

PUBLIC BENEFIT TEST PLAN

**REVIEW OF
COMPULSORY THIRD PARTY INSURANCE
LEGISLATION
IN QUEENSLAND**

4 August 1999

COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN QUEENSLAND

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1. Preface and Legislation Review

- 1.1. As part of its obligations under National Competition Policy (NCP) (specifically the Competition Principles Agreement), the Queensland Government is undertaking a review of the Motor Accident Insurance Act 1994 including the Motor Accident Insurance Regulation 1994.
- 1.2. This Act establishes a compulsory third party (CTP) personal insurance scheme for motor vehicles in Queensland. The scheme has the objective of ensuring compensation is available for parties injured in a motor accident where fault can be established. It also provides the mechanisms for rehabilitation of those parties and early resolution of their claims. The Motor Accident Insurance Commission (MAIC) administers this scheme. The scheme will insure 2.4 million vehicles at a total estimated premium of \$685 million in 1999/2000.

2. The Competition Principles Agreement

- 2.1. In conjunction with the Competition Policy Reform Act (1995) the Commonwealth and State Governments signed several inter-government agreements. These were a Competition Principles Agreement, a Conduct Code Agreement and an Agreement to Implement the National Competition Policy and Related Reforms.
- 2.2. In the Competition Principles Agreement there was a provision that each Party to the Agreement would develop a timetable to review all legislation that restricts competition by June 1996 and where appropriate reform all existing legislation that restricts competition by the year 2000.

Section 5(1) of that agreement includes the following statement which is important in planning a Public Benefit Test (PBT).

The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- a) *the benefits of the restriction to the community as a whole outweigh the costs; and*
- b) *the objectives of the legislation can only be achieved by restricting competition.*

According to the Competition Principles Agreement a review of legislation that restricts competition should:

- a) clarify the objectives of legislation;
- b) identify the nature of the restriction on competition;
- c) analyse the likely effect of the restriction on competition and on the economy generally;
- d) assess and balance the costs and benefits of the restriction; and
- e) consider alternative means for achieving the same result including non-legislative approaches.

3. The Public Benefit Test Process

- 3.1. The PBT plan has been developed in a manner which meets the requirements of Clause 5 of the Competition Principles Agreement referred to above.
- 3.2. In April 1999 the Queensland Government established a Committee of Review to examine the CTP scheme including scheme design and affordability. The Committee is also required to undertake a review in terms of the NCP Competition Principles Agreement. The proposed Public Benefit Test focuses on those matters which relate to NCP. It will not relate to aspects of the scheme such as administrative arrangements and the nature and level of compensation.
- 3.3. The NCP issues are necessarily specific to provide a suitable focus for review and to facilitate submissions and consultation and any subsequent changes to legislation which are recommended. The Issues Paper dealing with the identified NCP matters is enclosed as Appendix 1.

4. The Nature of Restrictions on Competition

- 4.1 The following matters have been identified as aspects of the legislation that require assessment against the NCP principles.

	Review Committee Issues Paper Reference
Compulsory Product	1
Private Insurers or Government Monopoly	3
Licensing of Insurers	4
5 Year Restriction on Being Reinstated if Insurer Withdraws	5
Industry Deed Prescribing Means of Sharing Claim Costs Between Insurers	6
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Restrictions on Commissions	36
Provision of Cover in the First Instance for Negligence of Manufacturers	44
Obligation to Provide Rehabilitation	47

All of these matters are dealt with in the issues paper.

5. CTP Policy Objectives

5.1 The objectives of the Queensland Legislation administered by the MAIC are to:

- continue and improve the system of CTP motor vehicle insurance and the Scheme of statutory insurance for uninsured and unidentified vehicles operating in Queensland;
- provide for the licensing and supervision of insurers providing insurance under policies of CTP motor vehicle insurance;
- encourage the speedy resolution of personal injury claims resulting from motor vehicle accidents;
- promote and encourage, as far as practicable, the rehabilitation of claimants who sustain personal injury because of motor vehicle accidents;
- establish and keep a register of motor vehicle accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and
- promote measures directed at eliminating or reducing causes of motor accidents and mitigating their results.

6. Alternative Options

6.1 The NCP Issues Paper sets out possible alternative directions for items listed in Section 4 which have NCP implications and which might be regarded as anti-competitive. The Review Committee is considering these issues specifically but also in the context of the wider scheme review and they will be examined fully in the PBT.

7. Key Affected Groups

7.1 The key groups affected by the existing structure or a move to alternatives are:

- 1) registered motor vehicle owners
- 2) injured parties
- 3) owners of unregistered / uninsured motor vehicles
- 4) medical and allied health professionals
- 5) legal profession
- 6) licensed insurers
- 7) insurers – possible new entrants
- 8) re-insurers
- 9) the Queensland Government through:
 - Queensland Treasury
 - Queensland Transport
 - Queensland Health
 - Emergency Services
 - The Nominal Defendant
- 10) agents for CTP insurers including motor vehicle dealers

8. Impacts on Affected Groups

8.1 The potential impacts on these key affected groups are set out in Appendix 2.

9. Basis of Proposed Assessment

- 9.1 The PBT is to be carried out as part of the Scheme Review in accordance with guidelines set by Government. This is a major undertaking. However a number of the NCP/PBT issues are relatively straight forward and in some instances qualitative.
- 9.2 The PBT requires the use of benefit-cost methodology. Where possible the impacts of competitive restrictions or their removal on key groups will be valued in dollar terms. Where this is not possible due to data not being available or being too costly to obtain, impacts will be identified as fully as possible, but will be described in more qualitative terms.
- 9.3 A key aspect of the methodology is defining “with” and “without” states. This means describing firstly the situation that applies to the present regulatory situation and secondly one or more alternative future states with different regulatory arrangements. All major impacts of moving from the “without” to the “with” state/s are then identified, and valued or described.

10. Review Process Proposed

- 10.1 The review of the legislation in respect of NCP/PBT matters will be undertaken by the Review Committee formed for the purpose of conducting the Scheme Review. That Committee is comprised of an independent chair and three independent members who have been appointed by the Queensland Treasurer.
- 10.2 Argyle Capital and Ernst and Young have been appointed to assist the Review Committee in NCP/PBT matters under terms of reference developed in conjunction with Queensland Treasury.
- 10.3 The process will include consultation with key affected groups and there will be opportunity for submissions from these parties and the public.

11. Consultation Strategy

- 11.1 Public and industry submissions were sought and received prior to the preparation of the issues paper.
- 11.2 The NCP issues form part of a wider scheme issues paper which also outlines the Review Committees’ view on future directions. This paper will be sent to all parties in the key affected groups for written comment.
- 11.3 Meetings will be held, where necessary, with parties from key affected groups to receive views and or to collect relevant data.
- 11.4 The Review Committee will, collate and analyse data, develop options and make recommendations.

12. Timetable

- 12.1 The timetable for Review of Legislation and the PBT is set out in Appendix 3.

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>1 Compulsory v Non-compulsory (NCP Issue also)</p>	<p>Queensland has had compulsory third party (CTP) motor vehicle insurance since 1936. The scheme is common law based and covers liability for personal injury arising from motor vehicle accidents with the policy of insurance indemnifying an owner or driver of a vehicle who is found liable, in whole or in part, for the cause of the accident.</p> <p>Third Party Insurance is compulsory in all States and Territories in Australia.</p>	<p>All submissions support the retention of a compulsory scheme because it ensures the availability of compensation to those injured as a result of the negligence of a driver or owner by through or in connection with a motor vehicle. A compulsory scheme is highly efficient. It enables the spread of risk and provides lower premiums to the motor vehicle owner than would be the case if individuals sought such insurance independently.</p> <p>The compulsory nature of the scheme has been supported without reservation in submissions, and it is regarded as essential to the continuation of an orderly, financially stable and fair third party insurance scheme.</p> <p>Without compulsory cover there would be some uncertainty about the capacity of owner/drivers to meet the cost of compensation and some risk of increase in unfunded public health demand for medical and hospital services, as well as other Government services.</p> <p>There must be appropriate compensation for injuries caused by negligence arising out of motor vehicle accidents.</p>	<p>Retention of a compulsory scheme is supported.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>3 Government Monopoly v Insurers (NCP Issue also)</p>	<p>The CTP Scheme is based on a system which allows the participation of private insurers. This system has worked well over a very long period (although for the vast majority of years a publicly owned insurer held more than 50% of the market) and is generally thought to be advantageous.</p> <p>The Motor Accident Insurance Commission (MAIC) as a regulator (not an insurer), licenses and supervises private insurers providing policies of insurance. Insurers carry the risk for policies issued, however, the Nominal Defendant as a Government instrumentality is the insurer of last resort, carrying the risk for unidentified and uninsured vehicles as well as the costs associated with claims should an insurer become insolvent.</p> <p>It is not possible to insure with an insurer who is not licensed under the Act.</p> <p>Queensland and NSW are currently the only States without a Government monopoly provider.</p>	<p>A number of submissions support the on-going involvement of private insurers in the scheme with the Government's role confined to that of regulator.</p> <p>Private sector underwriting of the scheme has the advantage of the risk being removed from the Government albeit that the Nominal Defendant is the insurer of last resort should an insurer become insolvent.</p> <p>Private sector underwriting offers:-</p> <ul style="list-style-type: none"> • commercial management; • acceptance of financial risk; and • price competition (if scheme design allows). <p>The involvement of private insurers also provides an opportunity to benchmark performance.</p> <p>There were comments that the Government should administer the scheme centrally rather than allowing individual insurance companies to profit.</p>	<p>The Committee favours the retention of private insurers because it:</p> <ul style="list-style-type: none"> • removes the financial risk from Government; • disciplines pricing of premiums; and • ensures premiums are adequate for the risks. <p>The Committee, however, recognises that it comes at a price because there are efficiencies that can be gained through a Government monopoly.</p> <p>Under a Government monopoly certain functions could be outsourced to the private sector to extract efficiencies.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
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3 (Continued)

A Centrally operated Government fund would have the ability to manage the scheme for the long term with due consideration of the scheme policy/design issues.

The Committee is of the view that the financial efficiency of the present scheme and other options should be measured before a final decision is made.

Unlike private insurers, a Government monopoly can accumulate funds without need to pay shareholder dividends. (It would be a matter of Government policy as to whether such an entity paid dividends in the same manner as other Government enterprises in Queensland.)

A Government monopoly has a number of other advantages including:-

- consistency of claims management;
- optimal acquisition costs;
- stronger attention to long term care and scheme policy issues;
- motorists receive the benefits of appropriate investment portfolio more directly, as against investment assumptions being embedded in premium calculations. (By way of example the Traffic Accident Commission of Victoria earned an average of 12.9% per annum in the three years to June 1998. The Queensland Nominal Defendant in the same period earned 13.6% per annum. This is a significantly higher level than the amount allowed for in the premium calculation);
- costs to the motorists can be smoothed out over time; and
- a closer working relationship can be established with Road Safety programs (which is a long term policy).

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>4 Licensing Insurers (NCP Issue also)</p>	<p>The Motor Accident Insurance Act 1994 allows a body corporate carrying on the business of general insurance to apply to MAIC for a licence to issue policies for CTP insurance.</p> <p>Sections 62, 63 and 64 of the Act set out the provisions for the licensing of insurers and the conditions of license.</p> <p>Section 10 of the Act which outlines MAIC's functions requires MAIC to establish and revise prudential standards with which licensed insurers must comply.</p> <p>The applicant for a licence must be carrying on the business of general insurance in Queensland and must have executed the Industry Deed prior to granting of the licence</p> <p>Under Commonwealth legislation insurers writing business in Australia must be licensed with the Australian Prudential Regulation Authority (APRA).</p> <p>APRA undertakes extensive analysis of an insurer's solvency and capacity to meet ultimate claims cost.</p> <p>However, information pertaining to an insurer's financial capacity is not shared with the State jurisdiction, resulting in a level of duplication with regard to prudential supervision undertaken by MAIC.</p>	<p>The CTP scheme attracts a large annual premium income (estimated at \$685 million for 1999/2000) with an outstanding claims liability estimated to be in the order of \$2.5 billion. As the Nominal Defendant is insurer of last resort, this is a very high exposure for the Government should an insurer not have the capacity to meet its claims liabilities.</p> <p>Licensing of insurers limits market access and lowers the number of insurers involved in the scheme. It could be argued that this increases the exposure for the Government should an insurer become insolvent.</p> <p>Conversely a smaller number of licensed insurers provides a basis for more efficient control and supervision.</p> <p>Imposition of standards (including an Industry Deed) by the regulator ensures an appropriate presence, operating structure and staff.</p> <p>Serious and appropriately structured insurers are less likely to fail.</p> <p>The long tail nature of claims requires that only those insurers prepared to make long term commitment should be permitted to participate.</p> <p>MAIC has statutory powers to set standards which insurers are obligated to meet. It would be difficult to undertake the degree of prudential supervision in terms of the Act without duplicating the functions of APRA</p>	<p>Licensing and prudential supervision is in the best interests of the Queensland community.</p> <p>The Committee is of the view that there could be a linking of continuation of licensing to compliance with Commonwealth legislation combined with a pre-set standard in claims rating by a recognised international credit rating organisation.</p> <p>With a view to reducing duplication in prudential supervision, MAIC should explore opportunities with the Australian Prudential Regulation Authority for more open sharing of information.</p> <p>The legislation should provide that insurers who leave the scheme must maintain claims management procedures and resources according to MAIC standards for run-off of all outstanding claims.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>5 Five Year Restriction on Being Reinstated if Insurer Withdraws (NCP Issue also)</p>	<p>Section 62 of the Act states that an insurer whose licence is withdrawn under the Act may not re-apply for a licence within 5 years after the withdrawal.</p>	<p>Ensures that insurers cannot simply come and go from the scheme to meet their own strategic objectives.</p> <p>Limits market re-entry where there have been exceptional circumstances e.g. a takeover of an insurer which may have caused a temporary withdrawal to meet new owners' requirements at that time.</p>	<p>This restriction is important in relation to the stability of the scheme and its retention is favoured. However, in special circumstances MAIC could have the capacity to exercise discretion.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>6 Industry Deed Prescribing Means of Sharing Claim Costs Between Insurers (NCP Issue also)</p>	<p>All insurers sign an Industry Deed at the time of licensing. The Deed sets out the requirements for the management of CTP business and the basis for insurers transacting business between one another.</p> <p>The Industry Deed does provide for licensed insurers to have sharing agreements but where more than one insurer is involved in an accident and where disputes exist after 2 months, the Deed sets out the basis for cost sharing. It covers rules for resolving disputes between insurers.</p>	<p>No issues have been raised by insurers, however, in terms of the NCP review the matter requires examination</p> <p>The Deed requires claims costs distribution based on the number of vehicles in the accident providing all vehicles involved are of the same class (other factors also apply). This can result in commercial inequities and may be anti-competitive.</p> <p>The concept of an Industry Deed is seen as necessary where the market has multiple insurers. To do otherwise leaves the injured party exposed to lengthy litigation simply to resolve liability between insurers.</p>	<p>The Deed needs closer examination to determine the implications for a free market operation. However, the Committee favours the view that the Industry Deed be retained as no strong arguments have been advanced for change.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>8 Nominal Defendant is only Insurer of Unregistered and Unidentified Vehicles (NCP Issue also)</p>	<p>The Nominal Defendant is the deemed insurer for unregistered and unidentified vehicles.</p> <p>The Nominal Defendant also provides gratuitous insurance in special circumstances e.g wheelchairs, trailers.</p> <p>In NSW with a similar scheme operating, Nominal Defendant claims are handled and costs shared by the underwriting insurers.</p>	<p>The risks covered by the Nominal Defendant could be underwritten directly or indirectly by the private insurance industry. However, there may be advantages in retaining a specialised unit given the recognised opportunity for fraud and the level of specialised claims investigation associated with unidentified vehicles.</p>	<p>The current system arguably works well but alternatives should be examined which could include an analysis of the financial efficiencies under various alternatives.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>17 Competition Amongst Insurers (NCP Issue also)</p>	<p>There are currently 6 licensed insurers in the Queensland scheme, two of which have a market share of approximately 83%.</p> <p>In the NSW scheme, the only other State with competing insurers, there is an element of price competition between insurers.</p>	<p>With Queensland having fixed premiums for all classes of vehicles and standard policy coverage, any capacity for insurers to compete is limited.</p> <p>The benefit of competition is not visible to the consumer.</p>	<p>Conceptually, the Committee feels that there is little opportunity for insurers to add value in a highly regulated market. The Committee is considering a number of options for introducing price competition including:-</p> <ul style="list-style-type: none"> • a NSW "file and write" (greenslips) system involving a premium set around an agreed benchmark with each insurer. This system promotes a closer relationship between the insurer and vehicle owners and enables differential premiums. However, the system is also recognised as having very high delivery costs and is operationally cumbersome; • a variation to the above which would allow insurers to file premiums for each class in March each year to operate in the following financial year. This could be done on an unrestricted basis or with MAIC setting so-called mid-market rates and filed rates to be (say) + or - 15%; and • a system which would put the scheme to tender, say, every three years with CPI adjustment allowed in the second and third years so that greater stability of premium levels might be achieved. <p>If a regulated premium was maintained, the feasibility of having only two or three classes open to competition (e.g. taxis, rental cars) should be examined.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>18 Impediments to Change of Insurers (NCP Issue also)</p>	<p>Vehicle owners renew their registration by several alternative methods, including:-</p> <ul style="list-style-type: none"> • payment by personal attendance at a Queensland Transport Customer Service Centre; • payment by bank authority; • payment by telephone using a credit card; or • payment through Australia Post or some other agencies. <p>Queensland Transport will not accept a request for a change in CTP insurer other than by mail or through the insured signing an authority at an office of Queensland Transport.</p> <p>There is a present inability to insure with interstate insurers who are not licensed by MAIC.</p> <p>To ensure continuation of policy coverage where payment is not effected by due date the legislation imposes on the insurer an obligation to provide a 30 day period of grace. Consequently, to avoid disputes over liability the change of insurer must be completed and premium paid on or before due date.</p>	<p>There are suggestions that the selection and change of insurer process is too restrictive and should be improved to allow more flexibility eg allow requests for change of insurer over the phone in the same way as registration of motor vehicles is being paid telephonically.</p> <p>The current practice also acts as a disincentive for new insurers wishing to enter the scheme.</p> <p>The present process of Queensland Transport issuing a CTP renewal notice as part of the registration process limits the insurers' opportunity to acquire new business.</p> <p>There would be administrative complexities and potentially more cost if the scheme allowed direct purchasing by owners (e.g NSW model).</p>	<p>Consideration needs to be given to a system which promotes choice and is cost efficient. The cost of a system which allows change of insurers between renewal dates is considerable. However, motor vehicle owners ought to be able to change insurers at any point during the policy year so that it takes effect on renewal. This process should be available irrespective of the mode of payment.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>19 Minimum Market Share Requirements (NCP Issue also)</p>	<p>Section 64 of the Motor Accident Insurance Act and Section 14 of the Regulation prescribe that a CTP insurer must have a market share equal to or greater than 5% at the end of the financial year following the fifth anniversary of the granting of the licence, otherwise MAIC must withdraw the licence.</p> <p>However, MAIC need not withdraw the licence if in the next or subsequent year the licensed insurer has a share of the market of at least 4.5% and the insurer had been at a level of at least 5% in the previous financial year.</p>	<p>The Insurance Council does not support the requirement for an insurer to achieve a designated market share. It is claimed to discourage new insurers from entering the scheme.</p> <p>One licensed insurer supports this view but is concerned that the number of CTP insurers could become excessive.</p> <p>The imposition of a minimum market share is contrary to a free and open market and limits the number of insurers available to the motor vehicle owner. This is clearly a barrier to entry to the scheme.</p> <p>Conversely, a minimum market share ensures that insurers are substantial participants and committed to the market and provides the necessary economies of scale in respect of operating the scheme.</p> <p>Assessment needs to be undertaken to determine how difficult it is for an insurer to enter the market and increase market share. Further, if it is appropriate to have a minimum market share, does the current 5% balance choice with economies of scale?</p>	<p>As a part of the NCP process, a study is being undertaken into the possibility of allowing greater flexibility in or relaxation of minimum market share requirements. A study should be undertaken to determine:</p> <ul style="list-style-type: none"> • the effect of the removal of the requirement on the way the scheme is managed; • the effect on the scheme of a number of small insurers; and • appropriateness in terms of market power for one insurer to have a strong dominance in the market.

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>20 Optional Cover v Standard Cover (NCP Issue also)</p>	<p>The current scheme has the same standard of coverage for all motor vehicles.</p> <p>The person insured under this policy is the owner, driver or other person whose wrongful act or omission in respect of the insured vehicle causes injury to someone else and any person who is vicariously liable for the wrongful act or omission.</p> <p>The policy insures against liability for personal injury caused by, through or in connection with the insured motor vehicle anywhere in Australia subject to the scope of cover expressed under Section 5 of the Motor Accident Insurance Act, which in essence restricts the cover to the driving of a motor vehicle.</p> <p>The policy does not insure a person against injury, damage or loss that either arises independently of any wrongful act or omission or is attributable to the injured person's own wrongful act or omission.</p> <p>Some States do allow the option of an excess on CTP premiums, which is understood to be difficult to administer and not actively pursued.</p>	<p>The submissions generally support the notion of a standard cover.</p> <p>The standard policy denies the insurer the opportunity to limit cover for risks it considers too broad or alternatively to provide wider cover so as to gain market share.</p> <p>The motor vehicle owner is not gaining the benefit of a free market.</p> <p>At the same time Queensland motor vehicle owners are offered consistent protection and are not prejudiced by having to lodge a claim on a policy which incorporates substantial exclusions.</p>	<p>The Committee, whilst leaning toward retention of a standard policy, will give consideration to:</p> <ul style="list-style-type: none"> • the feasibility of an optional no-fault cover; and • the benefits of leaving the market to determine the policy coverage or at least the scope to provide broader policy coverage with minimum safety nets.

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>21 Insurers Unable to Decline (NCP Issue also)</p>	<p>A CTP insurance policy under the Act is binding on the licensed insurer who cannot repudiate or decline to issue or renew a CTP insurance policy.</p>	<p>There is full support for the current system. The compulsory nature of this insurance means that every vehicle owner must be able to purchase an insurance policy.</p> <p>There are market advantages/disadvantages where onus is on the owner to independently acquire CTP cover.</p> <p>Guaranteed cover ensures availability of cover for all registered vehicles and all owners irrespective of their driving records.</p> <p>Opportunities could arise for insurers to control the nature of risks through covert agency arrangements.</p> <p>An insurer may have declined insurance for a particular owner on all other classes of business but must accept CTP.</p>	<p>Insurers being unable to decline business is a central part of the scheme, which ensures that all registered vehicles have CTP cover and hence compensation for those injured.</p> <p>No change is contemplated in this arrangement.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>28 Premium - Fixed by Government (NCP Issue also)</p>	<p>Insurance premiums, levies and fees are fixed annually by regulation. Within 3 days of the tabling of the regulation in the Legislative Assembly, the Minister must table Motor Accident Insurance Commission's recommendations and if the premiums, levies or fees differ from the Commission's recommendations, the Government must also table a report setting out the reasons for the difference.</p> <p>The Motor Accident Insurance Act sets out the basis for the determination of premiums and prohibits the discounting of CTP insurance.</p> <p>The Commission's recommendation is based on actuarial analysis of the scheme data on claims frequency and claim size, supplemented by submissions from insurers and other interested parties.</p> <p>The actuarial analysis is conducted by independent consulting actuaries, and reviewed by the State Actuary.</p> <p>In more recent years, other States have established independent bodies to make recommendations to Government on premium rates.</p> <p>Tasmania has a Government Prices Oversight Commission while South Australia has a Premium Review Committee.</p>	<p>The current system regulates the costs of CTP cover, however it is not a free market for owners or insurers.</p> <p>There is considerable support for the "depoliticising" of premium rate setting and some support for the establishment of an independent body to determine premium rates. In other States where an independent body has been established, Governments have retained the right to vary the recommended premium.</p> <p>Some insurers believe they should be able to determine and charge premiums appropriate to risk.</p> <p>Two submissions from major licensed insurers support continued regulation of premiums as deregulation has not been shown to achieve long-term lower premiums in NSW.</p> <p>Sections of the legal profession have also indicated support for regulation.</p> <p>Deregulation of premiums should have clear advantages to motor vehicle owners including premiums that better reflect individual risk. The financial efficiencies of such a move need to be closely examined.</p> <p>Consideration of linking CTP insurance to a driver's license could be considered and also the concept of using the fee on drivers' licences to collect the levies.</p> <p>Even in a regulated market, consideration of discounts for drivers with a good history and differential premium ratings for country vehicles can occur.</p>	<p>The Committee has concerns with the current premium setting process in that it appears to be a cost plus exercise. The Committee is of the view that further consideration should be given to a more competitive model e.g tender process for the scheme or filing of competitive premiums. The Committee will give further consideration to the options. Refer to "17. Competition Amongst Insurers".</p> <p>The only manner in which the process could be totally depoliticised is to establish a body with the responsibility to set a fully funded premium and to act conclusively. This is not proposed by the Committee at this stage.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
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28 (Continued)

Despite support for the current system it is recognised that:

- it limits freedom of motor vehicle owners to seek the most competitive CTP insurance rate;
- it does not allow for discounts;
- premium rates do not recognise possible differences in risk between country/regional vehicle owners;
- Queensland is one of only two States that allow multiple private insurers to underwrite the product. Experience in NSW suggests non-regulated premiums may make the cost for CTP cover for some high risk groups prohibitive. There is also a suggestion that deregulation has not resulted in a sustained reduction in premiums; and
- there is a potential for significant variation in premium levels year to year in an unregulated market.

Analysis undertaken by a leading Australian stock-broking firm supports the view that insurers can earn significant profit on the business, with at least one major insurer earning estimated profit of 15%-16% of premium. The current premium setting process allows for a profit of 6%, which was reduced from 8.5% by the Government in the 1999 premium rate review and accepted by insurers. This would appear to indicate that there are other elements of the premium structure which provide opportunities to enhance profits. The process is therefore in need of review.

As part of the overall review the Committee will be reviewing and analysing the assumptions used in the premium setting process, in particular:

- acquisition allowances;
- re-insurance allowance;
- discount for future investment earnings;
- profit; and
- average cost of the group of new claims.

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>29 Regulation of Insurers Profit and Other Factors (NCP Issue also)</p>	<p>MAIC, on an annual basis and after actuarial advice, recommends to the State Government a basis for the premium for CTP cover for the following year.</p> <p>This recommendation is in a form which provides a detailed breakdown of the elements making up the premium.</p> <p>The Government can approve a modified and lower premium with specific adjustments to certain costs and the insurers profit margin. This occurred in determining the premium for 1999/2000. However, under the terms of the legislation, the Government must table in the Parliament a report detailing the reasons for the difference.</p> <p>Administration costs are currently set as a proportion of the premium which could result in higher levels paid on premiums associated with higher risk vehicles e.g buses.</p>	<p>By regulating the premium the Government has some controlling effect on the insurer’s income stream. While the regulated premium has a profit allowance built in, the actual level of profit depends on this allowance and factors such as:</p> <ul style="list-style-type: none"> • economies of scale; • claims management efficiencies; • efficient policy acquisition; and • claim payments, <p>which can increase or decrease the profit allowance factor.</p> <p>A regulated premium prevents insurers from freely determining premiums to optimise profit/market share.</p>	<p>As indicated under the Area of Concern “17. Competition Amongst Insurers”, the Committee is examining a number of bases for competition between insurers. A comprehensive analysis on the economic efficiencies of the various alternatives will be undertaken.</p> <p>If a regulated premium system is to be retained, there is a need to determine, on an on-going basis, the true costs of acquisition and claims handling and calculation in the premium. This could be done by improving the annual reporting by insurers.</p> <p>Returns on the cost of capital employed could also be calculated to ensure that CTP profitability is not disproportionate to other insurance business being conducted, after considering the risk profile.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>35 Premium Relativity (NCP Issue also)</p>	<p>Premiums for all vehicle types are set annually by regulation on the recommendation of MAIC and after approval by the Queensland Government.</p> <p>Prior to the determination of premiums MAIC calls for public submissions and seeks actuarial advice.</p> <p>The relativities are intended to reflect the individual claims experience for the particular class.</p> <p>Administrative costs are currently set as a proportion of the premium which could result in higher levels paid on premiums associated with higher risk vehicles, e.g buses.</p> <p>There are only 2 classes of trucks. Class 6 covers vehicles with a GVM of 4.5t or less and Class 7 GVM of more than 4.5t.</p> <p>This accords with national uniformity which determines a heavy vehicle as one with a GVM of 4.5 tonne or greater.</p> <p>Two States have in place three classes of trucks as opposed to the majority having a two class breakdown.</p>	<p>The car rental and taxi industries consider that it is not fair that their vehicles are not in Class 1. The taxi industry has a premium relativity of five and a half times Class 1, but recent experience would indicate a much higher level should apply.</p> <p>The taxi industry's view is that there should be a recognition of its role in the public transport system through lower premiums.</p> <p>While the taxi and hire vehicle industries represent comparatively small risk pools, the variability which occurs in a small pool of insured vehicles is taken into account by the actuaries (eg should there be a very large claim within the pool, it is discounted in the actuarial assessment).</p> <p>Others suggest there needs to be an examination of premium ratings for country vehicles, recognising the lower frequency rate of accidents.</p> <p>There are some suggestions that anomalies, particularly in respect of trucks, need to be addressed. There is a significant difference in the premium for each truck Class. Vehicles with a GVM just exceeding 4.5t are caught with the higher premium.</p> <p>Some submissions raised the issue of anomalies in regard to motor cycles arising from the 1994 Act.</p>	<p>The Committee supports the concept that premiums should reflect the risk associated with each class of vehicle. It is recognised that this is not yet the situation for taxis.</p> <p>The Committee cannot see the justification for moving taxis and rental vehicles into Class 1 in light of the relative claims experience involving these vehicles.</p> <p>Consideration could be given to separate underwriting pools for some classes of vehicles.</p> <p>Consideration could be given to a discount for vehicles in remote areas (see"32. Premium Discounts/Penalties").</p> <p>In line with national uniformity for trucks the 4.5 tonne GVM should be retained, however the feasibility of a new mid-class for trucks could be investigated.</p> <p>The Committee proposes to further investigate the issues in regard to motorcycles.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>36 Commissions (NCP Issue also)</p>	<p>Section 96 of the Act prohibits the payment of commissions to business originators of more than 2% of the gross premium for new vehicles or those being re-registered, and 1% of the gross premium for any other CTP insurance policy.</p>	<p>Restriction on the level of commission payable assists in ensuring a stable market through the removal of commission rate volatility.</p> <p>There appear to be ways used by some insurers to get around the commission provisions of the legislation. The activity is believed to be impacting on insurers wishing to write business in the property market who are not licensed under CTP.</p> <p>The legislation restricts the earnings of agents for this particular product and also limits market access and market share opportunities for those insurers prepared to pay higher commissions.</p> <p>However, as a compulsory product it has also been suggested that like other elements of motor vehicle purchase (registration/stamp duty) no commission should be allowed. This would minimise costs currently passed on to the motor vehicle owner.</p> <p>If commissions were eliminated entirely, it may have the affect of maintaining the status quo in terms of CTP market share for newly registered vehicles.</p> <p>Higher commissions may lead to insurers seeking to limit their risk exposure/profile by paying higher commissions to the upper end of the new car market.</p>	<p>The Committee favours the view that no commissions should be paid because:</p> <ul style="list-style-type: none"> • the scheme has high acquisition costs; • it is a compulsory product; and • no commissions are paid on registration fees. <p>However, the Committee is further evaluating the concept of commissions.</p> <p>The issue also needs closer examination to assess the implications on a free market operation.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>44 Provision of Cover in the First Instance for Negligence of Manufacturers (NCP Issue also)</p>	<p>Insurers are required to meet the reasonable costs of a claimant in the first instance notwithstanding that the cause of the accident may have been related to a vehicle defect caused by negligence of a manufacture or repairer.</p> <p>Section 58 of the Act gives the insurer recourse for the recovery of claim costs from the manufacturer or repairer.</p>	<p>This provision provides stability to product and scheme but could have cash flow implications for insurers through meeting claims costs before cost recoveries from other parties are received, especially if the claim is large.</p> <p>There are risks that the manufacturer is no longer in business or does not have products / public liability insurance at time of occurrence.</p>	<p>The Committee favours retention of the provision as it is important to ensure injured parties are not caught in the predicament of suing a range of defendants with what can be protracted legal proceedings.</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
<p>47 Rehabilitation (NCP Issue also)</p>	<p>Section 51 of the Act requires an insurer, on admission of liability (in whole or in part), to provide reasonable rehabilitation services to a claimant.</p> <p>Section 42 requires an insurer, on admission of liability to make payments to or for the claimant for private hospital, medical and pharmaceutical expenses reasonably incurred because of the injury or a proportionate part of the expenses reflecting the extent to which liability is admitted.</p> <p>There are many cases where insurers have provided rehabilitation prior to the admission of liability. However, there are a number of claimants who are caught in a situation of need for rehabilitation but who are unable to personally fund the services.</p>	<p>This is an important feature of the Queensland product with clear benefits to claimants. It provides appropriate assistance in early recovery and reduces length of incapacity for claimants and costs to the public health system.</p> <p>The provision of rehabilitation services, especially where there is early rehabilitation, is likely to reduce the total cost of claims through the reduction of future economic loss and treatment costs. On the other hand, there may be increases in scheme costs because the rehabilitation leads to a better quality of life without a corresponding reduction in future economic loss, or because rehabilitation could possibly be misused as a tool to increase damages. It is difficult to quantify these various impacts.</p> <p>The provision of rehabilitation is delayed because of claims liability issues.</p> <p>Claimants are not always aware of entitlements to reasonable rehabilitation, and are confused by the process of assessment for rehabilitation.</p>	<p>This is a central part of the scheme and it satisfies what must be a key objective, however, the concept in terms of NCP will require review.</p> <p>The Committee is very supportive of the concept of rehabilitation in the Scheme, and indications are that the various participants in the scheme are implementing the rehabilitation provisions in an acceptable manner. A number of study possibilities on quantification of the various impacts are being investigated for the medium term.</p> <p>To encourage early rehabilitation, the possibility of insurers meeting, say, \$300 of medical/rehabilitation costs without admission of liability could be considered, although there would need to be safeguards to ensure that this opportunity was not misused (see “2. Common Law v-No-fault”).</p> <p>An information service could be established by MAIC or the insurance industry. A pamphlet could also be produced, for distribution by various means including GP's, hospitals and rehabilitation providers. Information channels for service providers could be improved for necessary information on the operation of the scheme e.g by Internet, CD Rom (see “40. Notice of Claim Details”).</p>

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
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47 (Continued)

There are difficulties in providing rehabilitation in more remote areas, for example where there is no base hospital.

The provision of long-term rehabilitation in remote areas for seriously injured persons is understandably more costly for the scheme relative to the city, and the scheme is intended to support these costs. The availability of such services from either the public or private system can sometimes be an issue, but the Committee is not in a position to make a judgement on the extent of any gaps. Some of MAIC's projects relate to the evaluation of service delivery methods in remote areas.

There is a barrier to early rehabilitation intervention if claimants take the full timeframe of 9 months allowed for notification of a claim.

Information packages provided to claimants should encourage the early lodgement of the claim notification, so that liability can be determined and a rehabilitation plan approved and funded.

It has been put to the Committee that there is evidence of over-servicing by rehabilitation providers.

Treatment standards and perhaps schedules of fees could be considered, taking note of proposals for the new scheme in NSW.

The claimant's treating medical practitioner should take more of a role in clinical management of the claimant.

It is recognised that part of the difficulty with GP's taking on this role is their general lack of exposure to the scheme on a regular basis. The information initiatives proposed above should improve this situation, as should the proposed authority for insurers to contact medical providers at the Section 34 stage.

Delays arise in arranging appropriate rehabilitation because contact between claimants and insurers is generally through the claimant's solicitor.

The tradition of legal representation needs to be recognised, but protocols could be prepared for insurers to directly contact claimants, providing notification was sent simultaneously to the solicitor of the nature and content of the communications.

AREA OF CONCERN	PRESENT POSITION	ISSUES	POSSIBLE DIRECTIONS
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47 (Continued)

Differences exist in practices between insurers in the provision of rehabilitation. The larger insurers are able to provide a specialist section to manage rehabilitation, while the smaller insurers manage on a “case by case” basis.

Insurers are often asked to progressively pay rehabilitation expenses they have not had the opportunity to review and approve. It was suggested that a point in the process be chosen, after which progressive payment would not be made without prior approval of the service.

The data on rehabilitation costs is understated because many services are included in the treatment category, or not separately identified in a lump sum payment on claim finalisation.

The insurer's obligation to advise the claimant of the effect on damages of the provision of rehabilitation services (Section 51(4)) is seen as a burden and somewhat unnecessary.

Some minor amendments are required to Section 51 relating to:

- admission of liability in part;
- consistency across two subsections of the terminology "reasonable and appropriate"; and
- clarification of the effect that the payment of rehabilitation expenses is to have on the ultimate assessment of damages.

It was suggested that insurers sometimes misuse rehabilitation information for the purpose of defending claims.

The different approaches are appropriate in the scheme.

The current "reasonable and appropriate" provisions in the Act are considered to be sufficient to handle the situation.

There should be continued efforts towards consistency in data coding between insurers, whilst recognising that the treatment cost versus rehabilitation cost issue cannot always be resolved.

The Act could be amended to remove the mandatory requirement, and make such advice a prerequisite to the insurer seeking reimbursement of rehabilitation expenses.

These amendments to be considered.

This is not considered an acceptable practice, and should be subject to monitoring by MAIC.

**COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN QUEENSLAND
PUBLIC BENEFIT TEST PLAN**

POTENTIAL IMPACTS ON KEY AFFECTED GROUPS

GROUP	POTENTIAL IMPACTS
1 Registered Motor Vehicle Owners	The PBT is being undertaken in conjunction with the Review of the Scheme. The intention is to identify areas of improvement in the scheme which will benefit this group.
2 Injured Parties	Any changes to the basis for cover, claims, rehabilitation and medical expenses.
3 Owners of Unregistered / Uninsured Motor Vehicles	This group may be affected dependent upon any changes which occur in relation to the operations of the Nominal Defendant.
4 Medical and Allied Health Professionals	This group may be affected if there were structural changes to the scheme or changes in relation to the provision of medical services.
5 Legal Profession	If the basis for determination of the risks premium, which includes legal expenses, was to change, this group would be affected.
6 Licensed Insurers	Licensed Insurers are an essential part of the present scheme and they have had substantial input into the considerations of the Review Committee through the opportunity already given to provide submissions. This group would be affected by any changes in the structure of the scheme, including the basis for cover, premiums, claims, commission payments, and minimum market share issues.
7 Insurers - possible new entrants	This group would be impacted in the same way as currently licensed insurers.
8 Re-insurers	This group would be impacted by any structural changes to the Scheme which affected the basis for cover, premiums or claims.
9 The Queensland Government	
♦ Queensland Treasury	To the extent that changes result in the assumption of risks and any increases or decreases in funding by the State.
♦ Queensland Transport	The Department would be affected by any changes in the basis for the collection of premiums.
♦ The Nominal Defendant	Would be affected if any changes were to be recommended to the basis of operation or assumption of risk by the Nominal Defendant.
♦ Queensland Health	Any changes in relation to basis for provision of services including rehabilitation.
♦ Emergency Services	Any changes in relation to the structure or basis for levies.
10 Agents for CTP Insurers including Motor Vehicle Dealers	This group would be affected by any structural changes which related to the recovery of premiums or changes to the basis for or rates of commissions paid.

PUBLIC BENEFIT TEST PLAN

**REVIEW OF COMPULSORY THIRD PARTY INSURANCE LEGISLATION IN
QUEENSLAND**

TIMETABLE

ACTION	COMPLETION DATE
• Approval of PBT Plan by CTP Scheme Review Committee	4 August 1999
• Submission of PBT Plan to Queensland Treasury for approval	4 August 1999
• CTP Scheme Issues Paper (incorporating NCP Issues) forwarded to insurers and other industry participants	6 August 1999
• Advertising for public comment	13 & 14 August 1999
• Analysis of financial efficiency ratios	6 August 1999
• Examination of acquisition costs	20 August 1999
• Meetings with insurers and other industry participants on issues paper	23 August 1999
• Submissions received	6 September 1999
• Public Benefit Test Report	27 September 1999