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# Public vs. Private underwriting and administration of personal injury statutory insurance schemes


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## Synopsis

Compulsory personal injury compensation schemes covering workplace and motor vehicle injuries (in this paper we refer to the latter as Compulsory Third Party, or CTP Insurance) when first established in Australian during the early to mid-1900s, with few exceptions were structured on private underwriting with private sector insurers, often competing with government owned insurers [1]. This underwriting model remained stable until the later part of the twentieth century.

In the 1970s, with respect to *CTP Insurance*, following escalating costs of common law, premium affordability issues, and the failure or withdrawal of many private insurers from the market, several jurisdictions transitioned to public underwriting (three jurisdictions also introduced no-fault benefits at the same time, largely influenced by the reviews of injury compensation in Australia and New Zealand conducted by Justice Woodhouse). In the 1980s, with respect to *workers' compensation*, due to similar issues, several jurisdictions transitioned to public underwriting also electing to outsource claims administration.

Although private insurers advocated a willingness and capability to re-enter these markets, at the completion of the National Competition Policy review process (that ran from the mid-1990s to early 2000s) no government changed their legislation to move away from public underwriting of CTP Insurance or workers' compensation where such schemes existed.

With respect to the National Injury Insurance Schemes (NIIS) introduced in between 2006-2016 covering motor accident catastrophic injury on a no-fault basis, there is a lack of appetite for private insurers to underwrite this class of insurance. This is principally due to the extreme volatility in claims costs and limited opportunity to commute benefits with respect to long term liabilities.

In the past quarter century, there have been no durable transition from public to competitive private underwriting or *vice versa* -the one exception being the South Australian CTP Insurance scheme where transition to private underwriting occurred in 2016, in part driven by a financial motive of the state government to realise value.

Since the mid-1980s, whether publicly or privately underwritten, governments have tended to favour legislative modifications to contain scheme costs with the view to maintain long term scheme viability and appropriately balance scheme objectives. Examples of such activity include adjusting benefits (e.g. revising injury or monetary thresholds, monetary caps and time limits); reducing frictional costs (e.g. efficiency initiatives, restricting certain acquisition costs/commissions and containing unmeritorious legal activity; and limiting the potential for excessive profiteering). There appears to be a preference to fully exhausting these mechanisms before considering any change to public or private underwriting.

In the recent CTP Scheme Reviews in NSW (2015-2016) and Queensland (2016), the matter of public vs. private underwriting was considered. Following these reviews, neither scheme decided to move away from private underwriting, however the respective Regulators have signalled that this matter should be considered in future scheme reviews.

This paper provides a longitudinal history to explain how Australian workers' compensation and CTP Insurance schemes have evolved to reflect their current underwriting structure and key arguments presented on the relative advantages and disadvantages public vs. competitive private underwriting. This paper provides a brief overview of economic theory and empirical research evidence evaluating the relative efficiency of competitive vs. government monopoly underwriting structures, and presents a framework for how the elevation of overall economic efficiency can be better evaluated to guide further analysis and debate.

*Keywords: public underwriting; competitive private underwriting; privatisation; outsourcing; competition policy; CTP Insurance; Workers' Compensation; National Injury Insurance Scheme (NIIS); Efficiency.*

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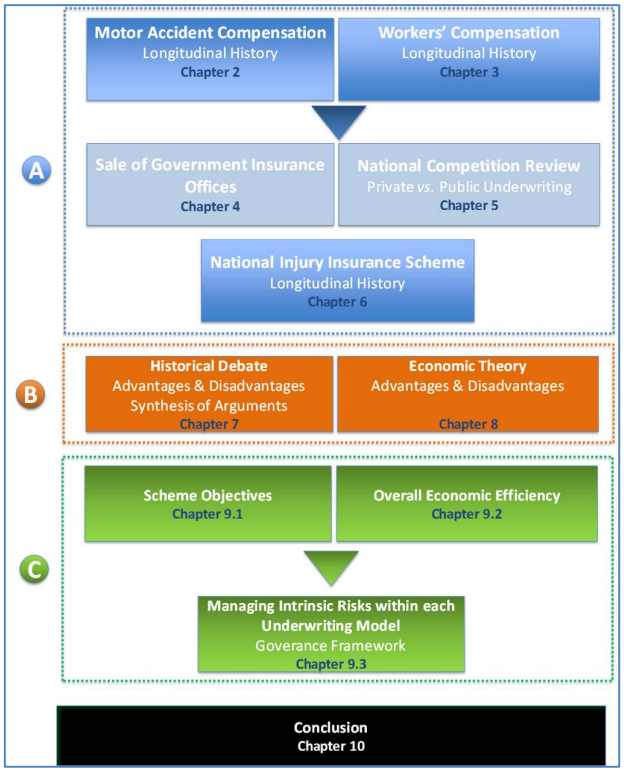
## 1. Introduction

This paper aims to provide a substantial contribution to knowledge and understanding of public vs. competitive underwriting in Statutory Insurance in three areas:

**A.** Explain the rationale for the current structure of private vs. public underwriting of accident compensation schemes in Australia for motor vehicle and workplace injuries. This is achieved by providing a longitudinal history, from scheme inception, examining points of transition between underwriting models.

**B.** Examine the relative merits (advantages and disadvantages) of private vs. public underwriting. Firstly, by synthesising key arguments used in public debate at historical points where transition was being considered; and secondly, from an economic theory perspective.




**C.** Premised on the finding that research evidence is both incomplete and inconclusive on whether private vs. public underwriting is more efficient, and that good scheme design and management are more likely to be the key determinants of overall economic efficiency, the paper provides a governance framework to manage inherent risks under each underwriting model. These risks are synthesized from the relative advantages and disadvantages identified earlier, and structured under a framework of incorporating productive (technical), allocative and dynamic efficiency. This broader concept of efficiency incorporates the extent to which scheme administration meets consumer needs and expectations, aligned to scheme objectives (including rehabilitation, health and wellbeing outcomes).

# 2. CTP Insurance – Longitudinal History

## 2.1. Evolution of Compulsory Third Party (CTP) Insurance in Australia

From the early 19th century, with increasing motor vehicle ownership, use and higher travel speeds, the incidence and severity of injury arising from motor vehicle crashes significantly increased. Tranter (2005) observed that community anxiety concerning injury from use of the 'new machines' began to emerge as early as 1900, citing as an example, an article in Melbourne daily newspaper, The Argus:

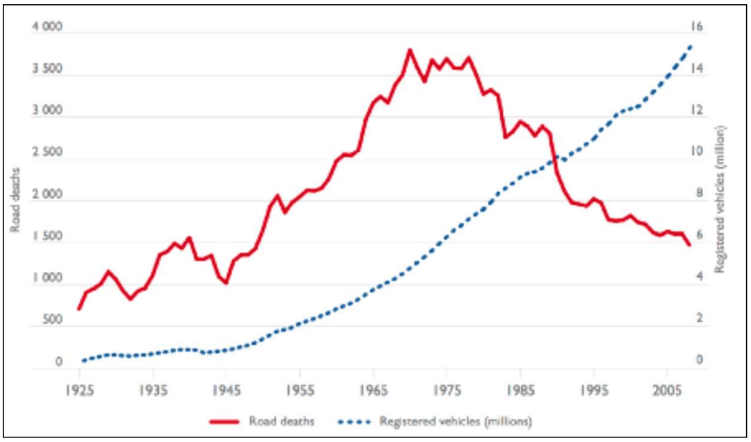
> The real truth is that when the motor comes into universal use life will not be worth living. ... [T]o live in a city when motors have superseded horses will be like living in a cotton mill, with a boiler factory on one side and a merry-go-round with a steam organ on the other. ... A horse does not like to run a man down if he can help it, but a machine of steel and brass will delight in killing people (The Argus, 12 Dec1900, p.4).

As the use and number of vehicles progressively increased, jurisdictions began to introduce legislation to control the use and safe operation of motor vehicles. For example, Victoria's *Motor Car Act 1909* (Vic) established a regulatory regime of centralised registration; conferred to police responsibilities for enforcement and licensing, introduced a minimum licensing age, required vehicles to be fitted with lights and number plates; and made provisions for drink driving and reckless driving offences.

By 1910, the number of motor vehicles was relatively small, with about 4,000 registered motor vehicles in NSW (NSW Government n.d.) and 2,735 in Victoria (Tranter 2005, p.869). The number of deaths was also relatively small. For example, in Sydney during the period 1903 - 1914, there were 49 recorded deaths from motor vehicles, compared to 130 deaths from electric trams (ibid, p. 846).

Between 1910-1925, there was a rapid growth in vehicles, with more than 300,000 vehicles registered by 1925, with a commensurate and significant increase in road fatalities. Road deaths in Australia started to be recorded in 1925 at which time there were 700 deaths in that year (22.9 deaths per 10,000 vehicles). By 1930 there were more than 1,000 deaths annually on Australian roads (16.1 deaths per 10,000 vehicles) (ATSB 2010).

**Figure 1 Road Deaths and Registered Motor Vehicles in Australia** (ATSB 2010)



People who were injured in motor vehicle accidents had access to common law to seek damages if they could prove the driver or operator was negligent in the use of that vehicle – that is, [they] had failed to exercise the duty of care to the claimant which community standards demanded of the user or handler of the vehicle. The onus was on the claimant to show the defendant's breach of this duty (Minogue 1978, p.8).

However, there were many challenges in obtaining injury compensation, a key issue, *inter alia*, being the inability of many victims to obtain compensation due to the financial inability of defendants to satisfy a judgement, in the absence of holding liability insurance. Moreover, for those successfully sued and without liability insurance, the financial consequences on themselves and their families was often severe. To illustrate the lack of insurance cover, in Victoria, during the mid-1930s it was purported that only half of motor vehicle owners held third party liability insurance (ibid, p.8).

Such issues provided the impetus for governments to mandate the purchase of personal injury insurance on the part of motor vehicle owners against third party liability for damages. Such legislation was introduced in the UK in 1930 under the *Road Traffic Act 1930* (UK) and two jurisdictions in the US (Connecticut 1925, Massachusetts in 1926), noting that the compulsion mechanism adopted in Massachusetts was for third party liability insurance to be a prerequisite to registering a motor vehicle.

Community debate in Australia on the *pros and cons* of compulsory third party liability insurance (CTP Insurance) can be tracked back to the late 1920s. For example, an article published in the Australasian Insurance and Banking Record (1929) critically reviewed the *Road Traffic Bill* before the UK Parliament, and presented a counterview that compulsory insurance would lead to a moral hazard[2] and resultant unsafe driving practices and increased insurance costs. An alternative policy position advocated was to increase penalties for negligent and dangerous driving, further promotion of road safety and engender reliance upon voluntary *first party insurance* (anon(a) 1929).

Australian jurisdictions ultimately followed the lead of UK, and during the mid1930s-40s, legislated Compulsory Third Party (CTP) insurance as a prerequisite to legally operate a motor vehicle in a public place, and established legislated frameworks that specified eligibility and benefit entitlements under common law damages.

The first Australian jurisdiction to introduce CTP insurance legislation was Tasmania in 1935 under the Ogilvie Labor government, followed by other states and territories over the next ten or so years: South Australia & Queensland (1936); Victoria (1939, commencing 1941); NSW (1942); Western Australia (1943); ACT (1948); and NT (1949).

Key features of the newly established Australian CTP Insurance schemes were:

- Pure common law with provision for contributory negligence deductions
- Restricted to bodily injury damages
- Court judgments made by a judge rather than jury with the view to better control the quantum of awards (with the exception of Victoria and NSW[3])
- Nominal insurer arrangement to cover uninsured/unidentified drivers (recovery from uninsured owner/driver possible in certain circumstances).

## 2.2. Underwriting & Administration 1940s - early 1970s

At the time of inception of CTP Insurance schemes in Australia, all jurisdictions relied on private insurers to provide insurance (i.e. underwrite and manage claims), under regulatory oversight regimes to govern the appointment of authorised of insurers and setting of premiums. In all States, government owned insurance offices participated in the market competing against private insurers, with the exception of South Australia.

This underwriting structure remained in place until the early 1970s, apart from Western Australia:

### Motor Vehicle Insurance Trust (Western Australia)[4]

CTP Insurance was mandated in Western Australia effective from 1 July 1944. However, following consumer complaints about underwriting practices, difficulty in obtaining insurance, and claims costs across the numerous insurers (including high legal costs between insurers disputing liability), a significant change to the underwriting of the Western Australian scheme was made in 1949. For policies commencing from 1st July 1949, the Motor Vehicle Insurance Trust was established to administer the *Motor Vehicle (Third Party Insurance) Act 1943* (WA).

The Trust was set up as a statutory monopoly, taking over CTP Insurance from private insurers. Insurers who wished to take part in and underwrite the scheme were entitled to become members of the Trust and were known as "participating insurers ". They were entitled to participate in the proportion that their share of the gross premium income at the time of the institution of the scheme bore to the total third party premium income, the balance held by the State Government Insurance Office (Jackson 1950, p. 407). Premiums were set by the Trust, and administered by a committee of five, one being the manager of the State Government Insurance Office (SGIO) and the other four being nominees of the other participating insurers[5].

The scheme operated on the basis of pooling funds for each accident year, referred as a 'pool year', to pay claims incurred in that year, with a decision of whether that year made a profit or loss made after 8-9 years to determine if there was to be a distribution. By the early 1970s there were fourteen participating insurers, with the State Government Insurance Office holding a 67% interest in the Trust (Minogue 1978, p.40).

## 2.3. Transitions to Public Underwriting: 1970s

During the 1970s, several Australian CTP Insurance schemes were under pressure due to escalating claims costs (particularly for minor claims), premium affordability, and significant delays in the common law process. This led to Victoria, Tasmania and the Northern Territory introducing no-fault benefits and the transition to public underwriting in whole or part. In South Australia, there was no transition to no-fault, however, the State Government Insurance Commission (SGIC) which was established in 1972, became sole CTP Insurance provider in that state from 1975.

The rationale for introducing no-fault, needs to be interpreted in the wider context of reforms that occurred in New Zealand in 1973 to introduce a universal 'no-fault' accident compensation scheme following the Woodhouse Royal Commission[6], and deliberations by the Australian Government to establish a similar scheme in Australia for 'significant physical or mental incapacity', to be publicly underwritten through the proposed establishment of a National Government Insurance Office.[7]

## Victoria

By the 1960s more than 50 insurers were writing CTP Insurance policies in Victoria. There were some changes to the law that aimed to contain growth in claims costs. Premiums were regulated by the government but by the late 1960s failed to keep pace with claims costs and frequency, which continued to place pressure on the viability of writing CTP policies. One of the key causes of rising claims costs was the 1968 reform abolishing the common law prohibition against spouses suing the other spouse in respect of tort damages and the removal of limits on passengers' ability to sue the [negligent] driver.

The political imperative to maintain affordable premiums in the face of increasing claim numbers and costs resulted in significant exits of private insurers from the market. By 1970 only the government owned State Insurance Office (SIO) and the RACV were the providers of CTP Insurance.

In 1973 the RACV withdrew from the Victorian CTP market[8], leaving SIO as the sole provider of CTP Insurance in Victoria. In effect this meant that CTP Insurance became by default a publicly underwritten scheme, primarily because the private insurers determined that CTP Insurance was not an attractive business proposition.

In the same year, the Victorian State Government appointed a Committee, chaired by Mr. V.H. Arnold, to suggest a feasible scheme based on no-fault principles (identifying benefits available and the cost of providing them). The need for change was largely prompted by concerns about delays in the common law process, with claimants (and medical providers) typically waiting up to two years before receiving any compensation. The Committee recommended the creation of the Motor Accidents Board, and made several recommendations for compensation without the necessity of proving fault by any motorist.

Effect was given to the Committee's recommendations by the enactment of the *Motor Accidents Act 1973* (Vic.) which became operational on 12th February 1974. Under the new scheme, the newly established government owned Motor Accidents Board (MAB) offered limited no-fault benefits (medical and economic loss)[9] and SIO able to offer common law (the MAB scheme was funded by a levy on CTP Premiums).

## Tasmania

In the early 1970s, the Tasmanian Law Reform Commission established a committee, chaired by Justice Neasey[10], to review the Tasmanian motor accident compensation system. The Committee published its report in 1972 entitled '*Recommendations for the establishment of a no-fault system of compensation for motor accident victims*'. The committee's findings identified a number of deficiencies in the common law system such as lengthy delays in claims settlement and provider payments (principally as a result of litigation), high legal expenses, lump sum payments being inadequate in certain circumstances, and many private insurers finding CTP Insurance unprofitable and either ceasing to write business or choosing only to write acceptable risks (GPOC 2000). Following consideration of the report, the State Government introduced a dual common law/no-fault system established under the *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas).

The new CTP Insurance scheme was underwritten and administered by the Government owned Motor Accidents Insurance Board (MAIB), which became operational on 1st December 1974.

### Northern Territory,

In March 1978, the Australian Government Actuary produced his regular report into CTP Insurance in the Northern Territory, wherein he recommended dramatic increases to CTP Insurance premiums. He predicted that if major changes did not occur in the method of compensating motor accident victims, premiums would have to be further increased the following year. At the time there were 25 private insurers, collectively known as the 'motor vehicle ordinance pool', with which Territorians could choose to insure their motor vehicle.

The Government, in response to this report, commissioned a feasibility study of establishing a no-fault insurance scheme. This culminated in a new scheme being established under the *Motor Accidents (Compensation) Act 1979* (NT) which commenced on 1st July 1979 to provide no-fault benefits *for Territory residents* for medical and like expenses and loss of earning capacity with common law General Damages capped at $100,000[11] (noting no-fault benefits and capped common law applied only to Territory residents).

The newly established CTP Insurance scheme was underwritten and administered by the newly established Government owned Territory Insurance Office (TIO), whose establishment in-part was to also provide general insurance to Territorians following the withdrawal of private insurers from key segments of the general insurance market following the 1978 Katherine floods.

### South Australia,

South Australia's State Government Insurance Commission (SGIC) commenced business on 4th January 1972, predominantly as a motor vehicle and household insurer. It was set up by an Act of this Parliament as an alternative provider of general insurance for the South Australian public (the aim was to ensure that through [increased] competition adequate service was given and premiums kept at a reasonable level).

In 1972 the SGIC began writing CTP Insurance in competition with private insurers, and from 1975 became the sole CTP Insurance provider in South Australia.

## 2.4. Transition to Public Underwriting: 1980s

The 1980s saw further migration away from private underwriting in Victoria (and for a brief time in NSW), the abolishment of the Motor Vehicle Insurance Trust in Western Australia, and the introduction of third party claims administration in South Australia.

### Victoria

The common law scheme in Victoria substantially deteriorated from mid-1979 through to 1985/86, increasing the pressure and demand for reform. A compelling case for reform was presented in 1986 in a Government Statement entitled *Transport Accident Compensation Reform*, (Victorian Government 1986):

- Metropolitan CTP Insurance Premiums ($181), needed to be around $348 to fully fund the scheme
- Solvency in mid-1979 (104%) reduced to 31% by 1985/86. Payments exceeded revenue for the first time and the Government was likely to be required to top up the fund from consolidated revenue without action
- Claims for whiplash which in 1977 made up 10% of claims, made up 37% of claims by 1985/86
- Unfunded liabilities were approximately $1.6 billion and were expected to grow to $2.5 billion by 30th June 1986
- Costs per claim had grown by an average of 8% p.a. over the past 5 years.

The Transport Accident Bill 1986 (Vic) introduced later that year provided for the introduction of a publicly underwritten pure no-fault scheme, which was later amended in parliamentary debate to include add-on common law for seriously injured claimants (with only limited modification since, this remains the basis of the scheme design today).

The new scheme which came into effect on 1 January 1987 was publicly underwritten and administered by the Government owned Transport Accident Commission (TAC) established under the *Transport Accident Act 1986* (Vic)[12].

### New South Wales

Prior to 1984, CTP Insurance was provided by a number of private insurers, but by this date almost all CTP Insurance was provided by the Government Insurance Office (GIO). In 1984 the *Motor Vehicles (Third Party Insurance) Amendment Act 1984* (NSW) changed the funding arrangements for CTP Insurance, making the GIO the sole administrator of the third-party scheme (State Records Authority NSW n.d.).

In 1987 the NSW government introduced 'TransCover' – a fault-based scheme established under the *Transport Accidents Compensation Act 1987*, (NSW) administered by GIO, who at the time of introduction of the scheme held more than 90% of the NSW CTP Insurance market. The TransCover scheme which came into effect from 1 July 1987, was a radical departure from the previous common law scheme as it set statutory benefits for pain and suffering, and medical expenses, as well as capping weekly economic loss benefits. The determination of fault and the extent of fault was delegated to an administrative decision. These changes and restrictions on benefits made TransCover an unpopular scheme (SIRA n.d.).

After a change in government in 1988, the TransCover scheme was superseded by the *Motor Accidents Act 1988* (NSW), the new Act taking effect from 1 July 1989 but operated retrospectively to 1 July 1987. The new Act restored the right to bring common law actions for damages, while introducing some restrictions, like indexed caps on general damages and exclusion of general damages for small claims. The Act also provided for the payment of treatment and rehabilitation expenses as they were incurred by the injured person. The Motor Accidents Authority was established on 10 March 1989 to administer the new CTP Insurance Scheme which was underwritten and administered by private insurers[13], issuing insurance policies (called Green Slips) as a prerequisite to register a motor vehicle (MAA 1990).

### Western Australia

On the 1st January 1987, the State Government Insurance Commission[14] was established under the *State Government Insurance Commission Act 1986* (WA), following the amalgamation of the State Government Insurance Office and the Motor Vehicle Insurance Trust.

At the same time, the State Government Insurance Corporation (trading as SGIO) was established as a subsidiary of the State Government Insurance Commission to compete within the general insurance market. The Compensation (Industrial Diseases) Fund, the Insurance Commission General Fund, and the Government Insurance Fund were also established and commenced at this time (ICWA n.d.).

## 2.5. Privatisation Reforms of ACT and South Australian CTP Schemes[15]

### Australian Capital Territory (2008) – Reforms to increase competition

At scheme inception (1948) there were 16 insurers. There was no price competition, with fee determinations made by the Minister. By 1980, all insurers except Insurance Australia Limited (trading as NRMA Insurance) had withdrawn from the market.

In August 2008, legislative reforms were introduced to encourage new insurers to participate in the scheme, competing on service and price. The reforms (sometimes labelled as 'privatisation') had three main aims: to enable choice of insurer by ACT citizens; improve health outcomes for motor accident victims; and lower costs through greater scheme efficiency (Legislative Assembly for the ACT 2008).

NRMA remained the sole private insurer until 2013, at which time Suncorp entered the market and currently operates under three brands: GIO, AAMI and APIA.

### South Australia (2016)

Announced in the South Australia 2014-15 State Budget, the South Australian CTP Insurance Scheme was privatised with effect from 1 July 2016. The transition to private underwriting should be interpreted in the context of:

(i) Scheme reforms in 2013 that restricted common law for less serious injuries, resulting in an improved funding and financial position
(ii) The announcement of the Federal Government's Asset Recycling Initiative with incentives for state/territory governments to divest of certain assets.[16]

A key motive for privatisation was to 'minimise any residual risk and liabilities to the South Australian Government and optimise the value realized' (Government of South Australia 2015). A $300 million dividend is projected for 2016/17 following privatisation - this amount includes $260 million from the four approved CTP insurers by way of an initial market share allocation fee (Finity 2016).

To effect the transition, vehicle owners have been allocated to one of four new insurers (AAMI, Allianz Australia, QBE and SGIC). Switching from the allocated CTP insurer and competitive pricing will not be actively encouraged during the first three years of the new scheme, with the regulator to impose 'CPI-like' premium increases during this period.

## 2.6. Current Dimensions and Structure

### Key Dimensions

Australia currently has about 18.4 million registered motor vehicles (ABS 2016). The purchase of CTP Insurance is either a pre-requisite or part of the registration process.

During the 2015-16 financial year, about 58,000 personal injury claims were lodged. This equates to 3.1 claims per 1,000 registered vehicles. In 2016 there were 1,300 deaths on Australian roads, representing about 5 deaths per 100,000 population. During 2015-2016, claim payments relating to active claims totalled $4.4 billion[17].

### Product Overview

As at 1 July 2017, entitlements and benefits vary significantly across schemes, with no progress (or interest) on harmonising benefits other than for catastrophic injury. With respect to benefits, the following observations are made:

- *Pure Common Law schemes* (for non-catastrophic Injury) exist in **NSW**, **Queensland**, **Western Australia**, **South Australia** and the **ACT** (noting schemes in NSW and ACT provide for a modest $5,000 benefits with without need to provide fault to encourage early reporting and to rapidly discharge minor injury claims).

- *No-fault schemes* of **Victoria** and **Tasmania**, have access to common law (subject to caps and thresholds) as an 'add-on' to no fault benefit entitlements. **Northern Territory** is pure no-fault with no access to Common law for either residents or visitors.

- *All no-fault schemes are currently publicly underwritten*, noting the NSW Government set to introduce a hybrid no-fault/common-law scheme from 1 December 2017 aimed at containing claim costs (hence lower premiums), opening access to the scheme to about 7,000 at-fault drivers per annum.

- All jurisdictions have established NIIS schemes that generally align with NIIS Minimum Benchmarks. All NIIS schemes are publicly underwritten (refer later discussion).

An abridged summary of scheme benefit structures is presented at Appendix 1.

### Underwriting and Administration Structure

Each Australian State and Territory has a CTP Insurance scheme covering motor vehicles registered in the jurisdiction (i.e. eight schemes).

- **NSW, Queensland, South Australia** and the **ACT** (all common law schemes) are privately *underwritten by multiple authorised insurers competing on price,* noting the South Australian CTP scheme transitioned to private underwriting from 1st July 2016 and will have centralised price setting operating until 2019.

- There are four *publicly underwritten* schemes, comprising the Australian no-fault schemes of **Victoria, Tasmania and the Northern Territory,** plus **Western Australia** that is pure common law. In these schemes, claims administration is managed in-house except for the Northern Territory, where following the sale of the Territory Insurance Office to Allianz in 2014, the government retained public underwriting of the CTP Insurance has outsourced claims administration to Allianz.

With respect to catastrophic injury, from 1 July 2016, all jurisdictions provide care and support benefits without regard to fault that align with the National Injury Insurance Scheme (NIIS) Minimum Benchmarks (refer latter discussion on NIIS schemes).

Excluding dedicated NIIS schemes, publicly underwritten CTP Insurance schemes currently underwrite about 40% of total premiums written.

**Table 1 Motor Vehicle Injury Insurance Schemes: Underwriting & Administration 1 July 2017**

| Insurer | Parent Entity | Publicly Underwritten, Insource Claims Administration | | | Publicly Underwritten, Outsource Claims Administration | Privately Underwritten | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | VIC | WA | TAS | NT | NSW | QLD | SA | ACT |
| **Government** | | ✓ | ✓ | ✓ | ✓ | | | | |
| **Private Insurers** | | | | | | | | | |
| AAMI | Suncorp | | | | | ✓ | ✓ | ✓ | ✓ |
| Allianz | Allianz | | | | ✓ | ✓ | ✓ | ✓ | |
| APIA | Suncorp | | | | | | | | ✓ |
| CIC | Allianz | | | | | ✓ | | | |
| GIO | Suncorp | | | | | ✓ | ✓ | | ✓ |
| NRMA | IAG | | | | | ✓ | | | ✓ |
| QBE | QBE | | | | | ✓ | ✓ | ✓ | |
| RACQ | RACQI | | | | | | ✓ | | |
| SGIC | IAG | | | | | | | ✓ | |
| Suncorp | Suncorp | | | | | | ✓ | | |

## 3. Workers' Compensation - Longitudinal History

### 3.1. Evolution of Workers' Compensation Insurance in Australia

The concept of social insurance with respect to supporting injured workers began to take a formal and more structured approach in the late 18th century, intended to address the needs of increasingly industrialised western societies. With the advent of the industrial revolution came an increasing incidence and severity of workplace accidents, and the only means of obtaining compensation from an employer was through the Courts by means of a civil law suit.

Workers rarely elected to sue their employers as it was expensive to do so, they were largely uneducated and unaware of their rights and many of them were children. If, however they did sue, they rarely succeeded due to the unfavourable view of the courts towards workers and what has been described as the '*unholy trinity*' of legal defences available to employers:

- First, the injury was due to the contributory negligence of the employee
- Second, the injury was caused by the negligence of a fellow employee
- Third, the risk of injury was understood and assumed by the employee at the time of employment (Haller, 1988).

It was so uncommon for a working person to win compensation for injuries sustained as a result of work that private organisations such as the English "Friendly Societies" and German "Krankenkassen" were formed that offered more affluent workers the option of buying various kinds of disability insurance (Haller, 1988). Later the operations of both these organisations would play a role in the structure of the social insurance systems in Germany and England.

The first workers' compensation system was established in Germany by Chancellor Otto von Bismarck in the late 1880s, with society in general adopting a more sympathetic view towards workplace accidents. This program became the model for workers' compensation systems in Europe and in England. Bismarck's preference was for a form of state insurance (funded by the government), but opposition to this forced him to rely on a series of industry-based insurance funds co-funded by employers and employees (Berufsgennosenshaften). These industry funds built on a tradition of industry arrangements going back to medieval guild structures, particularly the Krankenkassen in the mining industry. There were three major platforms of social insurances implemented in Germany: sickness insurance for workers in 1883, followed by accident insurance for workers in 1884, with broader reforms to covering invalidity and old age introduced in 1899.

With respect to workers' compensation in the UK, the *Employers' Liability Act 1880* (UK) opened the pathway to common law action for workplace accidents by limiting the defence of common employment). This Act was adopted in the Australian colonies between 1882 and1895. While these Acts were well intentioned, taking them up did not lead to any significant improvement in outcomes for injured workers (Safe Work Australia 2017, p 228).

Subsequent reforms under the English *Workmen's Compensation Act 1897* (UK) limited common law awards by prescribing the amounts of compensation that employers had to pay if an employee suffered an injury '*out of and in the course of employment'* – any injury had to disable an injured employee for at least 2 weeks to be compensable and not be attributable to serious and wilful misconduct (In effect, the compensation was determined on a no-fault basis and the 1897 Act was the basis for many workers' compensation acts in former English colonies, e.g. US, Canada, Bangladesh (formerly part of the Indian colony) and Australia[18] (Brownbill 2015).

Post Australian Federation, the first State to introduce workers' compensation legislation was South Australia in 1900 that copied many aspects of the English 1987 Act (ibid. p, 46). Legislation was soon adopted in other jurisdictions WA (1902), Queensland (1905), Tasmania (1910), Victoria (1914), NT (1920), NSW (1926), and the ACT (1951). The Commonwealth's first *Officers' Compensation Act* was passed in 1908, and the *Seamen's Compensation Act* was passed in 1911 (Industry Commission 1994).

General features of the newly established workers' compensation schemes were:

- State based legislation, other than legislation covering Commonwealth officers
- Based on no-fault principles adopting principles established in the English 1897 Act
- Restricted compensation to bodily injury claims only
- Nominal defendant schemes for uninsured employers (except South Australia initially).

## 3.2. Underwriting & Administration early 1900s - early 1980s

Upon scheme inception, with the exception of Queensland and the Commonwealth, the underwriting and administration of workers' compensation was undertaken by private insurers. State Government Insurance Offices, as and when established, operated in competition with private insurers. This structure remained in place until the early 1980s.

From a scheme design perspective, the basic architecture established by the mid-1920s dominated workers' compensation arrangements for much of the century. From the latter half of the 1920s through to the 1970s, the distribution of costs for work-related injury continued to favour employers as relatively low benefits and high fault thresholds limited employer liability. However, from the early 1970s the impetus for improved workers' compensation payments gained momentum with increases to the level of weekly payments and the maximum amount available, influenced by increased union militancy (Purse 2005, pp. 13-14).

Progressive changes to scheme entitlement and benefits, and increasing worker advocacy invariably had an impact on scheme costs. By 1984, total compensation payments had increased to 2.3 per cent of the national wages and salary bill, up from 0.8 per cent in 1970 (Advisory Committee on Prices and Incomes 1986: 49). Purse (2005, p.14) observed that compensation payments to injured workers were not the only factor that contributed to the cost spiral and poor financial performance:

- At a structural level, the failure to address poor workplace health and safety management and the lack of vocational rehabilitation to assist injured workers to return to work… these deficiencies were compounded by excessive claims disputation and associated, often protracted, delays in the payment of compensation to injured workers
- With the exception of Queensland (a monopoly scheme) the administrative cost of delivering compensation to injured workers had become a serious strain on scheme finances[19]
- The inefficiencies of private underwriting highlighted by widespread premium evasion and the propensity of insurers to engage in destructive bouts of premium discounting.

## 3.3. Transition to Public Underwriting and Outsourcing of Claims Administration (1980s)

Within the climate of escalating premiums, structural deficiencies in scheme design and inefficient underwriting arrangements, political space was created within which the push for the modernisation of workers' compensation arrangements by reform minded governments became irresistible (Purse 2005, p. 14).

### Victoria

In the late 1970s through to the early 1980s private insurance companies were making significant underwriting losses (in part due to significant price cutting), and following resultant premium increases, premiums in Victoria became the highest of any state. The Victorian Employers Federation in October 1982 called for government action, claiming that for some companies, the [annual] cost of accident insurance premiums was equivalent to their [annual] profits (Stylianou 2011). Moreover, there were significant backlogs of claims awaiting to be finalised (12,000), as the waiting periods awaiting hearing to resolve disputes was approaching 30 months (ibid. p.11).

In July 1983, the government announced an inquiry into the Victorian workers' compensation to be chaired by B Cooney. In the announcement, reference was made to Queensland's public monopoly system, which had cheaper operating costs, and to earlier inquiries that had recommended the establishment of a central agency while noting that 'previous governments have not been prepared to bite that bullet' (ibid. p. 11). [20]

The Inquiry's report (Cooney Report) was released in June 1984. The committee recommended the establishment of an occupational Health and Safety Commission, the active promotion of rehabilitation and return to work programs. It also recommended that the system continue to operate on a fully funded basis with multiple insurers and that employers be given the incentive to adopt safer work practices by tying their premium rates to their safety profile (Cooney 1984).

The Victorian Government introduced the *Accident Compensation Act 1985* (Vic) ('ACA') shortly after the release of the Cooney Report. The Cooney Report recommended by a 3-2 majority that the system of multiple private insurance underwriters that existed prior the ACA be retained. The Government rejected this recommendation and created a single Accident Compensation Commission, which was responsible for the underwriting and administration of the Accident Compensation Scheme as a whole (DTF 2000b).

Under new arrangements, claims management (and premium collection) was outsourced to panel of nine claims administration agents (including the State Insurance Office) following a competitive tender process[21].

### South Australia

In June 1978 the South Australian Government established a Tripartite Committee of Inquiry chaired by Mr D.E. Byrne, to examine and report on the most effective means of compensating those injured at work.

In September 1980 the Committee released the report entitled 'A Workers' Rehabilitation and Compensation Board for South Australia — the key to rapid rehabilitation and equitable compensation for those injured at work', commonly referred to as the "Byrne Report" (Byrne 1980).

The committee identified a number of problems with the existing Scheme:

- The increase in claims involving lost time > 8 weeks seemed to be more a symptom of the current compensation system than of an increase in the number of serious injuries
- The current Act provided for the payment of a monetary benefit to an injured worker, but failed adequately to emphasise the obligation or need for rehabilitation
- There were situations where it appeared advantageous to one or other of the parties involved to delay the proceedings, although this proved to be detrimental to the worker's interests in the long term
- The Act introduced in 1971 and amended in 1973 increased the financial benefits payable to worker, and although it was accepted that insurance premiums would rise, the effect on compensation costs was not predicted
- Overall lack of coordination and control… the Act prescribed certain legal requirements but did not require any particular organisation to take responsibility for the smooth functioning of the total system.

Implied in the Committee's Report was that it was difficult for effective coordination and control to be exercised under a multi-insurer regime of 55 private insurers that operated in the market, and that under current arrangements 'the insurance company merely administers the payment of industry claims and charges accordingly' (ibid, p.33).

Included among the Committee's recommendations was establishing a new Act and repealing the *Workers' Compensation Act 1971* (SA); that a Board be established to administer a workers' compensation scheme; and that the Board be responsible for overseeing and confirming rehabilitation programs. In effect, the new scheme was to be underwritten and administered as a public monopoly.

A joint committee was established to investigate those areas where employers and the unions were in agreement or disagreement with respect to changing the workers' compensation system. Essentially, the joint committee reviewed the Byrne Committee recommendations to determine which of those should be implemented. A joint agreement was reached that led to the drafting of new legislation that was considered by Parliament in 1986 and the establishment of WorkCover in September 1987 (Safe Work Australia 2017).

When the new scheme commenced it was managed through an agency agreement with a subsidiary of the State Government Insurance Commission, but by April 1989 WorkCover had assumed full responsibility for scheme administration. Following a bout of poor scheme performance in the early 1990s, claims administration was outsourced in 1995 with a panel of nine claims agents appointed (Purse 2009).

Outsourcing of claims administration was vigorously opposed by the Labor opposition as 'back door privatisation'. Notwithstanding, the Minister for WorkCover in parliamentary debate argued that use of services of private insurers was 'considered appropriate and desirable by the government and the board of the corporation' (ibid. p.449). The Minister's view at the time was that [administrative cost] reductions 'in the vicinity of 10 - 15%' would be achievable targets post outsourcing (ibid. p.451).

### New South Wales

In 1985 there was a major reform to the NSW workers' compensation system prompted by financial difficulties (notably, premium rose from 2.65% in 1976/77 to an estimated 4.3% in 1985). The key objectives of reform were the introduction of strategies to create and promote safe work environments and the efficient rehabilitation of injured workers, as well as targeting insurance premiums, court delays and legal costs. As part of the reforms, existing insurance licenses were cancelled, and a smaller pool of participating insurers appointed, with new licensing criteria (Lozusic 1999).

In 1986 the State Compensation Board published a discussion paper that identified continuing problems with the workers' compensation system, such as the increase in compensation payments despite a reduction in the number of injuries (ibid.). Reform to the scheme was introduced in 1987 under the *Workers Compensation Act 1987* (NSW) that established a radically different scheme, which included public underwriting of the scheme and removing the right of workers to make common law damages claims against their employers, and the outsourcing of premium

administration and claims management to a panel of seven insurance agents. Common law damages were later reinstated under legislative reforms in 1989 (Safe Work Australia 2017).

## 3.4. Current Dimensions and Structure

### Key Dimensions

Approximately 10.2 million Australian workers are covered by workers' compensation arrangements, with nearly 110,000 new serious injury claims from workplace accidents or illness each year (i.e. claims with at least one working week of time lost[22]). This equates to about 10.5 serious injury claims for every 1,000 employees. In addition, there are nearly 200 worker deaths per annum, about a quarter of these occurring on public roads (Safe Work Australia 2017)[23] during the course of employment (journey claims to and from work is generally covered under CTP Insurance and are not included in this statistic).

Including all claims for time off work and medical only claims, there are likely to be in the vicinity of 250,000 – 300,000 new claims per annum. In 2014–15, Australian workers' compensation schemes made payments of $8.4 billion, of which 53 per cent was paid directly to the injured worker as compensation for their injury or illness and 22 per cent was spent on medical and other service costs (Safe Work Australia 2017)

### Product Overview

Australian workers' compensation schemes are founded on no-fault principles, with the provision of benefits including: compensation for loss of income/earning capacity (weekly benefits), medical/treatment and rehabilitation, lump sum permanent impairment and death benefits. Most schemes have provision for additional top-up benefits as lump sum damages under common law, the majority of schemes limiting this to serious injuries only.

Entitlements and benefits vary significantly across schemes, with limited progress on harmonisation other than OHS regulation and common definitions of worker/employer. With respect to benefits, the following observations are made:

a) There has been a move away from ongoing income and medical/treatment benefits for less severe injury, with several schemes implementing legislation to impose time limits to ongoing benefits (e.g. NSW 2012, SA and NT in 2015), and/or cessation of medical benefits for workers no longer receiving income support (e.g. Victoria)

b) Most schemes have provisions for redemptions, ranging from full redemptions (e.g. Tasmania, Western Australia, Northern Territory), redemption only for specified benefit types (e.g. weekly benefits in WA) and redemptions of minor payment streams (e.g., in Victoria a worker may redeem weekly benefits only if >55 years old and in receipt of income benefits for more than 104 weeks).

An abridged summary of benefits is attached at Appendix 2. A more comprehensive summary of workers' compensation entitlements and benefits can be found at the Safe Work Australia Website: https://www.safeworkaustralia.gov.au/.

## Underwriting and Administration Structure

Each of the Australian states and territories have developed their own workers' compensation scheme:

- Four jurisdictions (**Western Australia, Tasmania, ACT** and **Northern Territory**) are privately underwritten

- Four jurisdictions (**NSW, Victoria, Queensland** and **South Australia**) are publicly underwritten. NSW, Victoria and South Australia transitioned to public underwriting in the 1980s and currently outsource claims administration to third party providers appointed through periodic competitive tendering of services.

There are three Commonwealth schemes, underwritten by the Commonwealth, with the exception of the Seacare scheme [24].

- **Comcare Scheme**: covering Australian Government employees, Australian Defence Force personnel with service before 1 July 2004 and the employees of licensed self-insurers under the *Safety, Rehabilitation and Compensation Act 1988* (Cwth)

- **Australian Defence Force** personnel with service on or after 1 July 2004 under the *Military Rehabilitation and Compensation Act 2004* (Cwth)

- **Seafarers** under *Seafarers Rehabilitation and Compensation Act 1992* (Cwth).

In addition to the Comcare scheme, the State and Territory schemes allow employers to **self-insure**, subject to minimum threshold on company size and the provision of financial guarantees. As at 30 June 2015, across Australia (excluding NSW Specialised Insurers), there were 273 self-insurance licenses issued (covering 835 entities/subsidiaries) that covered about 15% of the workforce. With respect to private companies that self-insure, although there are a relatively small number, they represent some of the largest companies, for example in Victoria, the two biggest self-insurers (in terms of employee numbers) are Wesfarmers and Woolworths.

In the privately underwritten schemes of Western Australia, Tasmania and the Northern Territory the government retains the liability for government employees. In NSW (publicly underwritten) government employers self-insure administered under a separately managed fund: Treasury Managed Fund (TMF) administered by NSW Self-Insurance.

In several jurisdictions there is also private insurers underwriting and managing claims for defined industry segments. For example, in NSW a number of '*Specialised Insurers*' are licensed to underwrite workers 'compensation liabilities and manage workers' compensation claims (e.g. Coal Mines Insurance Pty Ltd, Catholic Church Insurances Limited, Guild Insurance Limited, Hospitality Employers Mutual, Racing NSW and StateCover Mutual Limited). These specialised insurers comprise only a small segment of the overall Australian workers' compensation market.

Excluding specialised and self-insurers, publicly underwritten workers' compensation schemes currently underwrite about 85% of total premiums written.

## Table 2 Scheme Administration Profile: Australian Worker's Compensation Insurance

| Insurer | Parent Entity | Publicly Underwritten, Insource Claims Administration | | Publicly Underwritten Outsourced Claims Administration | | | | Privately Underwritten | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Comcare | QLD | NSW icare | NSW TMF | VIC | SA | WA | TAS | ACT | NT |
| **Government** | | ✓ | ✓ | | | Note 1 | | Note 2 | | | Note 3 |
| **Private Entities** | | | | | | | | | | | |
| Allianz | | Pilot | | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ |
| Catholic Church Ins | | | | | | | | ✓ | ✓ | ✓ | |
| CGU | IAG | Pilot | | ✓ | | ✓ | | ✓ | ✓ | ✓ | ✓ |
| Employers Mutual Limited | | | | ✓ | ✓ | ✓ | ✓ | | | | |
| Gallagher Bassett | | | | | | ✓ | ✓ | | | | |
| GIO | Suncorp | | | ✓ | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| Guild Insurance | | | | | | | | ✓ | ✓ | ✓ | |
| QBE | | | | ✓ | ✓ | | | ✓ | ✓ | | ✓ |
| XChanging | | | | | | ✓ | | | | | |
| WFI Insurance | | | | | | | | ✓ | | | |
| Zurich | | | | | | | | ✓ | ✓ | ✓ | |

Note1: Catastrophic Injury Claims Outsourced to the Transport Accident Commission.

Note 2 Following a tender issued by icare during 2016/17, in NSW from 1 January 2018 EML will become the single claims agent, responsible for managing 'all new claims' across the scheme. Allianz and GIO have been retained by icare as transition agents and will retain responsibility for the management of existing claims until 31 December 2018. CGU & QBE will conclude their role as icare scheme agents from 1 January 2018.

Note 3 The liability for Government Public Servant workers' compensation claims is retained by the NT Government, with claims management services outsourced to Gallagher Bassett.

## 4. Sale of Government Owned Insurance Offices

Government owned insurance offices were established in most States between 1914 and 1927, predominately to provide compulsory workers' compensation insurance, and later CTP insurance (Kenelly and McKenzie 2008). Government owned insurance offices all initially operated in competition with the private sector insurers (with the exception of the provision of workers' compensation in Queensland and the national scheme established for Commonwealth officers). By 1970, government owned insurers accounted for 59% of CTP Insurance premiums and 24% of workers' compensation premiums (ibid. p,308).

Late entrants to establishing government insurance offices were South Australia (1972) and the Northern Territory (1978), which were introduced to improve the availability and affordability of insurance in their jurisdiction, in particular, home and motor insurance. These entities also operated in competition with private insurers for the provision workers' compensation and acted as monopoly providers of CTP Insurance.

In the 1990s, with the advent of financial deregulation, government owned insurance offices were limited in their ability to develop and grow market share in their core business by the geographic limits of their respective regulatory jurisdictions. With a few exceptions, they were slow to move into new product markets, develop a competitive culture, and face substantial investment to improve IT platforms (ibid. 319).

In the 1990s all States sold their government owned insurance offices through public float or trade sale, with the TIO being sold via a trade sale in 2014. The proceeds of sale in some jurisdictions, such as South Australia, was strategically linked to debt reduction programs (SA Legislative Council 1996) the sale of SGIC generating $175M).

Although there was no change to the structure of public vs. private underwriting as a result of these sales, it did result in the outsourcing of claims administration where government monopoly arrangements were maintained (i.e. South Australia 1996; Northern Territory 2014).

## Table 3 Inception and Divestment of Government Owned Insurance Offices

| Jurisdiction/ Government Entity | Inception | Exit Date, Mechanism | Government Underwriting CTP Insurance | Government Underwriting Worker's Compensation |
|---|---|---|---|---|
| NSW<br>Government Insurance Office (GIO)[25] | 1927 | 1992, Public Float | Competition with private insurers 1942 - 1984.<br>Sole provider 1984-1989. (TransCover)<br>Competition with private insurers 1989- 1992<br>No public underwriting from 1992 following the sale of GIO | Competition with private insurers 1917 - 1986.<br>**Public Monopoly** from 1986 (WorkCover NSW) |
| VIC **(note 1)**<br>State Accident Insurance Office (SAIO)<br>State Motor Car Insurance Office (SMCIO) | 1914<br>SAIO (W/Comp)<br><br>1941<br>SMCIO (CTP) | 1986<br>CTP Insurance Underwriting transferred to TAC<br><br>1992, Trade Sale of SIO | Competition with private insurers 1941 - 1972<br>Sole provider 1972-1986<br>**Public Monopoly** from 1987 (Transport Accident Commission) | Competition with private insurers 1914 - 1985<br>**Public Monopoly** from 1985 (Victorian Workcover Authority) |
| WA<br>State Government Insurance Office (SGIO) | 1926 | 1987<br>CTP Underwriting transferred to State Government Insurance Commission (later renamed ICWA)<br>1993, Public Float | Competition with private insurers 1943 – 1949<br>Participating Insurer (MVIT) 1949- 1986<br>**Public Monopoly** from 1987 (Insurance Commission of Western Australia) | Competition with private insurers 1926 – 1993<br>No public underwriting from 1993 following the sale of SGIO |
| Queensland<br>State Accident Insurance Office (renamed in 1917 to SGIO)<br>Suncorp (1985)[26] | 1916<br>Suncorp Insurance and Finance Board established in 1985 | 1996, Public Float (Suncorp) | Competition with private insurers 1936 – 1997<br>No public underwriting from 1997 | **Public Monopoly** from scheme inception (in 1978 the Workers' Compensation Board of Queensland was established as an agency independent of the public service) |
| SA<br>State Government Insurance Commission (SGIC) | 1972 | 1996, Trade Sale | Competition with private insurers 1972-1975<br>Public Monopoly from 1975 – 2016 (MAC), outsourced claims administration from 1996<br>Scheme privatised 1 July 2016 with no public underwriting from that date | Competition with private insurers 1972-1986<br>**Public Monopoly** from 1986 (WorkCover) |
| Tasmania<br>Tasmanian Government Insurance Office (TGIO) | 1919 | 1995,<br>Trade Sale | Competition with private insurers 1925 – 1974<br>**Public Monopoly** from 1987 (Motor Accident Insurance Board) | Competition with private insurers 1919 – 1995<br>No public underwriting from 1995 following the sale of TGIO |
| NT<br>Territory Insurance Office (TIO) | 1978 | 2014, Trade Sale<br>[Motor Accident Compensation (MAC) subsidiary remained in public hands] | No prior competition with private sector<br>**Public Monopoly** from 1990 (Motor Accidents Compensation Commission) | Competition with private sector 1978-2014<br>No public underwriting from 2015 following the sale of TIO |

Note 1: The State Insurance Office (SIO) was established under the *State Insurance Office Act 1975* as a successor to both the State Accident Insurance Office and the State Motor Car Insurance Office

# 5. National Injury Insurance Scheme - Longitudinal History

## 5.1. New South Wales Lifetime Care and Support Scheme (2006 - 2007)

In March 2006, the NSW Government tabled a Bill to establish a scheme to provide lifetime treatment, care and support service for persons who suffer catastrophic injuries (such as spinal damage and brain trauma) in motor accidents in NSW. The scheme was based on no-fault principles.

The Bill received Royal Assent on 8th May 2006 with administrative provisions of the *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW) commencing on 1 July 2006 for children under 16, and from 1st October 2007 for adults. The NSW Lifetime Care and Support Scheme (NSW-LTCSS) was publicly underwritten, funded by a levy on CTP Insurance premiums, and administered by the NSW Lifetime Care and Support Authority (NSW-LTCSA).

Motives behind the development of the NSW-LTCSS were twofold:

1. Recognition that current arrangements were not ideal for people who sustained major injuries. Economic considerations included the escalating costs of long term care across the common law compensation scheme and the inappropriate use of funds (often because of the inexperience of the individuals and their families in investing large amounts of funds and ensuring they last for the lifetime of the injured person)

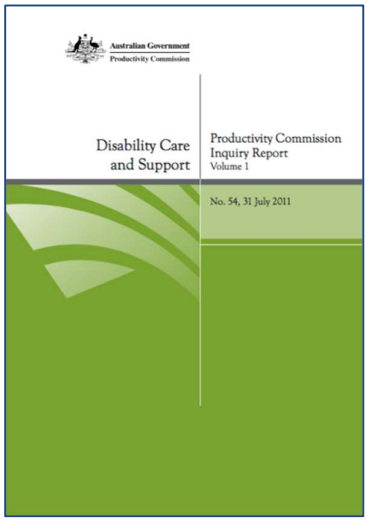
2. Perceived inequity in entitlement to services, both in considering the fault based nature of the current Motor Accidents Compensation Scheme and also in terms of more general disability services, and the difficulty in accessing needed services. In the prior Scheme, litigation and delays were viewed to compromise recovery. Even for those who can prove fault, damages were reduced by contributory negligence and the statutory discount rate used in the calculation of lump sum compensation payments, with no offset allowance for inflationary increases, resulting in severe reductions in lump sum awards to meet future costs (Walsh 2006).

Under the NSW-LTCSS, any person who sustained a motor accident injury of sufficient severity to require "lifetime care and support" is entitled to receive care and support, irrespective of the ability to establish the negligence of a third party. Eligible NSW LTCS participants continue to be entitled to lump sum damages for non-economic loss and future economic loss from the residual scheme (privately underwritten) if another person was at-fault for their injury, but can only receive care and support benefits under the NSW-LTCSS. On average, 120-150 people per annum enter the NSW-LTCSS as permanent participants.

The NSW-LTCSS was intended to provide speed and certainty to eligible claimants in terms of the security of their future care and support, by providing services from the time of hospital discharge. The NSW LTCS adopts a person-centred approach to planning, co- ordination and service-delivery, focused around helping a participant to achieve social and independence, aligned with their life area goals and objectives. The NSW-LTCSS provided a framework for latter design of Australia's National Injury Insurance Scheme (refer discussion below).

## 5.2. Productivity Commission report (2011)

In 2008, the Hon Bill Shorten MP[27], established the Disability Investment Group (DIG) with public and private sector representation. The DIG was asked to explore innovative funding ideas from the private sector that will help people with a disability and their families to access greater support and plan for the future, and think creatively about how to inject additional resources into the historically underfunded disability sector.




While the DIG was conducting its review, the Australian Government undertook several initiatives to bolster the current systems for supporting Australians with disability. The measures included signing the *UN Convention on the Rights of Persons with Disabilities*, increasing the Disability Support Pension and Carer Payment in the 2009–10 Budget and allocating increased funding under the National Disability Agreement over the next five years.

In 2009 the Australian Government released the report of the DIG. The DIG's principal recommendation was that the Commonwealth Government, in consultation with States and Territories, should immediately commission a comprehensive feasibility study on a National Disability Insurance Scheme (NDIS). The DIG believed that further analysis was necessary because, while a NDIS would be transformational, some of the transition and other issues associated with its introduction would be complex (DIG 2009, p.1).

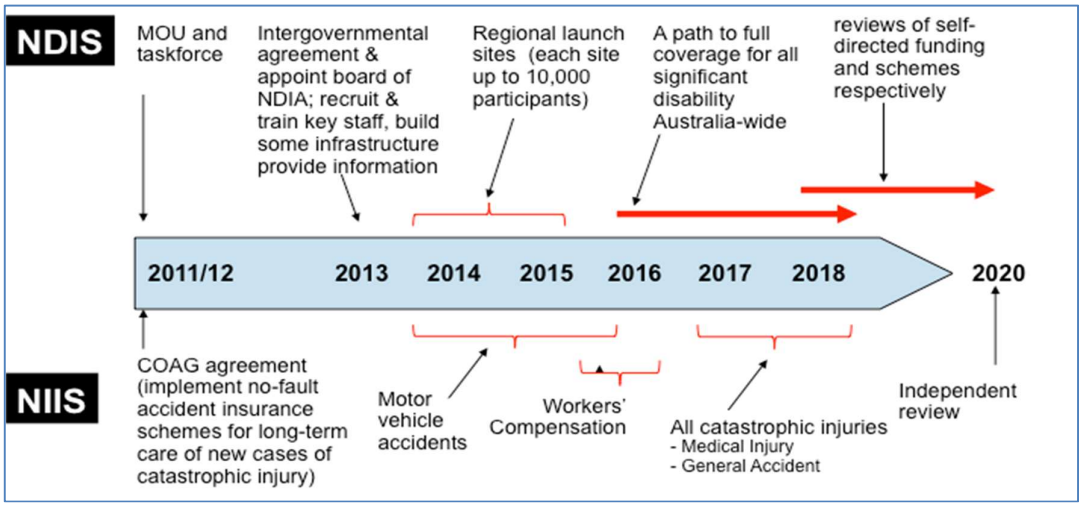
Following the release of this report it was announced in April 2011 that the Productivity Commission had been commissioned to undertake an inquiry into long-term care and support for people with disability in Australia. In August 2011, the final report of the Productivity Commission was released (PC 2011a), outlining the details of establishing a National Injury Insurance Scheme and a National Disability Insurance Scheme.

1. **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
2. **National Injury Insurance Scheme** (NIIS) – 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[28].

The PC recommended that a NIIS, based on no-fault principles (PC 2011b) be developed for catastrophic injuries (such as quadriplegia, acquired brain injuries, severe burns and multiple amputations) caused by four types of accidents: motor vehicle accidents, workplace accidents, medical accidents and general accidents (occurring in the home or community) as a federated model of separate state/territory based no-fault schemes that provide lifetime care and support benefits for people who had sustained a catastrophic injury.

The development of the NIIS would run in parallel to the NDIS, depicted below:

**Figure 2 Implementation pathways: NDIS and NIIS**




Source: Fronsko, 2016a, *National Injury Insurance Scheme Australia - 2016 Update*, International Forum of Disability Management, Malaysia

The NIIS scheme was envisaged to be fully funded through the collection of insurance premiums (or levy), and apply only to new injuries post scheme inception. A summary of the design elements of the NDIS and NIIS schemes is provided at Appendix 3.

## 5.3. National Injury Insurance Scheme Implementation (2012 – 2016)

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

- All states endeavor 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.
- 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.

A Council of Australian Governments (COAG) communiqué of 19 April 2013 reported that minimum national benchmarks (NIIS Minimum Benchmarks) had been developed for the provision of no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents (COAG 2013). The NIIS minimum benchmarks for motor vehicle accidents were modelled on the existing NSW Lifetime Care and Support Scheme, and were established to ensure consistency between jurisdictions on eligibility for the NIIS and level of benefits and standard of care provided.

States and Territories signed individual bilateral *Heads of Agreement with the Commonwealth* on the launch of the NDIS and on the full scheme rollout confirmed the operational and funding details for the roll-out of the NDIS in each launch site. Agreements were signed for New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory in 2013, the Northern Territory in 2014 and Queensland and Western Australia 2016 (COAG n.d.).

As part of the Heads of Agreement, several jurisdictions agreed to timelines for implementation of the NIIS for motor vehicle accidents, and other injury types, presented in the table below:

**Table 4 Status of implementation schedule for the NIIS (1 January 2017)**

| Date | Reform required | Jurisdiction |
|---|---|---|
| 1 July 2013 | Motor accidents | South Australia implemented.<br>NSW and Victoria already meet benchmarks. |
| 1 July 2014 | Motor accidents | Northern Territory implemented. |
| 1 July 2016 | Motor accidents | Queensland Implemented<br>WA implemented |
| 1 July 2016 | Workplace accidents | ACT, NT, QLD, SA, TAS required to meet benchmarks.<br>NSW and VIC already meet benchmarks<br>Queensland and Western Australia established legislation for their respective stand-alone NIIS schemes to administer[29] |
| July 2018 | Medical injury | Sth Aust agreed to develop, agree and implement minimum benchmarks for medical injury. |
| Unknown | Continue negotiations on medical injury | ACT, NSW, NT, QLD, VIC |
| Unknown | Continue negotiations on general accidents and criminal injury | South Australia |

## 5.4. Public Underwriting of the NIIS Scheme for CTP Insurance

The matter of non-government and private sector involvement of the NIIS was reviewed in the National Injury Insurance Scheme: Motor Vehicle Accidents Consultation Regulation Impact Statement (Australian Government 2014, pp. 26-27). It was noted in this report that the PC Inquiry on Disability Care, concern was expressed by the insurance industry that the NIIS should not 'crowd out' private insurers but work with private providers (ICA 2014). The Insurance Council of Australia (2014), in their submission, presented five possible models for the party insurance provision under the NIIS, each with their own potential risks and benefits (ibid.).

1. 'Managed' private sector underwriting with private insurers underwriting all the financial risks and the jurisdictional government, through their authority, collecting premiums and managing claims

2. Private Sector underwriting with mitigation of risk through premium mechanism. This would operate as the first option, except insurers establish a schedule of prices on which they are allocated a deposit premium based on their market share at the beginning, which is then adjusted at the end of the year to reflect actual claims.

3. Private underwriting with capped insurer cover and price adjustment mechanism. This is similar to the second option with a cap on insurer liability per participant

4. Government underwriting with a private case manager. This option has the government as underwriting with private insurers operating as case managers for claimants, which is tendered for and remunerated by the government

5. Two-tier system for catastrophic and non-catastrophic. This option has tier one injuries managed by a statutory agency and tier two privately underwritten through third party premiums. This is how the New South Wales motor vehicle accident scheme currently operates.

For the CTP schemes in Victoria, Northern Territory and Tasmania, and the NSW–LTCS Scheme (all publicly underwritten) meeting the NIIS Minimum Benchmarks was not a significant issue as they broadly met the minimum benchmark criteria. Hence there was no imperative to change scheme design or underwriting

For the newly established South Australian Lifetime Support Scheme ("SA-LTS") and ACT scheme (both commencing from 1st July 2014), and the NIIS schemes for Queensland[30] and Western Australia (Legislative Council of WA 2016) jurisdictional governments have made the decision that they should be publicly underwritten. It is noted that in the announcement to privatise the South Australian CTP scheme, the government advised that the SA-LTS will remain a separate entity and continue to be publicly underwritten.

One of Australia's largest general insurers acknowledged that providing insurance for catastrophic injury can be very capital intensive – suggesting that [some] private insurers may not wish to underwrite such a scheme, and that they may not be as efficient as a government underwriter (Suncorp 2012). Moreover, in their submission to the Competition Policy Review in 2014, Suncorp made the following statement (Suncorp 2014a):

> *Suncorp considers it appropriate for government to run disability services such as the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS).* However, broader personal injury insurance schemes such as workers' compensation and CTP insurance should be opened to competition through the private market.

The decision by the Queensland government in 2016 to publicly underwrite the NIIS was based on the view that stakeholders generally supported the State Government underwriting and funding of the scheme, and the relative cost savings in [public] delivery relative to private underwriting:

> "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] for a publicly underwritten scheme.
>
> …. The State Actuary noted that [presumably] for this reason all other States that have implemented or announced a NIIS have publicly underwritten the scheme. The committee noted 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'. (Source: Parliamentary Committees Queensland 2016, p.35).

Thus, option 5 of the ICA's suite of options developed in 2014 (refer above) has been adopted, but this does exclude future use of third party providers to assist in case management.

## 5.5. Current Dimensions and Structure

The table below provides a summary of structural elements of the NIIS schemes motor vehicle accidents across various jurisdictions as at 1 July 2017.

**Table 5 Structure of CTP Insurance Schemes Managing Catastrophic Injury Claims**

| Jurisdiction | Stand-alone Scheme | Date of scheme inception | Ability seek common law in lieu of participation | Inter-jurisdiction Coverage | Outsource Claims admin'n |
|---|---|---|---|---|---|
| NSW (*Lifetime Care & Support Authority)* | Yes | 2006 minors 2007 all persons | No | No | Hybrid [1] |
| Victoria (*Transport Accident Commission)* | No | | No | Yes | No |
| Queensland *(National Injury Insurance Scheme)* | Yes | I Jul 2016 | Yes | No | No |
| WA *(Insurance Commission Western Australia)* | No [2] | 1 Jul 2016 | Yes | No | No |
| Tasmania *(Motor Accidents Insurance Board)* | No | | No | No | No |
| South Australia *Lifetime Support Authority* | Yes | Jul 2014 | No | No | No |
| ACT *(Lifetime Care and Support Scheme)* | Yes | 1 July 2014 | No | No | Yes[3] |
| NT *(Motor Accidents Compensation Commission)* | No | | No | Yes | Yes[4] |

1. Case Management outsourced to a panel of providers who are the primary point of contact for participants and service providers and responsible for organising and requesting most treatment, rehabilitation and care.
2. Managed by the Insurance Commission of Western Australia, under a segregated Fund.
3. Claims Administration outsourced to the NSW Lifetime Care & Support Authority
4. Claims Admin outsourced to Allianz as part of the administration of CTP claims following the 2014 sale of TIO.

# 6. National Competition Policy

## 6.1. National Competition Policy Review – did anything change?

### National Competition Policy (Hilmer Review)

An examination of competitive approaches to underwriting of Statutory Insurance classes in Australia was undertaken in 1992, as part of the Federal Government's desire to establish a National Competition Policy. The Government commissioned an Independent Committee (chaired by Professor GH Hilmer) to conduct an Inquiry into a National Competition Policy. The Committee tabled their Report in 1993, commonly known as the Hilmer Review (Hilmer 1993).

A key recommendation of the Hilmer Review was to review Government owned businesses, encompassing utilities such as gas, electricity and water and also government owned insurance businesses, principally CTP Insurance and workers' compensation (ibid. Chapter 6). Following the release of the Hilmer Review, state and territory governments, from 1994 undertook comprehensive reviews of their legislation under the lens of compliance with National Competition Policy aims and principles[31], and were provided with payments based on a review of progress undertaken by the National Competition Council.[32]

In 2002 when jurisdictions reported on progress towards achieving National Competition Policy (see Appendix 4) Victoria, Northern Territory and South Australia signalled their intent to retain public underwriting for both workers' compensation and CTP Insurance, with a decision for Western Australia and Tasmania pending (noting these jurisdictions later decided to retain public underwriting).

Victoria's response to the Review with respect to motor vehicle injuries was consistent with conclusions reached by other publicly underwritten jurisdictions:

> "The [Victorian] Government's view is that the no-fault compensation including a provision for lifetime care, lower and more stable premium relative to the other States' average and the community rating in the premium, provide greater benefit to the community than the costs of restricting competition. The benefits have been provided by a stable scheme over a period in excess of 10 years. The costs of restricting competition in Victoria's scheme are judged to be smaller overall than the benefits. The Government has therefore concluded that there is a net benefit to the community as a whole from the existing arrangements" (Victorian Government 1999).

Victoria later agreed to introduce some independent price oversight, which resulted in the occasional narrow review whether or not to index premium by the Victorian Essential Services Commission, but never a broader review of premium.

South Australia was more expansible in its rationale to maintain public underwriting of its CTP insurance scheme, citing community rating of premiums was a key consideration with respect to fairness and community acceptability:

> "The [South Australian] Government considered that the review demonstrated that a sole provider scheme is cheaper for motorists than a multi- provider scheme and that the objectives of CTP legislation – universal coverage, fair claims settlement, (maximum) affordability of premiums, fairness and community acceptability as well as minimum financial risk to the Government – cannot be achieved except by restricting competition through compulsion, community rating and provision by a single statutory authority.
>
> The decision to retain MAC-SA as the sole provider was considered to be in the public interest and in terms of National Competition Policy requirements within the range of outcomes that could reasonably be reached based on the evidence available" (Government of South Australia 2002, p.26).

With respect to Western Australia, although a previous government recommended to open the Insurance Commission of Western Australia to competition, the new government decided to retain the current arrangements, arguing that the present underwriting model worked well, was stable and delivered broader benefits to Western Australia.

The Productivity Commission's 2005 report on Review of National Competition Policy Reform (PC 2005), recognising a lack of change, recommended a further review of CTP Insurance be conducted as part of national review of statutory insurance classes:

> The remit of the foreshadowed Advisory Council to develop nationally consistent frameworks for workers' compensation insurance should be expanded to encompass the development of national frameworks for Compulsory Third Party insurance. As part of that process, the Council should consider whether a further (national) review of restrictions on competition and efficiency in workers' compensation and Compulsory Third-Party insurance is required to facilitate the development of this framework. (Recommendation 9.2)

Despite this recommendation, no such review was undertaken.

Thus, at the completion of the NCP Review process, no government changed their legislation to move away from Government underwriting of CTP Insurance or workers' compensation. Governments retaining publicly underwritten schemes argued there was not a convincing argument that competitive private underwriting would be more efficient, and moreover, monopoly providers had the advantage of economies of scale. This view was not necessarily supported by insurers, such as AAMI[33]:

> "…it is felt that states/territories have not provided sufficient evidence of the market size required to achieve economies of scale, but they have implied to date that costs would be higher if smaller, multiple suppliers were allowed in place of monopoly providers. This has not been the private insurance sector's experience to date with small-scale operators being able to successfully compete against larger scale operators in the NSW and Queensland [CTP] markets. And in any case, private insurers can spread many of their fixed costs over a range of insurance products and thus enjoy economies of scale that governments are unable to realize." (AAMI 2005 p.10).

### Competition Policy Review (Harper Review)

A second major Competition Policy Review (the Harper Review) was commissioned by the Federal Government as a key election commitment in 2013 that was a limb of the Government's forward economic policy agenda (which also included the Tax White Paper, the Federation White Paper and the response to the Financial System Inquiry). The Review, which considered stakeholder submissions, issued its Final Report in 2015.

In a submission to the Review, the Insurance Council of Australia (2014) emphasized the benefits that private insurers can contribute by underwriting statutory insurance classes:

> "The ICA submits that, in the context of the Competition Policy Review, there exists a strong case that statutory insurance schemes are well served by private insurance markets, and that the risk of injury, particularly arising from losses from employment or motor accidents, can be transferred from the public sector with the attendant allocative efficiency gains". (ibid. p. 2).
>
> While it is acknowledged that there are arguments to be made in support of private and public underwriting of statutory insurance, particularly in relation to catastrophic injuries, it is the ICA's strong submission that general insurers are best placed to underwrite well designed statutory insurance schemes, to avoid:
>
> - Financial risk to governments, taxpayers and future policyholders
> - Inherent volatility in the financial performance of public monopoly schemes
> - Political interference with pricing of risk
> - Government reliance on premiums collected for a mandatory, personal injury insurance scheme - as a source of general revenue (ibid. p. 6).

Suncorp (2014b) in its submission to the Harper Review, commissioned PricewaterhouseCoopers (PwC) to assess the potential economic and productivity gains of private underwriting of certain non-catastrophic personal injury schemes in select jurisdictions (NSW and South Australia workers' compensation and the South Australian CTP Scheme). The value the private sector is purported to achieve was premised on assumptions that the private insurance sector would have better capital management, better case management towards the faster recovery of injured persons,[34] and a reduction in health expenditure associated with the faster recovery,

through improvements in delivery, without reducing levels of care or health outcomes. The purported benefits of competitive private underwriting of statutory insurance classes for non-catastrophic injury in Suncorp's submission is summarised below:

- *Better capital management* – the introduction of independent prudential oversight by APRA, the enhanced transparency, the differing rates of return, and the need to perform for stakeholders reduces the probability of schemes running into deficit.
- *Reduced risk to government* — reduced financial exposure (and hence risk) to government balance sheets and thus taxpayers, and in doing so protecting government credit ratings. It also allows for scarce government revenue to be freed up and reallocated to other critical areas of government activity, at the lowest possible cost of funding for taxpayers.
- *Increased competition* – private underwriting would allow more market participants (i.e. private insurers) to enter the market depending on whether they feel they can competitively play in the sector and adapt to changing consumer choices. This addition of more market participants within the sector thus increases competition driving greater insurance policy choice and competitive offers to 'win' consumers.
- *Improved innovation* – private companies would have the impetus to implement innovative solutions concerning rehabilitation and return-to- work processes. This improves productivity and wellbeing within the community by potentially enabling people to recover sooner from their injuries. It also means an improvement in support for injured people to be socially and financially independent as soon as possible after an injury.
- *Greater flexibility* – private firms generally have greater flexibility and can respond quicker to emerging claim trends and challenging economic environments compared to public bodies.

Notwithstanding submissions from the ICA, Suncorp and other insurers, the Harper Review made no recommendations with respect to the public underwriting of CTP Insurance or workers' compensation.

# 7. Pros and Cons of Public Monopoly *vs.* Private (Competitive) Underwriting

## 7.1. Historical Context (mini case studies)

The following discussion is not intended to be comprehensive, rather to provide some perspectives on public debate on the relative merits of pubic vs private underwriting. The following 'mini case studies' focus upon points in time where there was consideration of transition between systems, highlighting arguments for and against used at the time.

### UK 1920s: Gregory Holman Commission (Workers Compensation)

In the UK, the introduction of the *Workmen's Compensation Act 1897* (UK) imposed a duty on employers to make limited payments to the victims of industrial accidents irrespective of fault, and employers were left to arrange their own insurance to pay the cost of these claims. This system was privately underwritten.

In the early 1900s public debate emerged as to whether the UK would be better to have a national system (public monopoly) for workers' compensation vs. private provision. In 1922 the Government set up a commission under Holman Gregory K.C. to review certain aspects of the workers' compensation system. The review ('Holman Gregory Commission') noted that only 52% of the premium paid was delivered to the workers on benefits[35], and that this was wasteful and unsatisfactory, concluding 70%

should be available for settlement of claims (Young 1964) This required attention, but the Commission did not recommend establishing a State system of insurance.
Post the release of the Holman Gregory report in 1922, insurance companies committed to voluntarily limit profits and expenses to 30%, so that not less than 70% of the premium paid was available for claims (ibid, p. 83).

Leading into the 1924 Election, the Labour party made a commitment to nationalise workers' compensation, writing in their policy Statement 'Labour and the Nation' (UK Labour Party, 1926), under the heading "The Public Ownership of Foundation Companies":

> … the system of industrial life insurance needed to safeguard the worker against risk confronting him and through which is too often exploited – there and other fundamental necessities are too vital to the welfare of the nation to be exploited for private profit (p.26).

Ahead of the election in 1924, the UK Insurance Parliamentary Association Limited wrote to members of various political parties soliciting their views on nationalising the workers' compensation system, and whether it should be intergraded into the broader social security system. Notes accompanying their letters clearly demonstrated insurers were opposed to nationalisation, with concerns including:

- Loss of jobs to insurance staff and brokers causing great hardship
- Lack of confidence for both business in public sector management
- Loss of ability of the employee to contribute towards insurance premiums
- Community rating would be introduced (rather than risk rating), resulting in inequity and hardship to employers and employees
- Employees have distrust in 'officialdom'
- Competition between insurers is beneficial to maintain a good understanding between employers and employees (anon(a)1929).

Notwithstanding Labour's support, the Liberal Party and Union movement indicated no support for nationalising workers' compensation. The Liberal Government under Standley Baldwin won the 1924 election and nationalisation did not proceed under his government.

### UK 1940s Beveridge Report (Workers Compensation)

The UK workers' compensation was again examined in a 1940 Royal Commission. The Commission found that since the Holman Gregory Commission review and a voluntarily commitment from insurers to limit profits and expenses that the administrative costs were 50% higher. The average administration costs of 19% (ranging for 46.5% in commercial insurers, 21.6% mutual organisations and 10% self-insurers) were observed to be higher than the costs of national insurances (Young 1964, p. 83). Young (1964) argues that Beveridge, who later chaired the Commission, did not blame the insurance companies, or reflect on their efficiency, but rather blamed the system they had to deal with (p.83).

A concerning observation for the Commission was a lack of serious focus by those responsible for providing compensation to promote a coordinated rehabilitation and resettlement (assistance to finding alternate employment) to assist the injured worker. In other words, there was little focus on the worker's wellbeing.

The issues of poor administrative efficiency, and the lack of restoration focus on 'restoring the injured to worker to the greatest possible degree of production and earning as soon as possible' were two of several weaknesses identified in a survey of Britain's social insurance and allied services, released in 1942 under the "Beveridge Report" (officially entitled 'Social Insurance and Allied Services').

Based on principles espoused in the Beveridge Report, in 1948 the provision of a national public scheme to provide a base level of support to injured workers, without regard to fault, was introduced under the *National Insurance (Industrial Injuries) Act 1946* (UK). Private insurers were excluded from involvement with the scheme, it was questioned whether access to tort for work claims should continue, but eventually the worker's ability to sue at common law was retained, this component underwritten by private insurers (Lewis 2012).

### New Zealand 1947: Workers Compensation

In 1947 the workers' compensation Amendment Bill 1947 (NZ) was presented to the Parliament for debate. The Bill sought to introduce a state monopoly scheme for workers' compensation administered under the Accident Insurance Branch of the State Fire Insurance Office (SFIO). At the time about 43 private insurers competed with the SFIO for the provision of workers' compensation.

The opposition party, were opposed to the creation of a state monopoly and argued on ideological grounds that such a scheme brought New Zealand one-step closer to ultimate socialism. Notwithstanding, the debate in the House at the time if introducing legislative reform provided a perspective of the pros and cons viewed at the time (refer New Zealand Parliament, House of Representatives, debate of 23 October 1947 highlighting polarised views:

*Advantages of transitioning to a Public Monopoly Scheme*

- More economical than the private sector, as evidenced by lower administration costs of the State Fire Insurance Office compared to private insurers, and the much lower administration cost of the Queensland (Australia) workers' compensation system. Efficiencies were assumed to be generated by economies of scale by cutting out duplication that existed across the current 43 insurers underwriting workers' compensation at that time
- Lower premiums resulting from greater efficiencies
- Scheme is not constrained or served by the profit motives of shareholders (reference made to the UK Holman Gregory Commission's finding of wasteful and unsatisfactory administration costs amongst UK private insurers at the time), citing local examples of insurers avoiding the payment of meritorious claims driven by profit motives
- Flexibility to offer premium rebates based on sound claims performance
- Centralised data collection and resultant identification of issues and coordination of accident prevention initiatives based on research.

*Disadvantages of transitioning to a Public Monopoly Scheme*

- Adverse economic impact from the loss of employment in the insurance industry (5,000 workers impacted), and disruption to 16,000 brokers
- Inefficient if competition is rubbed out – there would be no standard that can be set to gauge efficiency and drive service improvement
- Monopoly bureaucrats lack competency in regulating premiums - private insurer input would create better insight and more effective price regulation
- Higher prices will result from lack of efficiency/competency.

In response to the various arguments for and against, an opposition member (Mr. Corbett) stated, "no system is perfect, and that a government monopoly will be the most imperfect of the lot" (p.139 of Parliamentary transcripts).

### Australia 1999: National Competition Policy Review Queensland (CTP Insurance)

As part of its obligations under National Competition Policy, the Queensland Government undertook a review of the *Motor Accident Insurance Act 1994* (Qld) and supporting Regulations (Queensland Government 1999). In this review there was an explicit assessment of the advantages and disadvantages of competitive private and public underwriting summarised below:

*Advantages of Competitive Private Underwriting*

- Commercial management expertise
- Acceptance of financial risk by private sector rather than public sector
- Price competition (if scheme design permits)
- The involvement of private insurers viewed to provide an opportunity to benchmark comparative insurer performance within the jurisdiction.

*Advantages of Public Underwriting*

- 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. Unlike private insurers, a public 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)
- Consistency of claims management (standard customer experience)
- Optimal (lower) 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[36]
- Costs to the motorists can be smoothed out over time
- A closer working relationship can be established with Road Safety programs (which is a long-term policy objective).

The Committee ultimately favoured the retention of private insurers because it removed the financial risk from Government and ensured discipline in pricing of premiums, principally, that premiums were adequate for the risks to be covered.

The Committee recognised that retention of competitive private underwriting comes at a price,[37] because there are efficiencies that can be gained through a public monopoly, noting that for a public monopoly certain functions could be outsourced to the private sector to extract efficiencies (ibid. pp. 8-9).

### Australia 2004: Productivity Commission Inquiry (Workers' Compensation)

In the context of statutory insurance, the Productivity Commission, in their Inquiry 'Report on National Workers' Compensation and Occupational Health and Safety Frameworks' (PC 2004), highlighted that management literature does not provide a powerful case for either public monopoly or competitive private provision of workers' compensation insurance. However, the PC noted some merits of private underwriting:

> … the Commission considers that, on balance, private provision is preferred on grounds that: private capital is directly at risk; competition in the marketplace is likely to generate incentives for efficiency and innovation; and there is greater transparency of any governmental influence over premiums. Further, the risk of private insurer failure can be reduced by prudential regulation. However, even in competitive schemes, the Commission notes that pressure can be applied to governments as funders of last resort in the case of significant market failure. (ibid. p. 323).

### Australia 2016: Queensland Scheme Review (CTP Insurance)

The Motor Accident Insurance Commission (MAIC) in 2016 conducted a review of the Queensland CTP Scheme to identify opportunities to improve its affordability, efficiency, and fairness for the community of Queensland as well as ensuring it is flexible in its design to support future innovation and improvement opportunities. The Review Committee led by Mr Henry Smerdon AM submitted its Report to Government on 9th December 2016 (Smerdon et.al. 2016).

Key recommendations in the report were aimed at encouraging stronger price competition between insurers in the scheme (and easier ways for consumers to switch their insurer), better transparency of legal fees and ongoing benchmarking of scheme performance (and insurer profitability) complemented by a periodic scheme review. The Review Committee concluded there was no compelling need to change the basic structure of the scheme with respect to benefits and private underwriting, and recommended that further work be undertaken to examine the merits of introducing limited risk rating in the setting of premiums by insurers. Detail of the recommendations is presented at Appendix 5.

### Australia 2017: Abandonment of multiple providers for outsourced claims management in NSW (Workers' Compensation)

The benefits of competitive provision of claims management services are frequently espoused as lower administrative costs, increased choice for employers, improved service and more effective system control. However, Purse (2009; 2012) argues that while the benefits of outsourcing in this area of public administration have often been asserted there has been a lack of research into these claims, and in his assessment of the South Australian workers' compensation system found no empirical evidence to support efficiencies were achieved.

A key challenge for the outsourced claims management model is setting performance standards and remuneration structures such that the objectives of the regulator and claims agent are aligned. In the 2007 Review of the South Australian workers compensation Scheme, Clayton and Walsh (2007) recommended the need for the regulator to have a "hands-on" role in specifying, monitoring and influencing agents to ensure standards of claim and injury management and outcomes delivered, with a focus on short term performance measures such as return to work. This is a profound recommendation as it implies the competitive agency model will not naturally gravitate to better performance without centralised intervention or coordination.

In New South Wales in 2017, competitive provision of claims management services has been abandoned in preference for the appointment of a single claims agent. It is not transparently evident why such arrangement has been adopted, whether for a cost efficiency reasons or ensuring a consistent claimant experience. However, it implies

a view of the Regulator that optimal service delivery/economies can be achieved in claims outsourcing through centralised design and control, rather than being aided by dynamic competitive forces.

## 7.2. Synthesis of Arguments (Advantages and Disadvantages)

Having regard to the arguments presented in this and preceding chapters, the following summary is a synthesis of key arguments on the relative advantages and disadvantages of public vs. public underwriting. The advantages and disadvantages tend to mirror each other for the different underwriting models, but are presented in this manner to reflect typical arguments when considering transition between models.

### Competitive Private Underwriting

*Advantages*

- Provides an arms-length relationship to mitigate the risk of imprudent government action/intervention to influence pricing, capital management and claims decisions
- Financial risk is retained by the private insurer shareholders rather than the Government (noting that a residual risk of insurer insolvency still remains)
- Consumers have choice of provider
- Broader benefit and economies can be achieved though product bundling (i.e. "economies of scope")
- Competitive tension between insurers helps to ensure efficient pricing and a focus on service innovation.

*Disadvantages*

- A focus on profit maximisation and claims cost minimisation may detract from a focus on optimal claimant outcomes (e.g. claimant mental and physical health and wellbeing)
- Actions to mitigate adverse selection and maximise profits introduce frictional costs and service inhomogeneity that would not otherwise be present in a monopoly scheme (i.e. marketing activity by insurers to overweight in 'good risks', and reduce exposure to under-funded policy holders).
- Lack of investment in collective activities by those responsible for providing compensation to invest in accident prevention for the broader public good.

### Public Monopoly Underwriting

*Advantages*

- Potential for lower premiums due resulting from lower capital holdings and a more aggressive investment objective (e.g. investment in equities with better long-term returns) - reflective of a higher tolerance for *short-term* balance sheet volatility compared to an APRA regulated private insurers[38]
- Potential for lower administrative costs delivery as there is less frictional costs associated with managing adverse selection with need for marketing/ commission regimes to acquire or renew policies
- Single insurer provides greater flexibility in how community-rating factors are applied
- One service standard is applied such that claimants, and policy holders, receive an equitable and consistent service experience tailored to their needs
- Can take a longer-term perspective in making up-front investments to achieve quality long-term outcomes (for claimants and the community), not overly constrained by short-term profit motives. Stated another way achieve a better balance of 'commercial' outcomes (sustainability) and 'social' outcomes (health and wellbeing of claimants and better linkages with accident prevention).

*Disadvantages*

- Financial (and reputational) risk remains with the Government should the scheme become significantly underfunded
- Risk of government or ministerial interference in premium setting and claims decisions leading to inefficient pricing and ineffective claim outcomes (a major problem in past, noting this risk in now minimised with independent Board oversight of public entities and/or independent review of premiums and scrutiny of claims decisions).
- Limits customer choice (i.e. loss of ability to select insurers with the best price, service delivery or supporting products).

# 8. Economic Theory

## 8.1. Opposing Views on the Technical Efficiency of Private vs. Public Underwriting

A common argument against public monopolies, when alternatives exist for private sector delivery, is akin to the following statement: "*the private sector is efficient and dynamic; public sector is costly and slow. The more we can get the private sector to run things, the better*". [39]

The typical grounding of economic theory to delineate public vs. private underwriting perspectives is the neo classical market theory, with the risk of oversimplification summarised as: that in well-functioning markets, supply and demand are matched, and goods/services are produced at prices (and quantities) that meet consumers demand/satisfaction at lowest cost (*technical efficiency*).

Anderson (1999), for example argues from an 'efficiency' perspective, that privatisation, when accompanied by elements of private market competition, should create greater market efficiency, with consequential lower prices for consumers:

> … This draws on neoclassical theory, which holds that elements of private competition (even if limited) will expose previously sheltered enterprises and service providers to the pressures of a competitive market, 'and the requirement to generate a return on capital. Accountability to shareholders will then intensify the need to reduce input costs, including labour, and to develop more effective techniques of production or service provision. Suggested general efficiency gains through privatisation are therefore closely linked to notions of a cost reducing, competitive regime and the pressure to extract a surplus from investment. It is implicitly suggested that general efficiency gains will outweigh any 'leakage' of resources to non- reinvested profit; that is, to private profits transferred out of the industry. (ibid. p.48).

Notwithstanding that statutory insurance is compulsory which imposes constraints, 'economic theory' does suggest that *private sector delivery will deliver goods and services at lower cost; and fully deregulated markets operate more efficiently (and sustainably) than partially deregulated markets*. Examples of these arguments can be found in papers published by Dewee (2000) examining private participation in Workers' Compensation; Roberts (2005) examining price regulation in workers' compensation; and McCarthy & Chua (2015) examining technical efficiency, principally competitive forces ensure the efficient operation of markets as inefficient insurers [eventually] exit the market.

Thompson et al (2001) having regard to workers' compensation schemes and theoretical considerations, provides a synthesis of two opposing economic perspectives:

> *On* the *one hand,* competitive insurance markets could result in lower costs than publicly administered schemes. A public monopoly insurer will be able to capture economies of scale not available in a competitive private sector market; and competitive market and, public schemes would not incur marketing costs or seek similar profit loadings.
>
> *On* the *other hand*, monopolistic state funds could result in higher costs than competitive privately underwritten schemes; in the absence of competition, the public sector lacks incentives to adopt cost efficient technologies, practices and policies; and in general, state funds are more influenced by political considerations which may further distort incentives for efficiency.

The authors also noted that state funds may have less fear of insolvency (due to the taxing power of the state to remediate issues), which carries the risk of under reserving, leading to inefficient transfers, *should resultant issues crystallise*, though the application of tax imposts on future generations (ibid p. 141).

It is noted that under Australia's jurisdictional 'competitive federalism' structure, for publicly underwritten workers' compensation schemes there is pseudo competition between jurisdictions to seek lower premiums, ostensibly to attract employers to their jurisdiction and incentivise economic activity. Notwithstanding, the extent to which this competitive federalism tension incentivises the adoption of cost efficient practices is not well understood or researched.

## 8.2. Research Evidence

Thompson et. al. (ibid) argue there is limited empirical research to demonstrate the efficacy of the above issues (in particular which underwiring model is more efficient), and to the extent there have been research studies undertaken, the results are inconclusive, such as:

- Demonstrating the existence or '*economies of scale'* in casualty insurance markets (there may be diseconomies of scale cited as an example), and '*economies of scope'* such as product bundling, which has been found in the banking sector did not appear to be important in the property/casualty insurance sector.

- Costs (price) efficiencies in state funds vs. competitive private model),
  In a study of 44 U.S. states and two Canadian provinces over a 20-year period from 1975 – 1995, Thomason and Burton (2000) found evidence to suggest public provision of workers' compensation is less costly than private, and later research follow-up (2001) suggesting that that schemes where public funds compete with private sector insurers were the least efficient.
  However, they were cautious in interpretation given (i) the small sample size of public monopoly schemes, and whether data comparability issues influenced the results, and (ii) uncertainty of the cause: effect relationship: i.e. are costs high because state fund state funds compete against private sector firms, or are competitive state funds established because system costs are high?

Of significance, Thompson et al (2001, p. 152) observe that **studies do not reflect whether a system is run well or poorly, which will obviously impact results.**

Much of the arguments and research to date centres about technical efficiency of private vs. public underwriting models, principally, administration and/or premium costs. Whilst these measures of efficiency are important and align with a common objective of schemes, there is a paucity of debate and evaluation against other scheme objectives, in particular, those linked to claimant health and wellbeing outcomes.

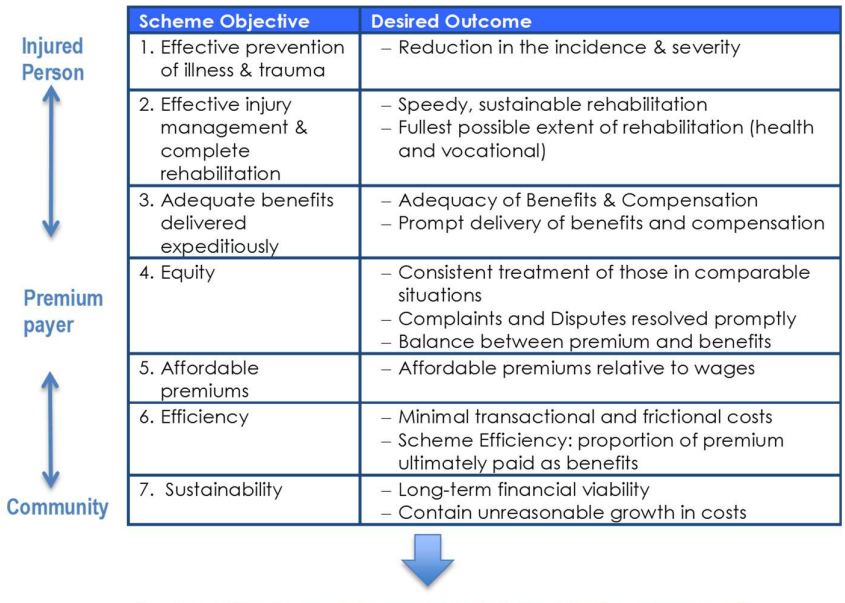
From a broader societal perspective, the consequences of poor outcomes for injured workers and motorists imposes not only an economic burden on society (e.g. Social Security system), but also non-economic impacts to the injured person (and family) through loss of enjoyment or ability to participate fully in amenities of life. From a scheme design perspective, a key challenge is how ensure optimal long-term claimant outcomes, at the same time balancing the need for ensuring financial efficiency and viability of the insurance system.

## 9. Proposed Framework to aid future assessment

### 9.1. Recognition of Objectives of Statutory Insurance Schemes

The overarching objective of statutory insurance schemes for personal injury is a social one: *to reduce the economic and social cost associated with injury and illness in the workplace and road crashes*. The legislative objectives of each of the schemes vary; however, the figure below provides a summary of common objectives schemes across Australia (Fronsko 2016b).

**Figure 3 Common Objectives: Personal Injury Compensation Schemes in Australia**




1. **Prevention of illness and injury**: aimed at reducing the incidence and severity of injuries, that is often actioned by promoting accident prevention, complemented by enforcement activity
2. **Effective Injury management and complete rehabilitation**: to support injured people in their recovery, both from a medical management perspective, but also to help people get their lives back on track to enable social and economic participation in the community

3. **Adequate benefits delivered expeditiously**: aligning benefits to what society regard as reasonable, particularly for serious injuries, with prompt delivery of benefits to assist with recovery and reduce financial disadvantage that may arise for delays in benefit delivery
4. **Equity**: with a jurisdiction's system to ensure injured people are treated equitably (people in similar circumstances/need are consistently serviced and compensated for injuries they sustain), with prompt review of decisions where there is a dispute. There also needs to be an acceptable balance between the quantum of benefits available and premium affordability
5. **Affordable premiums**: that the premium price is set at a level that consumers can reasonably afford to pay without undue financial hardship, and mitigate the risk people being uninsured
6. **Efficiency**: which can be considered at two levels: '*Technical Efficiency*', principally that transactional and fictional costs are low without compromising satisfaction and health outcomes, and '*Scheme Efficiency*', that an acceptably high proportion of the insurance premium dollar paid is ultimately directed as benefits and supports for injured people
7. **Sustainability**: that the system is financially sustainable in the longer term to provide benefits and supports to injured people. In practice, this means implementing programs aimed at containing unreasonable growth in claims costs.

It is noted that some scheme objectives operate in tension. For example, the adequacy of benefits and premium affordability. Moreover, some individual scheme objectives have internal tension. For example, balancing low administration costs with adequate resources to minimise claims leakage and provide good service. From a regulatory perspective, these conflicting objectives requires rigorous regulatory and administrative monitoring, stakeholder engagement and intervention to ensure appropriate balance is maintained.

## 9.2. Assessment should have regard to 'Overall Economic Efficiency'

For economists, an important criterion to assess programs and policies is that of '*Overall Economic Efficiency,*' defined as when individuals in society maximise their utility', or in simpler terms, maximising collective wellbeing of members of the community (Productivity Commission 2013). It requires the satisfaction of the following inter-related elements (refer Appendix 6 for a more detailed explanation):

- ***Productive (Technical) efficiency***; requiring that goods and services be produced at the lowest possible cost
- ***Allocative efficiency*** requiring the production of the set of goods and services that consumers value most, from a given set of resources
- ***Dynamic efficiency*** that seeks to maximise technical and allocative efficiency overtime, and implies consumers are offered new and better products they value.

### Technical Efficiency

As discussed above, technical efficiency has been the traditional area of focus in debating and evaluating the relative merits of public vs. private underwriting.

A technically efficient scheme implies a desired objective for 'optimally low' administration costs (incorporating insurer claims handling expenses, acquisition costs, profit margins and other external expenses). By optimally low, there needs to be effective management to minimise wastage, for example claims leakage (McCarthy

& Chua 2015) and effective regulation to guard against economic rents through excessive profits margins.

In the absence of natural competitive forces to drive efficiency, an observed practice in Australian public monopoly schemes to create 'simulated' tension by adopting policies and programs to incentivise a focus on efficiency. Examples include the application of 'efficiency dividends' as has recently been applied in Victoria (TAC) Western Australia (ICWA)[40] as well as the use of benchmarking to gauge comparative performance, set challenging performance targets and leverage insight on superior practices in other organisations (Fronsko 1999; 2016).

A corollary to technical efficiency is that low administration costs result in an acceptable level of the premium paid ultimately being appropriated to the injured claimant.

### Allocative Efficiency

Statuary insurance schemes, entitlements and benefits are defined in legislation, rather than being unfettered. In this context the attainment of Allocative Efficiency has two components:

- *Regulatory response* to ensure the scheme design appropriately meets societal expectations, balancing competing objectives (such as adequacy of benefits and affordability). This requires independent periodic scheme reviews, say every 3-5 years. It is important that scheme design not be unduly influenced by whether the scheme is publicly or privately underwritten

- *Administrative response,* such that those responsible for providing compensation, do so in a way that best meets clients' needs.

The regulatory response is largely independent of whether a scheme is privately or publicly underwritten, unless there is a public policy/tolerance constraint that may prohibit the adoption of a particular underwriting model (for example, the desire to maintain broad community rating base in CTP Insurance may preclude the adoption of a competitive underwriting model).

The administrative response should aim to attain optimal outcomes for the premium payer, but more significantly for injured claimants. In attaining this aspiration, progressive scheme administrators (i.e. entities responsible for providing compensation) seek to better understand customer/client needs, and accordingly tailor services to meet those needs.

To date there is an absence of empirical research on whether private vs. public underwriting delivers better allocative efficiency, in particular, optimal customer/ claimant outcomes.

### Dynamic Efficiency

Within legislative constraints, dynamic efficiency implies continually striving to satisfy the current and future needs of the population. This implies better use of resources to continually design, innovate and deliver improved products and services over time.

It can be argued that a competitive tension leads to innovation in product and service delivery (e.g. claims administration and policy administration) as competitors strive to differentiate themselves from their competitors. By inference, this creates a strong motive to retain and build a capable workforce.

In the public schemes, in the absence of competition, benchmarking may assist in the search for better practices, premised on challenging targets for performance improvement being established. This approach is currently used by the Transport Accident Commission, Victoria to achieve its mission, announced in 2016, to become a world leading social insurer, with an emerging focus on claimant wellbeing and proactively investigating new means to help customers get their 'lives back on track' and building internal capability to achieve this (TAC 2016).

There is presently no empirical evidence that quantifies the extent to which innovation and expertise is more or less better demonstrated in privately underwritten schemes than publicly underwritten statutory insurance schemes. A key issue in measuring the level of innovation in a competitive market is that insurers may regard their claims management practices as a differential advantage relative to their competitors and therefore may be unwilling to share (or advertise) better practices that achieve administrative efficiencies or superior claimant outcomes. Another issue is the lack of comparative data that measures and monitors claimant outcomes that is truly independent of scheme design to enable comparisons to be made.

It is noted however, that claims and disability management training offered by the Personal Injury Education Foundation (PIEF) and forums such as the Australian Institute of Actuaries biennial Injury Seminars, and the Australasian Compensation Health Research Forum (ACHRF) offer the opportunity for scheme practitioners, from both private and public sectors, to share experiences and leverage lessons that can be applied within their own organisation/jurisdiction.

## 9.3. Ensure a robust governance framework to manage key risks inherent within each underwriting model

There are a number of risks highlighted in this paper that are peculiar to each underwriting model. These are not wholly efficiency matters *per se*, rather intrinsic risks that if not mitigated may inhibit the efficient (and effective) operation of a scheme. In the absence of mitigating action by the scheme administrator responsible for providing compensation, it will require regulator intervention in the following areas:

### Public Underwriting Governance Matters

| Intrinsic Risk | Suggested Regulatory Response |
|---|---|
| Lack of competitive tension dulling incentives for product/service efficiency and innovation | • Requirement for the implementation of structured benchmarking programs (internal and against peers) to gauge relative performance and objective setting improvement targets, and transparent reporting of progress<br>• Auditing of key areas that may detract from efficiency (i.e. claims leakage)<br>• Where appropriate, use the imposition of efficiency dividends and/or specify a default annual indexation of premiums (where a quantum rather than rate is adopted) a level below underlying claims inflation (e.g. CPI) such to '*force*' a focus on efficiency and innovation. |

| Intrinsic Risk | Suggested Regulatory Response |
|---|---|
| Undue political influence such that<br>(i) pricing is insufficient over the longer term, or generates economic rents and/or<br>(ii) the scheme is underfunded (or overfunded) | • Requirement for the scheme administrator to have codified policy, (ideally approved or noted by the shareholder Minister) that integrates pricing; reserving and capital management and specifies tolerances and resultant actions if tolerance thresholds are breached. Such a policy is to be transparent (i.e. publicly accessible)<br>• *Ex-ante* Independent review of premium charges (by the Regulator or independent body) and that the findings of such reviews are transparent |

## Competitive Underwriting Governance Matters

| Intrinsic Risk | Suggested Regulatory Response |
|---|---|
| Insolvency Risk | • Issuance of prudential guidelines; requiring authorised insurers to be APRA regulated, and have a MOU with APRA to share information on prudential matters and compliance (rather than seek to duplicate APRA's supervision regime)<br>• If considering non-APRA regulated insurers, licensing should be subject to adoption of APRA equivalence regimes<br>• Licensing should be structured that it is possible to revoke or suspend a license if there are breaches of compliance, or if there is a material concern of pending insolvency risk. |
| Inconsistent service standards or cost imposts brought about by dysfunctional activities to avoid adverse selection, or overweight in 'good' risks | • Issuance of market practice guidelines to govern insurer (or agent) underwriting and policy administration behaviours. Such guidelines should specify standard (acceptable) practices and key minimum performance standards that insurers must meet or exceed<br>• Regulate commission regimes for the acquisition and renewal of polices<br>• *Ex-ante* Independent review of premium charges (by the Regulator or independent body) and that the findings of such reviews are transparent<br>• Consider assigned risk pools for cohorts where a degree of cross subsidisation is desirable. |
| Suboptimal claims handling brought about by undue focus on profit rather than claimant outcomes | • Issuance of claims handling guidelines, that aim to ensure a consistent customer experience irrespective of insurer. |
| Excess Profits | • Specify tolerance for 'acceptable' profit margins to be used in premium filings<br>• Consider *ex-post* mechanisms to repatriation of excessive profits (regarded as an economic rent, rather than for normal volatility). |
| Collective inefficiencies (system wide issues that requires a system wide response, but may not be discernable to an individual insurer, or within the ability of individual insurers to resolve). | • System wide monitoring to identify emerging issues<br>• Powers to direct insurers to undertake coordinated activities to deliver system-wide responses, as required. This implies the need to establish a regular and structured forum for the Regulator to engage with insurers on scheme performance issues and risks. |

To assist with future scheme evaluations, where the matter of public vs. underwriting is to be assessed the following table presents an illustrative framework for how the 'overall economic efficiency' of the entity ("provider") responsible for underwriting and service delivery can be assessed. Note the consequential impact of performance in these elements upon premium affordability and scheme efficiency.

## Table 6 Illustrative Framework to assess an underwriter's/administrator's contribution to Overall Economic Efficiency

| Efficiency Segment | Focus | Vector | Examination (Quantitative) | Span of Control* | Examination (Qualitative) |
|---|---|---|---|---|---|
| **Productive (Technical)** | Transaction Cost | Low | • Acquisition<br>• Claims Handling<br>• Claims Leakage | D<br>D<br>D | **How** has the provider demonstrated the optimal containment of costs, and *how* does this compare with historic performance and benchmark performance in peer schemes? |
| | Frictional Cost | Low | • Profit Margins (excessive)<br>• Legal and Investigation<br>• Fraud & Unmeritorious claiming | D<br>D<br>I | **How** has the provider demonstrated that profit margins are reasonable at time of premium filing, and that return on capital objectives are acceptable based on an appropriate level of capital to support the business. *How* does this compare with peer schemes?<br>**How** has the provider demonstrated administrative management and/or influence to minimise fraud, unmeritorious claiming and containing legal and investigation costs.? *What* empirical evidence can be presented to demonstrate the tangible results of these efforts? |
| **Allocative** | Accident Prevention | High | • Incidence and Severity | I | **How** has the provider demonstrated efforts and initiatives to improve safety and reduce the incidence and severity of injuries? |
| | Service Delivery | High | • Satisfaction (survey) | D | **How** has the provider demonstrated superior and improving service delivery? **How** has customer insights been used to improve claimant outcome., and *how* do these efforts compare with activity and results achieved in peer schemes? |
| | Rehabilitation Outcomes | Improve | • Return to work/usual activity | D | **How** has the provider demonstrated improvement in outcomes through administrative action or influence? *How* does this activity and results compare with historical performance and benchmark performance in peer schemes? |
| | Health Outcomes | Improve | • Return to health | D | |
| **Dynamic** | Wellbeing Outcomes | Improve | • Self-reported wellbeing | D | **How** has the provider sought to ensure and gauge that claimants perceive their 'life is [getting] back on track'? |
| | Service Effectiveness & Coordination | Improve | | I | **How** has the provider sought to influence medial and rehabilitation management and coordination of services to ensure the right services are provided at the right time to optimise outcomes?<br>**How** has the provider supported claimants transition from the compensation system to better participate (socially and economically) in the community? What evidence is presented on the results achieved? |
| | Social Capital | Build | | I | **How** has the provider worked with stakeholders to design and develop better linkages between community mainstream supports to assist severely disabled claimants better integrate into the community? |

* **D** = Direct influence; **I** = Indirect Influence

## 10. Conclusion

Australian Workers' Compensation and CTP Insurance Schemes (except for Queensland and Commonwealth workers' compensation) upon scheme inception involved competitive private insurance underwriting, frequently in competition with government owned insurance offices, which were initially established principally to aid the availability and accessibility of workers' compensation insurance in the early 1900s.

In general, this underwriting structure remained stable for nearly 50 years in workers' compensation and more than 25 years in CTP Insurance, with scheme reforms mostly focused on enhancing entitlements and benefits for injured workers and motorists and an emerging focus on rehabilitation.

Following this this period of stability, there were two significant tranches of transition to public sector underwriting, precipitated by scheme crisis due to escalating claims costs and resultant premium affordability issues, withdraw of private insurers from the market and emerging impediments to the prompt delivery of compensation benefits. The *first tranche* of transition occurred in the 1970s for CTP Insurance (Victoria, South Australia, Tasmania, Northern Territory) and the *second tranche* occurred in the 1980s for workers' compensation (Victoria, New South Wales and South Australia) that also saw a transition to outsourced claims administration.

Apart from a brief transition to public underwriting of the NSW CTP Insurance scheme between 1987 - 1989 under the TransCover scheme, there has been no transition back to competitive private underwriting other than the recent privatisation of the South Australia CTP which was in part prompted by the Government 'realising the value' in the scheme rather than a crisis event. This implies, that transition between underwriting structures is more likely to driven by a crisis event (principally affordability or scheme inefficiency) rather than ideologically driven by the government in power at the time. Once a particular underwriting structure is in place, it endures for a long time (effort is more focussed on modest change to sustain the enduring underwriting model rather than radical reform).

During and following the national completion policy (NCP) reviews that occurred from the mid-1990s, the insurance industry has broadly signalled its willingness and capacity to underwrite statutory insurance (worker's compensation and CTP Insurance) in publicly underwritten schemes, other than long-tail no fault catastrophic injury defined by the National Injury Insurance Scheme. Notwithstanding, following the NCP reviews, State and Territory governments signalled their intent to retain publicly underwritten schemes citing benefits such as efficiencies for economies of scale, ability to maintain lower pricing, ensuring a standard customer experience, greater flexibility to maintain elements of community rating and more effective linkages to accident prevention.

There has been a plethora of debate, from private and public entities advocating the relative merits of public vs. competitive private underwriting. This paper presents a synthesis of the various arguments presented.

Neoclassical economic market theory holds that a competitive privatised market is more efficient than a monopoly. However, economic theorists having regard to the dynamics of casualty insurance markets can postulate alternate views. Unfortunately,

there is little empirical research that investigates efficacy of whether a state monopoly or competitive private underwriting model delivers greater efficiencies, and it is dated (more than 15 years ago). To the extent there is research on the efficiency of alternate underwriting models, results need to be interpreted with caution due to data comparability issues and causality (i.e. is a system inefficient because it has monopoly underwriting, or do monopolies exist because the system is inherently inefficient). Notwithstanding, an observation is made that irrespective of the underwriting model, scheme performance is powerfully and ultimately dictated on whether it is well managed.

Traditionally debate on public vs. private underwriting has focused on technical efficiency (administrative costs and the resultant impact of premium). The framework proposed in this paper takes a far boarder perspective of efficiency; *firstly,* to ensure alignment with broader scheme objective, in particular those focusing on the injured person, and *secondly* have regard to all the elements of 'overall economic efficiency' (technical, allocative and dynamic) which aims to maximise utility of individuals in society (or more generally wellbeing). The framework also attempts to identify risks intrinsic to alternate underwriting models, and proposes these are the purview of a regulatory governance response to mitigate risks, and should be segregated such to not confound such matters in the evaluation assessing comparative efficiency.

As a result, this paper does not conclude that one system (private vs. public) is intrinsically better than the other. Rather it shifts the focus on the necessity for good scheme regulatory and administrative management and appropriate benefit design (irrespective of the underwriting model) and presents a framework to better gauge the efficiency of those responsible for delivering compensation having regard to broader scheme objectives and benefit provided to both claimants and society.

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**Appendix 1**

## Benefit Structure: Motor Accident Compensation Schemes (2016/17), excluding NSW, Qld, WA and SA NIIS Schemes.

| Jurisdiction | Vic | Tas | NT | NSW | Qld | WA | SA | ACT |
|---|---|---|---|---|---|---|---|---|
| **No Fault** | | | | | | | | |
| **Available** | **Yes** | **Yes** | **Yes** | **Limited** | **No** | **No** | **No** | **Limited** |
| Time Limits on Income | 18 months LOE, a further 18 months LOEC (to retirement if 50% or more WPI). | **2 years** usual/**5 years** any work (capped at 3x AWE) | **No** | $5,000 ANF | | | | $5,000 MANF |
| Limits on Medical | **No** (Medical excess $629) | **$400,000** ($500,000 if hospitalised 4+ days) | **No** | $5,000 ANF | | Limited Ambulance & Emergency Treatment | | $5,000 MANF |
| Permanent Impairment Threshold / Maximum Payable | **10% WPI** ($339,910) | **None** | **5% WPI** ($314,808) | | | | | |
| **Common Law** | | | | | | | | |
| **Available** | **Yes** | **Yes** | **No** | **Yes** | **Yes** | **Yes** | **Yes** | **Yes** |
| Threshold/Deductible | **30% or more WPI** (AMA 4); or Serious Injury Certificate issued (verbal threshold), No award unless damages > $52,770 | NEL $5,500; Economic Loss $52,770 | | 10% WPI (AMA 4 Modified) | | **NEL Deducible** ($20,500) | NEL- ISV >7; Economic Loss - ISV >10 points | **No** |
| Cap on Income | **Yes** ($1,188,180), | **Yes** (3x AWE) | | **Yes** (3x AWE) | **Yes** (3x AWE) | **Yes** (3x AWE) | **Yes** (3x AWE) must be discounted 20%. | **No** |
| Cap on General Damages | **Yes** ($528,000) | **No** (maximum historically paid was $438,000 in 2016) | | **Yes** ($521,000) | **Yes** ($350,000) | **Yes** ($406,000) | **Yes** | **No** |

**Appendix 2**

## Benefit Structure: Workers' Compensation Schemes (2016/17)

### Income Replacement Time Limits – Workers' Compensation (changes over time)

| Jurisdiction | 2005 | 2012 | 2016/17 | Work Capacity Test |
|---|---|---|---|---|
| NSW | Retirement age | 5 years | 5 years<br>to retirement if >20% WPI | At least every 2 years |
| Vic | Retirement age | Retirement age | Retirement age | At 130 weeks compensation |
| Qld | 5 years | 5 years | 5 years | Not Applicable |
| WA(1) | Retirement age | Retirement age | Retirement age | Not Applicable |
| SA | Retirement age | Retirement age | 2 years<br>To retirement if WPI 30% or more | Not Applicable |
| Tas | 5 years | 9 Years<br>12 years if WPI 11-19%<br>To retirement if WPI 20% or more | 9 Years<br>12 years if WPI 11-19%<br>To retirement if WPI 20% or more | Not Applicable |
| NT | Retirement age | Retirement age | 5 years<br>To retirement if WPI 15% or more | Not Applicable |
| ACT | Retirement age | Retirement age | Retirement age | Not Applicable |
| Comcare | Retirement age | Retirement age | Retirement age | Not Applicable |

(1) monetary Limit applies in WA (at 2016 it was $221,891 maximum for all benefits paid).
Note detail of the quantum, caps and step-down in income benefits is available at the Safe Work Australia website (https://www.safeworkaustralia.gov.au/).

### Medical Time Limits– Workers' Compensation

| Jurisdiction | Limit Basis | 2016/17 |
|---|---|---|
| NSW | Time | 2 years after weekly payments cease<br>5 years after weekly payment cease if 11-20% WPI<br>(continues for life if WPI > 20%) |
| Vic | Time | 52 weeks after weekly payment entitlement ceases |
| Qld | Time | 104 weeks<br>(continues for life if WPI 15% or more) |
| WA | Monetary | $66,567 (2016).<br>An additional amount of up to $50,000 may be ordered by an arbitrator where a worker's social and financial circumstances justify it. An additional amount of up to $250,000, beyond the $50,000, may be ordered by an arbitrator in the circumstances described in Schedule 1, sub-clause 18A(2aa) of the Workers' Compensation and Injury Management Act 1981 |
| SA | Time | 52 weeks after income support ends.<br>(continues for life if WPI 30% or more) |
| Tas | Time | 52 weeks after weekly payments ceases |
| NT | Time | 52 weeks after weekly payment entitlement ceases<br>(continues for life if WPI 15% or more) |
| ACT | Nil | For life |
| Comcare | Nil | For life |

## Access to Common Law – Workers' Compensation

| Jurisdiction | Available | Threshold | Caps |
|---|---|---|---|
| NSW | Economic Loss | 15% WPI | No |
| Vic | Pain & Suffering<br>Economic Loss | 30% WPI or Serious Injury Certificate Issued | Yes<br>Monetary Threshold for Damages also applies |
| Qld | Pain & Suffering<br>Economic Loss | Nil<br>For injuries sustained between 15 October 2013 – 30 January 2015, a worker must have a greater than 5% WPI to be able to pursue a common law claim) | Yes.<br>If the degree of permanent impairment <20% worker must decide to either accept the no-fault lump sum impairment payment or seek damages |
| WA | Pain & Suffering<br>Economic Loss | 15% WPI<br>Secondary psychological, psychiatric and sexual conditions excluded | WPI <25% $465,975 (2016)<br>Uncapped if WPI 25% or more |
| SA [1] | Economic Loss | 30% WPI | Yes |
| Tas | Pain & Suffering<br>Economic Loss | 20% WPI | No |
| NT | Not Available | N/A | N/A |
| ACT | Pain & Suffering<br>Economic Loss | Nil | Nil |
| Comcare [2] | Not Available | N/A | N/A |

1. Injured workers with less than 30% WPI have the option of redeeming their income maintenance and/or medical and like expenses (the entitlement to income maintenance redemption is limited to 104 weeks). A seriously injured (WPI 30% or more) worker's ongoing entitlement to payment of medical and like expenses cannot be redeemed (i.e. seriously injured workers are only able to redeem their income maintenance). Alternatively, a seriously injured worker may bring a common law claim against the employer. Any such claim is limited to a claim for economic loss. A seriously injured worker must elect to pursue either a common law claim or redemption of income maintenance, but cannot have both. Pain and Suffering damages available under limited common law, capped at $110.000 (not indexed).
2. Pain and Suffering damages available under limited common law, capped at $110.000 (not indexed).

**Appendix 3**

## Comparison of Scheme Design Elements: NDIS *vs.* NIIS (PC 2011)

| Design Element | NDIS | NIIS |
|---|---|---|
| **What kind of scheme is proposed?** | A national scheme to provide insurance cover for all Australians in the event of significant disability. Its main function would be to fund long term high quality care and support. Other important roles include providing referrals, quality assurance and diffusion of best practice. | A federated model of separate, state-based no-fault schemes providing lifetime care and support to all people newly affected by catastrophic injury. It would comprise a system of premium-funded, nationally consistent minimum care and support arrangements for people suffering catastrophic injuries. |
| **Who would be covered?** | All Australians would be insured. Funded support packages would be targeted at all people with significant disability, whose assistance needs could not be met without taxpayer funding. Anyone with, or affected by, a disability could approach the scheme for information and referrals. | All causes of catastrophic injuries, including those related to motor vehicle accidents, medical accidents, criminal injury and general accidents occurring within the community or at home. Coverage would be irrespective of how the injury was acquired, and would only cover new catastrophic cases. |
| **What it would provide?** | The NDIS would provide reasonable and necessary supports across the full range of long term disability supports currently provided by specialist providers.<br>Services such as health, public housing, public transport and mainstream education and employment services would remain outside the NDIS, with the NDIS providing referrals to them. | The NIIS would provide lifetime care and support services broadly equivalent to those provided under the Victorian TAC and NSW Lifetime Care and Support Scheme. This includes reasonable and necessary attendant care services; medical/hospital treatment and rehabilitation services; home and vehicle modifications; aids and appliances; educational support, and vocational and social rehabilitation; and domestic assistance. |
| **What would be the cost?** | The scheme would cost approximately $6.3 billion above current spending (around $280 per Australian). Total expenditure would be around $12.5 billion per annum. | Net annual costs of a comprehensive no-fault scheme covering all catastrophic injuries could be around $685 million (around $30 per Australian). |
| **How it would be funded?** | The Australian Government should direct payments from consolidated revenue into a "National Disability Insurance Premium Fund" using an agreed formula entrenched in legislation. A tax levy would be a second-best option. | The additional funding required for the NIIS would come from existing insurance premium income sources and through small increases in municipal rates. |
| **How many people would receive funded packages?** | Around 360 000 people would receive direct scheme funding. It would cover existing and new cases. | The NIIS would cover new incidence of catastrophic injury (around 800 people each year), but over the long run, 20,000 people would be in the scheme. |

**Appendix 4**

## National Competition Policy Reforms for CTP Insurance - Progress Report (2002)

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| New South Wales | *Motor Accidents Act 1988*<br>*Motor Vehicles (Third Party Insurance) Act 1942* | Mandatory insurance, licensing of insurers, file-and-write premium setting | Review was completed in 1997, recommending changing scheme design and that insurers file premiums with the Motor Accidents Authority. | Legislation was passed in line with review recommendations. | Meets CPA obligations (June 1999). |
| Victoria | *Transport Accident Act 1986* | Mandatory insurance, monopoly insurer, centralised premium setting | Internal review was completed in 1998, recommending removing the statutory monopoly in favour of competitive provision. Second review was completed in December 2000, recommending maintaining the monopoly and centralised premium setting. Review also recommended a third-party | The Government rejected the findings of the first review and accepted the findings of the second review. | Council to finalise assessment in 2003. |
| Queensland | *Motor Accident Insurance Act 1994* | Mandatory insurance, licensing of insurers, file-and-write premium setting | Review was completed in 1999, recommending retaining licensing of insurers, but removing restrictions on market re-entry and on motorists changing insurers. Review also recommended introducing greater competition in premium setting through a 'file-and-write' system. | The *Motor Accident Insurance Amendment Act 2000*, which commenced in October 2000, was passed in line with review recommendations. | Meets CPA obligations (June 2001). |
| Western Australia | *Motor Vehicle (Third Party Insurance) Act 1943* | Mandatory insurance, monopoly insurer, centralised premium setting | Review was completed in 1999-2000, recommending removing the monopoly provision of insurance and retaining Ministerial approval of premiums. | The Government is considering recommendations. | Council to finalise assessment in 2003. |

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| South Australia | *Motor Vehicles Act 1959* | Mandatory insurance, monopoly insurer, centralised premium setting | Review was completed in 1998, recommending removing the monopoly and controls on premiums. Second review was completed in 1999, rebutting previous review's recommendations. The Government issued both reviews for public consultation in early 2001. | The Government announced retention of mandatory insurance, the sole provision of insurance by the Motor Accident Commission and community rating. | Council to finalise assessment in 2003. |
| Tasmania | *Motor Accidents (Liabilities and Compensation) Act 1973* | Mandatory insurance, monopoly insurer, centralised premium setting | Review was completed in 1997, recommending retaining the monopoly provision of insurance. Following 1999 NCP assessment, the Government agreed to re-examine the issue. | The Government is considering the Victorian review of the TAC. | Council to finalise assessment in 2003. |
| ACT | *Road Transport (General) Act 1999* | Mandatory insurance, licensing of insurers | Not for review. Legislation allows the Government to approve multiple insurers. | | Meets CPA obligations (June 1997). |
| Northern Territory | *Territory Insurance Office Act*<br>*Motor Accidents (Compensation) Act* | Mandatory insurance, monopoly insurer, centralised premium setting | Review of Territory Insurance Office Act completed in 2000. Review of the Motor Accidents (Compensation) Act was completed in December 2000 and is under consideration by the Government. | The Territory Insurance Office Act was amended in December 2000, removing the requirement that the Territory Insurance Office be the sole administrator of the Motor Accident Compensation scheme. The Motor Accidents (Compensation) Act continues to enforce the monopoly. | Council to finalise assessment in 2003. |

## National Competition Policy Reforms for Workers' Compensation - Progress Report (2002)

| *Jurisdiction* | *Legislation* | *Key restrictions* | *Review activity* | *Reform activity* | *Assessment* |
|---|---|---|---|---|---|
| Commonwealth | *Safety, Rehabilitation and Compensation Act 1988* | Mandatory insurance, monopoly insurer, centralised premium setting | Review completed in 1997, recommending introducing competition to Comcare. | The Government has not responded to the review. | Council to finalise assessment in 2003. |
| New South Wales | *Workers Compensation Act 1987* | Mandatory insurance, monopoly insurer, centralised premium setting | Review was completed in 1997-98, recommending removing the monopoly insurer in favour of competitive underwriting. Further examination of the scheme in 2000-01 resulted in proposals for changing to scheme design. Further review has been proposed, with report to be completed in second half of 2003. | Legislation was passed to introduce privateunderwriting in October 1999. Subsequent legislation delayed implementation to a date to be determined by the Minister. Provisions for competitive underwriting were repealed in late 2001.<br>Scheme design changes were | Council to finalise assessment in 2003. |
| Victoria | *Accident Compensation Act 1985*<br>*Accident Compensation (Workcover Insurance) Act 1993* | Mandatory insurance, monopoly insurer, centralised premium setting | Internal review was completed in 1997- 98, recommending competitive provision. Second review was completed in December 2000, recommending maintaining the monopoly and centralised premium setting, and a third-party review of premiums and market testing. | The Government rejected the findings of the first review and accepted the findings of the second review. | Council to finalise assessment in 2003. |
| Queensland | *Workcover Queensland Act 1996* | Mandatory insurance, monopoly insurer, centralised premium setting | Review was completed in December 2000, recommending retaining mandatory insurance and public monopoly insurer, and creating Q-COMP as a separate regulatory entity. | The Government is legislating in 2002 to establish Q-COMP as a separate entity. | Council to finalise assessment in 2003. |
| Western Australia | *Workers Compensation and Rehabilitation Act 1981* | Mandatory insurance, licensed insurers, centralised premium setting | Review was completed in early 2002. | Minor legislative amendments scheduled for Autumn 2003. | Council to finalise assessment in 2003. |

| Jurisdiction | Legislation | Key restrictions | Review activity | Reform activity | Assessment |
|---|---|---|---|---|---|
| South Australia | *Workers Rehabilitation and Compensation* | Mandatory insurance, monopoly insurer, centralised | Review under way. Draft report completed in May 2000. Final report near completion. | | Council to finalise assessment in 2003. |
| Tasmania | *Workers Rehabilitation and Compensation Act 1988* | Mandatory insurance, licensed insurers | Review by the Parliamentary Joint Select Committee of Inquiry was completed in 1997, recommended minor amendments. | Legislation was amended in March 2001 in line with recommendations. | Meets CPA obligations (June 2001). |
| ACT | *Workers Compensation Act 1951* | Mandatory insurance, licensing of insurers | Review was completed in July 2000, recommending changes to scheme design elements and a greater capacity to self-insure. | The *Workers Compensation (Amendment) Act 2001* was passed in August 2001 (effective from 1 July 2002). It retained no premium setting, and choice of provider. | Meets CPA obligations (June 2002). |
| Northern Territory | *Work Health Act* | Mandatory insurance, prescribed standards that insurers must meet. | Review was completed in September 2000 and released for public comment in June 2001, recommending that premiums remain unregulated and insurers remain unlicensed. | | Council to finalise assessment in 2003. |

**Appendix 5**

## Recommendations: Review of Queensland's Compulsory Third Party Insurance Scheme (December 2016)



### RECOMMENDATIONS

| | | |
|---|---|---|
| *The Committee recommends that:* | | |
| **Scheme design and delivery** | **R1** | A private underwriting model be retained, noting opportunities for improvements outlined in Recommendations 9 to 12. |
| | **R2** | A public underwriting model should be further examined in the event of significant adverse change in scheme circumstances. |
| | **R3** | The community rating model and vehicle class filing system be retained. |
| | **R4** | MAIC further investigate limited risk rating to identify potential opportunities for improving price competition and affordability. |
| | **R5** | As a matter of priority, MAIC take action to address the issue of high insurer profits in the scheme. |
| | **R6** | The current CTP premium collection model be retained. |
| | **R7** | The CTP renewal process be moved online as soon as practicable noting the practical limitations associated with the current system. |
| | **R8** | Action be taken to improve consumer awareness of choice of CTP insurer both at renewal and when purchasing a vehicle. |
| *The Committee recommends that:* | | |
| **Scheme performance** | **R9** | To enhance governance, the *Motor Accident Insurance Act 1994* be amended to require a review of the scheme at least every five years. |
| | **R10** | The *Motor Accident Insurance Act 1994* be amended to remove reference to the Affordability Index and Average Weekly Earnings (AWEs) as a measure of scheme affordability. |
| | **R11** | Appropriate benchmarks be developed to enable enhanced assessment of scheme performance particularly around issues of affordability, efficiency, and motorist and claimant satisfaction. |
| | **R12** | MAIC implement a legal fee reporting model to allow for greater transparency of scheme efficiency. |
| *The Committee recommends that:* | | |
| **Scheme coverage and regulation** | **R13** | Areas of overlap and lack of clarity in the current prudential supervision arrangements be eliminated. |
| | **R14** | The *Motor Accident Insurance Act 1994* be amended to establish an appropriate hierarchy of regulatory responses to licence compliance breaches. |
| | **R15** | Insurer performance monitoring, benchmarking and reporting be strengthened. |
| | **R16** | Information on scheme trends and performance be made more readily available to all stakeholders. |
| | **R17** | The current Nominal Defendant scheme be retained. |
| | **R18** | The common law defence of inevitable accident be retained. |
| | **R19** | A no-fault cover for children not be introduced at this time. |

## Appendix 6

### **Components of Economic Efficiency** (Productivity Commission 2013)

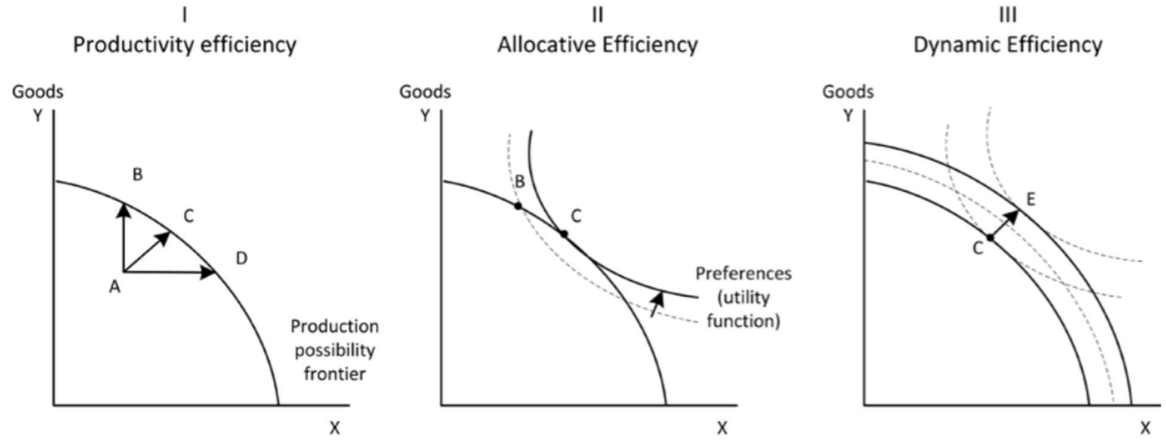
Economic efficiency is about maximising the aggregate or collective wellbeing of the members of the community. Economists commonly say that economic efficiency requires satisfaction of three components.

Productive efficiency is achieved when output is produced at minimum cost. This occurs where no more output can be produced given the resources available, that is, the economy is on its production possibility frontier (PPF). In panel 'I' below, a shift from A to B, or to C or to D is an improvement in productive efficiency.

Productive efficiency incorporates technical efficiency, which refers to the extent to which it is technically feasible to reduce any input without decreasing the output, and without increasing any other input. When more than one input is used, or more than one output is produced, the ratio of outputs to inputs can be formed only if inputs and outputs are summed into two scalars. If prices are used for that purpose, then technical efficiency merges into productive efficiency.

Allocative efficiency is about ensuring that the community gets the greatest return (or utility) from its scarce resources. A country's resources can be used in many different ways. The best or 'most efficient' allocation of resources uses them in the way that contributes most to community wellbeing. In panel II below the move from B to C is an improvement in allocative efficiency as a higher level of utility can be achieved by better matching the output mix to preferences.

Dynamic efficiency refers to the allocation of resources over time, including allocations designed to improve economic efficiency and to generate more resources. This can mean finding better products and better ways of producing goods and services. In panel III this is represented as a shift out in the production possibility frontier, with consumption rising as the economy moves from C to E. This shift can arise from innovation (producing more with less) and from growth in resources such as capital and labour. Improvements in dynamic efficiency bring growth in living standards over time.



## Endnotes

1 Workers' Compensation in Queensland and the Commonwealth commenced with public underwriting without private sector participation.

2 The introduction of CTP Insurance was viewed to create a 'moral hazard', in that drivers would know they are indemnified under their insurance policy for injuries they caused due to their negligence, thus dulling the incentive for safe driving behaviours.

3 In the mid-1960s, the New South Wales scheme was reformed by removing juries and having all matters heard by a judge.

4 A detailed history of the WA CTP Insurance scheme from 1943-1949 is presented in the article: Jackson LW, 1950, 'Compulsory Insurance of Motor Vehicles Against Third Party Claims', *University of Western Australia Law Review*, Vol 3, pp. 404-408.

5 As at mid-1970s, the Trust determined its own premiums, subject to the supervision of a Premiums Committee that was charged by the Act with the duty of inquiring and reporting upon the question whether the premiums charged are fair and reasonable. The Committee consists of six members, two of whom are nominated by participating insurers. At no stage has a premium fixed by the Trust been disapproved by the Premiums Committee (Minogue 1978, p, 40).

6 The Woodhouse Commission found the tort system inadequate on two distinct standards of performance. First, using an intuitive or common-sense standard of equity and adequacy in meeting the essential needs of accident victims, the Commission found that the common law was successful in only a small fraction of cases. This criticism was made still sharper when the Commission applied another standard of adequacy implicit in the common law itself: the standard of objective loss. By this latter standard, very few accident victims were able to recover 'adequate' compensation. The two major reasons for this failure were diagnosed as the administrative inefficiencies of civil litigation and the barring of numerous claims because of the fault principle (extract from Gaskins 1980, p. 245).

7 National Compensation Bill 1974 (Cwth), Explanatory Memorandum, p. 1. As background, the proposed National Compensation Scheme was the ultimate recommendation of a Parliamentary Committee established to examine implementing such a scheme in Australia, modelled on the New Zealand scheme. The proposed scheme was to be funded by a fuel tax (offset by the abolition of compulsory third party motor vehicle insurance premiums) and a payroll tax (offset by abolition of compulsory Workers' Compensation premiums). Bills were introduced to establish the scheme but were defeated in the Senate in 1974. The former Prime Minister sought to revive the Bill with the introduction of a private members Bill in 1977 but was not able to gain enough support for its passage.

8 Although the RACV was most likely suffering underwiring losses in the early 1970s, the withdrawal from Victorian market was also likely to be in part due to Commonwealth legislation requiring insurance companies to hold 115% of liabilities under the *Insurance Act 1973* (Cwth).

9 The scheme provided no-fault cover for hospital, medical and rehabilitation, care and support and funeral expenses on a no-fault basis and introduced a loss of earning capacity payment of up to $20,800. All payments made under this system continued to cease once a common law claim settled, as the system remained primarily based in the common law, but with limited no-fault support

10 Refer: Law Reform Committee of Tasmania, 1972, *Recommendations for the establishment of a no-fault system of compensation for motor accident victims*, Rev. 16/3/72, Chairman: Mr Justice Neasey.

11 For the first few years the new scheme realised a modest profit, but in 1982/83 the scheme had an operating loss of $7.3 million, brought about mainly by pain and suffering claims for non-demonstrable injuries such as whiplash. With losses continuing to escalate (peaking at $9.1 million in 1983/84, equating to about $180 per vehicle), the Government decided in 1984, that rather increase motor vehicle premiums to what it believed to be an unacceptable level, it abolished common law pain and suffering damages, replacing it for a no-fault lump sum impairment benefit subject to a threshold and cap. Thus, for Territory residents, the Northern Territory became Australia's first pure no-fault Scheme. Common Law for non-residents injured in the Territory was abolished on 1 July 2007 in response to the high cost and increasing lack of availability of reinsurance.

12 In the five-ten years post the 1986 reform, the TAC had a rapid return to solvency, attributed to a range of factors:

- Substantially quicker and lower costs of the run off of common law claims from the old scheme
- A long honeymoon period that resulted in significantly less common law claims under the new scheme than anticipated
- Conservative premium settings
- Very substantial investment returns from the late 1980s - early 1990s.

13 The Act provided for an initial 'privatisation' of third party insurance to a number of licensed insurers and the subsequent deregulation of Compulsory Third Party insurance premiums after a phasing-in period of two years.

14 On 1 October 1997 the name of the State Government Insurance Commission was changed to Insurance Commission of Western Australia (ICWA). The title of the relevant statute was also changed from State Government Insurance Commission Act 1986 (WA) to the Insurance Commission of Western Australia Act 1986 (WA) to reflect the organisation's new name.

15 In January 1993, the Victorian Government announced plans to dismantle the TAC and sell it to private insurers. However, due to public concern (in particular, objections from the RACV), and the strong financial performance of the TAC, the Government abandoned its plan (DTF 2000a). During the Victorian Government's National Competition Policy Review of Victoria's Transport Accident Compensation Legislation, RACV reiterated its objection to privatising TAC on the grounds that "if transport accident compensation was open to competition, and the monopoly was disbanded, this would put into question the level and motivation of individual private providers to actively support road safety initiatives" (ibid. pp. 96-97).

16 The Asset Recycling Initiative was designed to provide incentives to States and Territories to realise existing assets (sale or lease) and invest the proceeds in new, productivity enhancing infrastructure. This 'recycling' frees money currently locked up to help fund the projects that the States and Territories consider important to their future economic prosperity. The Initiative taps into private sector investment interest in current assets in order to fund new infrastructure. The Commonwealth will provide incentive payments to the States and Territories of 15 per cent of the sale price of assets, but only on the condition that proceeds are reinvested in productivity enhancing assets.

17 Data compiled from 2015/16 CTP scheme annual reports, and federal government road safety statistics.

18 In later reforms in the UK made under the Workmen's Compensation Act 1906 (UK) that substantially widened the scope of employees eligible for compensation to all individuals employed by way of 'manual labour, clerical work or otherwise' (for example Seamen acquired rights to compensation) individuals that sustained particular prescribed industrial diseases became eligible for compensation and the minimum disability period was reduced from two weeks to one (Brownbill 2015, p.51).

19 During the latter part of the 1970s, it cost 38 cents in New South Wales to deliver one dollar of compensation to injured workers and 39 cents in South Australia (Byrne 1980: 44). High administration costs were also a conspicuous feature of the Victorian scheme, and in the early 1990s they accounted for some 31 per cent of the premium dollar. By contrast, the costs of scheme administration in the publicly underwritten Queensland scheme amounted to a mere 6 per cent (Cooney 1984, pp. 1-4).

20 Refer, *The Age,* 7 July 1983, p. 3.

21 30 Insurers tendered to become claims agents. The 51 existing insurers at the time of transition were offered the option of either transferring assets of equal value to 95 per cent of their liabilities to the ACC or to pay the ACC a 10 per cent surcharge on their total claims cost and administer the runoff of their claims.

22 A 'serious injury claim' is defined as an accepted workers compensation claim for an incapacity that results in a total absence from work of one working week or more. Claims in receipt of common-law payments are also included. Claims arising from a journey to or from work or during a recess period are not compensable in all jurisdictions and are excluded. Serious claims exclude compensated fatalities.

23 Safe Work Australia. (2017). *Comparative Performance Monitoring Report*, 18th Edition, Canberra.

24 Seacare is a privately underwritten Workers' Compensation scheme, with employers required to hold Workers' Compensation insurance to cover their liabilities under the *Seafarers Rehabilitation and Compensation Act 1992 Act* (Cwth).

25 https://www.records.nsw.gov.au/agency/1090

26 http://www.archivessearch.qld.gov.au/Search/AgencyDetails.aspx?AgencyId=1848

27 Federal Parliamentary Secretary for Disabilities & Children's Services and Parliamentary Secretary for Victorian Bushfire Reconstruction

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

29 *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016* (Qld) commenced on 8 September 2016, with retrospective application to 1 July 2016.

30 The National Injury Insurance Agency Queensland will be established to administer the scheme. National Injury Insurance Scheme Fund Queensland will collect funds to pay for the costs of providing for reasonable and necessary treatment, care and support.

31 Refer: Competition Policy Reform Bill 1994 (Cwth).

32 The first tranche of the Competition Payment of $200 million commenced in 1997-1998, the second $400 million commenced 1999-2000, and the third tranche ($600 million) commenced in and 2001-2002 (all payments indexed to reflect 1994-95 prices).

33 AAMI 2005, *Productivity Commission's request for submissions for their inquiry into the impact of NCP and related reforms*.

34 An assumption was made that 5 per cent of injured persons would [under a private underwriting model] return to work faster and contribute to the economy by participating in market activities (ibid. p. 33). However, there is no justification provided to explain how this figure was derived, or an assessment of the robustness/efficacy of this assumption.

35 For the period 1911-1918, of the premium paid, 12.1% was expended as commission, 19% management expenses, 15.2% profit loading, and 51.7% as worker benefits

36 By way of example, the Transport 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 in Insurer Premium Filing submissions.

37 The Queensland legislation review of CTP insurance undertaken by Argyle Capital estimated that [annual] premiums could be $36 lower under a State monopoly than under the fixed premium private multi insurer market (Source: South Australian Government 2002, p. 27).

38 It is not within the scope of this paper to further explore this matter. It is noted, however, that a public monopoly Insurer may have a different risk appetite for short-term balance sheet volatility, and therefore may seek higher return on assets held against provisions for claims liabilities (relative to a competitive privately underwritten system). If adopting an investment objective that seeks higher return than risk free assets classes (i.e. mix of growth and defensive asset classes), the cost of claims as used in pricing calculations can be significantly lower, resulting in a lower premium that otherwise would be charged in a competitive privately underwritten scheme.

39 NEF n.d., *Mythbusters: The private sector is more efficient than the public sector*. Retrieved from, http://www.neweconomics.org/blog/entry/mythbusters-the-private-sector-is-more-efficient-than-the-public-sector

40 For example, the Insurance Commission of Western Australia in 2011 was requested by the Minister to implement a reduction in operating expenditure (i.e. efficiency dividend) of 5% each year, pertaining to discretionary operating expenses (as determined by Treasury) for the period 2011-2012 to 2014-2015.