible, abuse or misuse of the system.

The ability for catastrophically injured people to maintain their existing rights and provisions to demonstrate fault is instrumental in recommending that a hybrid model be adopted. This model strikes a fair balance.

As previously mentioned, these areas outlined not exhaustive and Government members will detail additional concerns during the parliamentary debate in the house.

Sincerely

Scott Stewart
Member for Townsville

Statement of Reservation on behalf of Government Members of the Committee (cont)

