



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2018-0320

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	19
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD.FOI](#)
Subject: [REDACTED] freedom of information - CTP
Date: Tuesday, 13 November 2018 11:45:23 AM

To the FOI contact officer,

I write under the Freedom of Information Act 2016 to request the following documents in possession of the Chief Minister, Treasury and Economic Development Directorate.

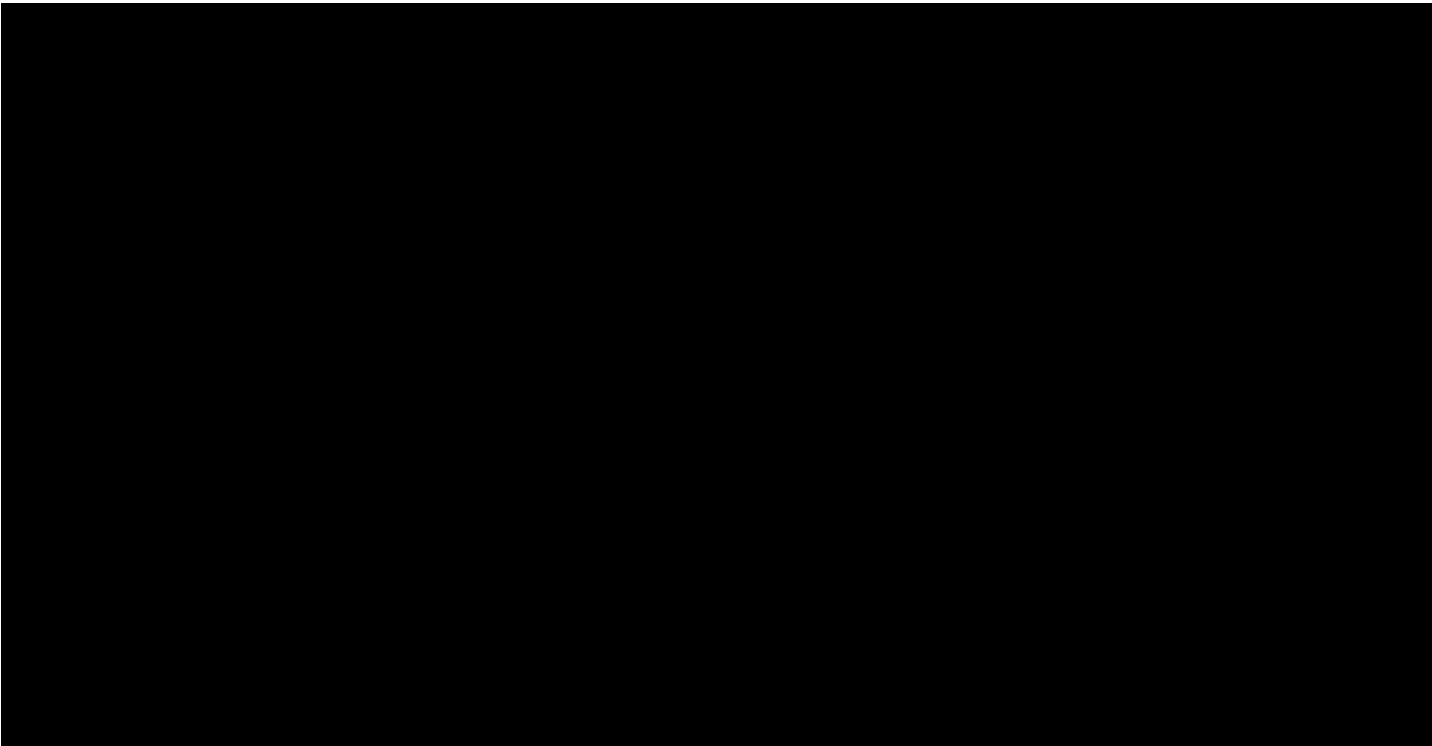
- briefing notes prepared for ACT government ministers and officials on compulsory third party insurance for the 2018 annual report hearings;
- all third party reports related to the compulsory third party insurance scheme commissioned by government between 1 January 2011 and 13 November 2018, including but not limited to third party reports regarding the compulsory third party insurance scheme;

I request this information on the basis it would:

- contribute to positive and informed debate on important issues or matters of public interest;
- reveal the reason for a government decision and any background or contextual information that informed the decision.

For ease of processing the term 'third party reports' excludes third party emails.

Thanks for your assistance.






ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2018-0320



via email: 

Dear 

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 13 November 2018, in which you sought access to documents and information in CMTEDD's possession regarding the ACT compulsory third party insurance scheme commissioned by the government between 1 January 2011 and 13 November 2018.

Specifically, you are seeking: *briefing notes prepared for ACT government ministers and officials on compulsory third party insurance for the 2018 annual report hearings; and, all third party reports related to the compulsory third party insurance scheme commissioned by the government between 1 January 2011 and 13 November 2018, including but not limited to third party reports regarding the compulsory third party insurance scheme.*

Authority

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 11 December 2018.

Decision on access

Searches were completed for relevant documents and 11 documents were identified that fall within the scope of your request.

I have decided to grant full access to 4 documents, exempt 1 document in full and have provided the remaining publically available 6 documents as a courtesy. The information redacted in the documents I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act, particularly Schedule 1; and
- the content of the documents that fall within the scope of your request.

Exemption claimed

My reasons for deciding not to grant access to the identified document is as follows:

Cabinet Information (Schedule 1 of the Act)

Document Ref No. 11 contains information that was prepared and brought into existence for consideration by Cabinet. The information in these documents are deliberative in nature.

In reviewing the document, I note the requirements of schedule 1 section 1.6(2) of the Act which states that the exemption for Cabinet Information does not apply to 'purely factual information' unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published. In the case of *Parnell & Dreyfus and Attorney-General's Department* [2014] AICmr 71, the Australian Information Commissioner stated that the term 'purely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content in such a manner that it is impractical to separate it from the other content.

Having reviewed the document, I consider that the purely factual information within the document identified is an integral part of the deliberative content, the analysis and views in the document would be robbed of their essential meaning without incorporation of this material. I am satisfied that disclosure of this purely factual information would involve the disclosure of a deliberation or decision of Cabinet.

Having considered the information contained in the documents, I am satisfied that disclosure of such information contained in documents Ref No. 11 would be contrary to public interest pursuant to schedule 1 section 1.6 of the Act.

The remaining documents are being released to you in full.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of folios to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107 (2)(b) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 3 working days after the decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

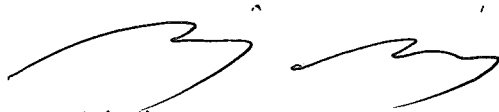
ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Daniel Riley', written in a cursive style.

Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

10 December 2018



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
	Information in relation to compulsory third party insurance	CMTEDDFOI2018-0320

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-20	ACT Government – Compulsory Third Party Insurance Survey	2017	N/A	Publically Available	Yes
2	21-29	CTP Around Australia	14/10/2017	N/A	Publically Available	Yes
3	30-31	Scheme comparison summary	30/10/2017	N/A	Publically Available	Yes
4	32-70	Citizens' Jury for ACT CTP Scheme	03/2018	N/A	Publically Available	Yes
5	71-160	Estimated costs of alternative benefit designs for the ACT's Compulsory Third Party (CTP) Insurance Scheme	13/03/2018	N/A	Publically Available	Yes
6	161-164	Annual Report Hearing Brief – Compulsory Third-Party (CTP) Insurance Scheme - Deliberative Democracy	11/10/2018	Full	N/A	Yes
7	165-169	Annual Report Hearing Brief – Compulsory Third-Party (CTP) Insurance Scheme Exposure Draft of the Motor Accident Injuries Bill 2018	11/10/2018	Full	N/A	Yes
8	170-171	Annual Report Hearing Brief – Backpocket Brief – Compulsory Third-Party (CTP) Insurance Scheme - Deliberative Democracy	29/10/2018	Full	N/A	Yes
9	172-184	ACT CMTEDD – Compulsory Third Party Insurance Scheme Reform Focus Groups	Undated	Full	N/A	Yes
10	185-218	Citizens' Jury Pack –Final	Undated	N/A	Publically Available	Yes
11	219-247	Compulsory Third Party Insurance – Deliberative Engagement Strategy	July 2017	Exempt	Cabinet in Confidence	No
Total No of Docs						
11						

ACT Government Compulsory Third Party Insurance Survey



Canberra Office: (02) 6282 4963
www.piazzaresearch.com.au

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BACKGROUND AND METHODOLOGY

As part of the vehicle registration process, all motor vehicle owners are required by law to purchase compulsory third party (CTP) insurance. CTP insurance covers other people injured in motor vehicle accidents when found to be the fault of the insured driver. CTP schemes exist Australia-wide but they are different in design, offering different coverage and benefit levels.

The only CTP scheme to operate entirely under common law exists in the ACT. Under this system, courts have jurisdiction to determine claims and deliberate on cases of negligence suffered by the injured person (which can be a lengthy process). Compensation amounts are also awarded on a case-by-case basis. When an accident occurs where no party is at fault, the injured party cannot sue for negligence which is the main avenue for compensation.

The Chief Minister Treasury and Economic Development Directorate (CMTEDD) sought input from the broader community to better understand issues and consumer choice preferences regarding current CTP schemes. Piazza Research (an ISO 20252 Quality Certified market and social research firm) was engaged to collect data that could be used to assist deliberators in respect to the design for a potential new CTP scheme for the ACT. This report outlines the survey process and findings.

Survey design and data collection

The survey questions were developed by Piazza Research in consultation with the CMTEDD project team. The survey was designed to identify consumer preferences for various insurance options and also to measure the strength of those preferences.

Surveys were collected by telephone interview commencing the 10th of September and ceased on the 19th of September. A randomised sample of ACT residents was surveyed during the working week, and on Saturdays.

Sample Design

A total of 515 responses were achieved for this survey. For the 95% confidence interval, this sample size provides results accurate to within +/- 4.4% margin of error for overall results, which is considered highly reliable.

Data Processing and Analysis

Piazza Research used its own statistical software, 'Q', and Excel to analyse survey results. Software validation and post data-entry checks were conducted to ensure data integrity before analysis.

A descriptive analysis was performed producing graphs, tables and frequency counts.

Quality Assurance System – This project complies with the ISO 20252 Market, Opinion and Social Research Standard.

Rounding error – Percentage results have been rounded to the nearest whole per cent. Percentages in some graphs may total slightly more or less than 100%.

SUMMARY OF MAIN FINDINGS

Universal coverage - Seventy-two (72%) of respondents said that they would prefer a CTP insurance scheme where everyone injured was covered regardless of whose fault it was. This was considered important by this group rating this 3.1 out of 4 on an importance scale.

Set payment model for benefits – A majority 55% prefer a CTP process where compensation was paid by insurers based on a set model of benefits. This group rated this as 3 out of 4 for importance to them. A sizable proportion (45%) preferred a negotiated or court settlement process and this group also considered this as important (3.2 importance rating).

Compensation fixed for less serious injuries – A very high proportion (79%) believed that CTP compensation should be fixed with people who have less serious injuries. This had a relatively lower importance rating from the group at 2.8 out of 4.

Compensation for non-financial loss – Fifty-five per cent (55%) said a CTP scheme that compensates for non-financial loss should only be available for people with more serious injuries and 45% this should be available irrespective of injury severity. Both groups considered this important with ratings of 3.1 and 3.0 out of 4.

Coverage versus premiums – ACT Residents were fairly evenly split between those who wanted lower premiums but less generous coverage (51%) and those who wanted more generous coverage at a higher premium expense (49%). Both groups rated the importance of their choice as important (3.1 and 3.0 out of 4).

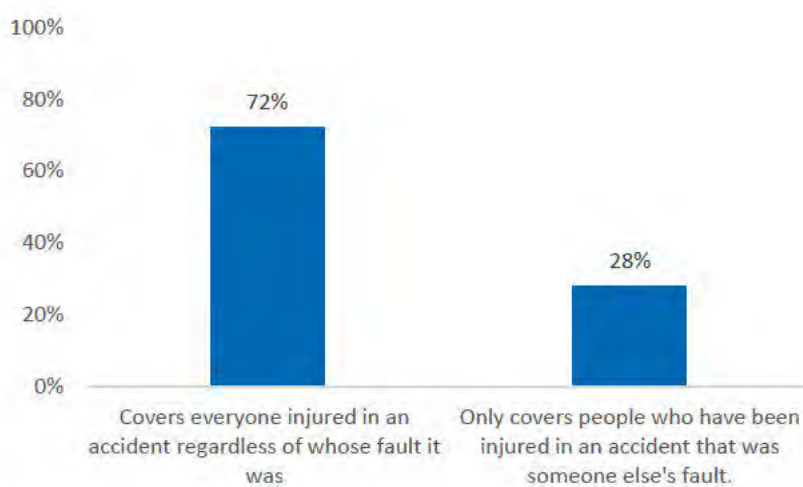
Measure of Relative Importance (MRI) – Participants were asked to rate CTP insurance scheme preferences, out of (1 being least important, to 5 being extremely important). The two-highest ranked CTP insurance features in terms of importance (combined 4 and 5 ratings) were; compensation being paid quickly to injured people (83%) and affordability of insurance premiums (77%). Being able to go to court had the lowest importance rating when compared against other aspects (57%) as did having individual circumstances taken into account (67%).

Correlation Analysis – A correlation analysis was conducted on demographic factors; age, education and gender against questions 1, 2, 3, 4 and 5 to determine whether demographics influenced responses. Demographic factors were found to be only weakly correlated to question responses. Overall results are likely the best representation of community preference.

DETAILED RESULTS

Q1. Would you prefer CTP that:

Covers everyone injured in an accident regardless of whose fault it was? **OR**
Like it is now in the ACT, only covering people who have been injured in an accident that was someone else's fault?



Nearly three-quarters of respondents preferred a CTP system which covers everyone injured in an accident regardless of whose fault it was (72%). The remaining 28% preferred a system which only covered people in an accident that was someone else's fault.

Base =515)

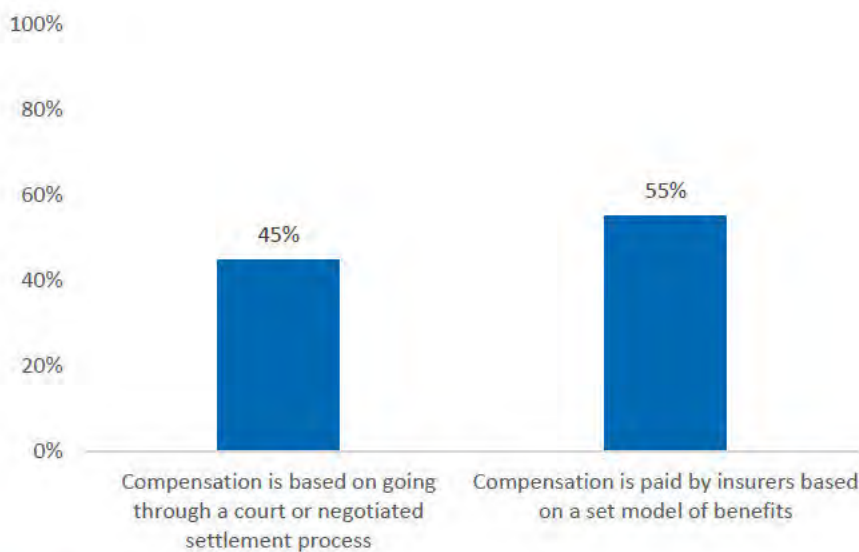
Q1a. How important is this to you?

The majority (72%) who preferred universal coverage also rated this as slightly more important (3.1 out of 4) than those who did not prefer this option.

Option	Av. Score
Covers everyone injured in an accident regardless of whose fault it was	3.1
like it is now in the ACT, covers only people who have been injured in an accident that was someone else's fault	2.9

Q2. If you are injured through someone else's fault, would you prefer a CTP insurance process where:

Compensation is based on going through a court or negotiated settlement process where your individual circumstances are taken into account? **OR**
Compensation is paid by insurers based on a set model of benefits, allowing for faster payment, but not having all your individual circumstances taken into account?



Base = 515

The majority of respondents (55%) preferred a process that is faster and paid by insurers based on a set model of benefits.

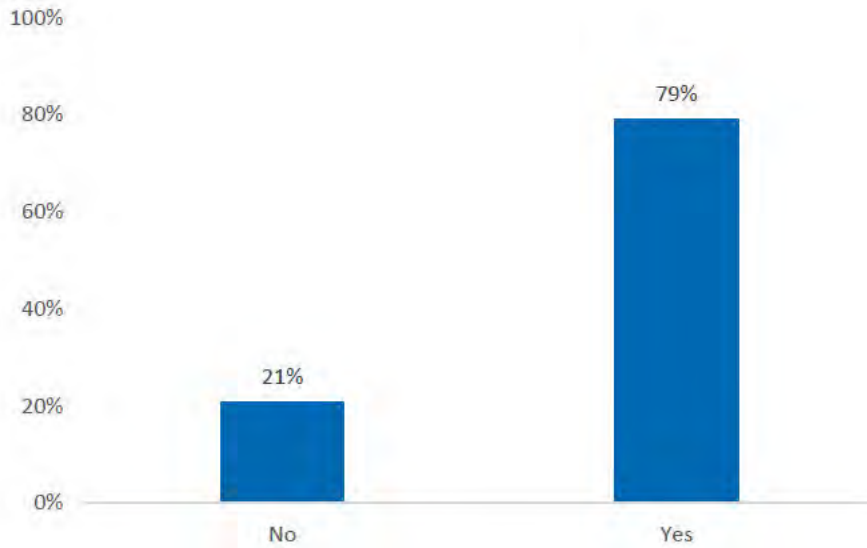
The other 45% preferred a process of going through court or having a negotiated settlement.

Q2a. How important is this to you?

The minority (45%) who preferred the option to go through a court or negotiated settlement process felt this was slightly more important than them with an average importance score of 3.2 out of 4.

Option	Av. Score
Compensation is based on going through a court or negotiated settlement process	3.2
Compensation is paid by insurers based on a set model of benefits	3.0

Q3. Do you think CTP compensation should be fixed in some way for people with less serious injuries?



A very high proportion of ACT residents (79%) believed compensation should be fixed for those with less serious injuries.

Base =515

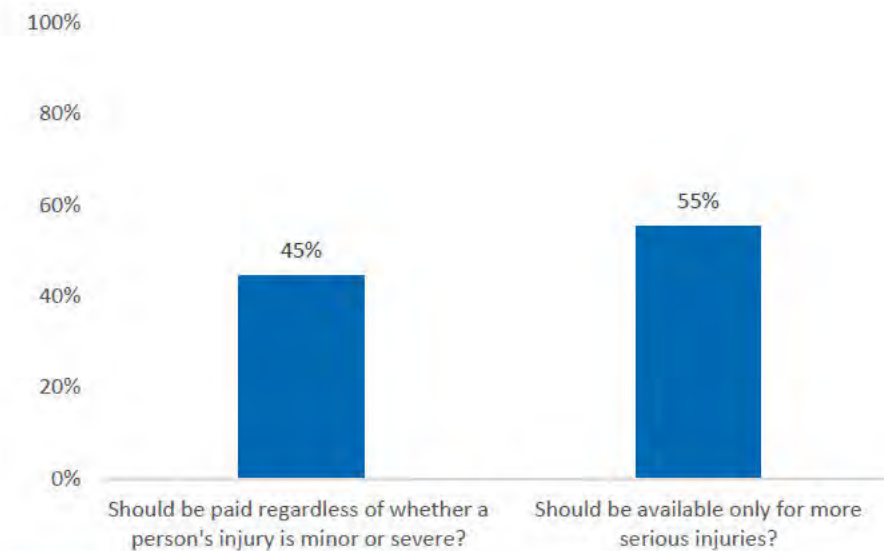
Q3a. How important is this to you?

While the majority by far preferred fixed compensation, this group rated this aspect as marginally less important (2.8) than those who preferred unlimited compensation who rated this at 3.

Option	Av. Score
YES --Do you think CTP compensation should be fixed in some way for people with less serious injuries	2.8
NO --Do you think CTP compensation should be fixed in some way for people with less serious injuries	3.0

Q4. CTP schemes can cover things like pain and suffering and loss of enjoyment of life – these are examples of non-financial loss. Do you think compensation for non-financial loss:

Should be paid regardless of whether a person’s injury is minor or severe? OR
Should be available only for more serious injuries?



While the majority (55%) believed compensation for non-financial loss should be restricted to more serious injuries, 45% believe compensation for non-financial loss should be paid regardless of injury severity.

Base = 515

Q4a. How important is this to you?

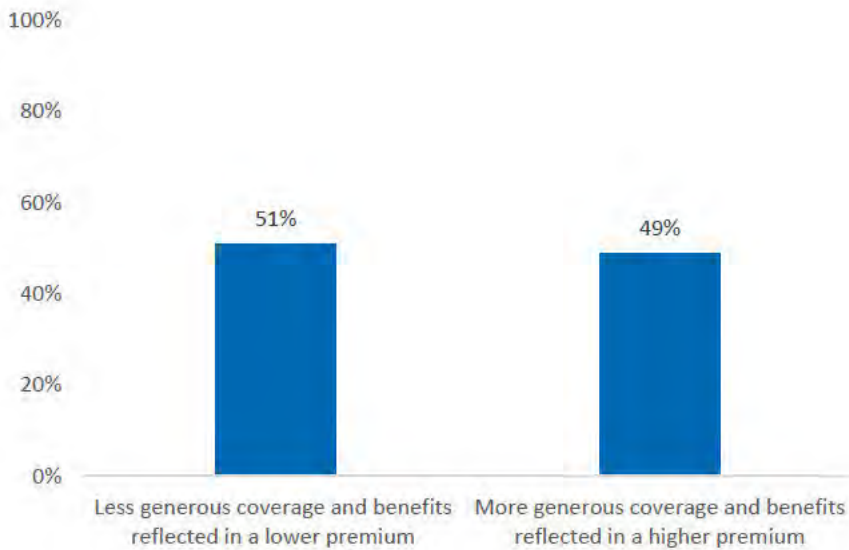
Again, the difference in relative importance for each group was negligible with those preferring pain and suffering be paid regardless of injury severity rating the aspect as 3.1 out of 4. Those preferring pain and suffering being available only for more serious injuries rates this aspect as 3 out of 4 in importance.

Option	Av. Score
should be paid regardless of whether a person’s injury is minor or severe?	3.1
should be available only for more serious injuries	3.0

Q5. One way to manage the cost of CTP premiums for everybody would be to make payouts less generous. We would like to understand how you feel about this trade-off. Which of these would you prefer?

Less generous coverage and benefits reflected in a lower premium (compared to other Australian states and territories) OR

More generous coverage and benefits reflected in a higher premium (compared to other Australian states and territories)



Results were evenly split here with 51% preferring a lower premium accepting less generous coverage and 49% would pay a higher premium to receive more generous coverage and benefits.

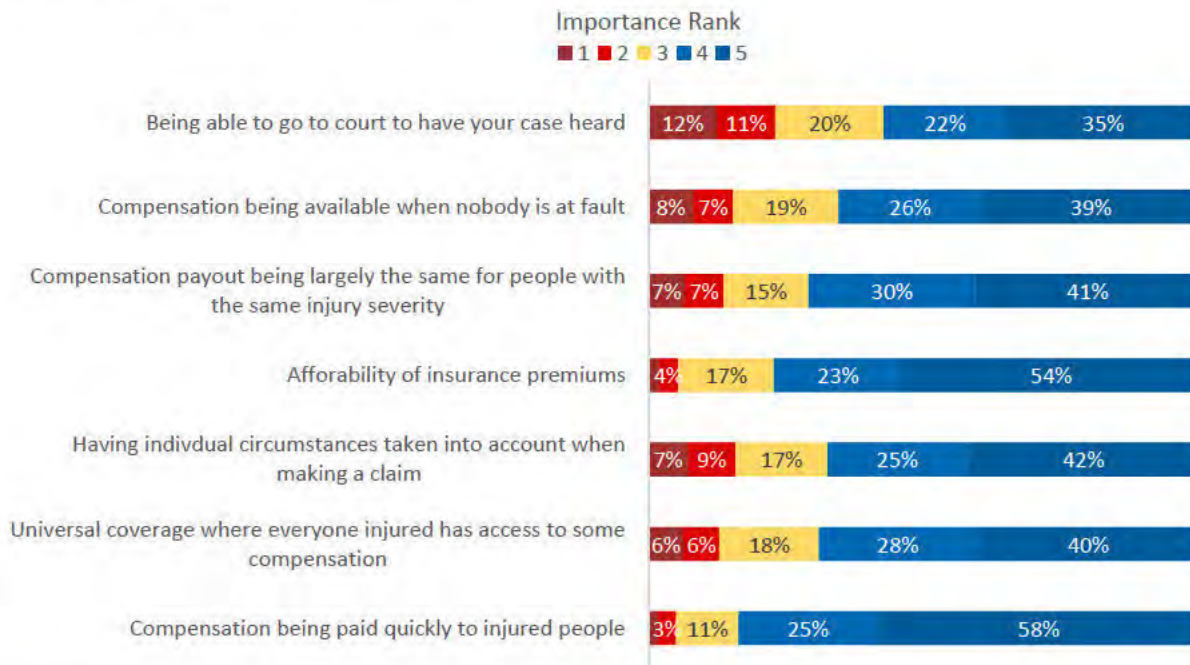
Base = 515

Q5a. How important is this to you?

Importance ratings for those preferring less generous coverage (3.1) was similar to those preferring more generous coverage (3).

Option	Av. Score
Less generous coverage and benefits reflected in a lower premium (compared to other Australian states and territories)	3.1
More generous coverage and benefits reflected in a higher premium (compared to other Australian states and territories)	3.0

Q6. With 1 being not at all important and 5 Extremely important, how important are the following CTP Insurance features:

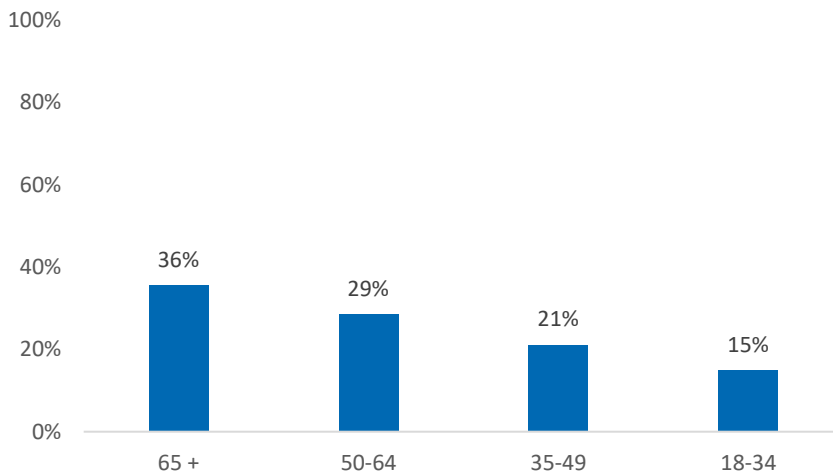


Base = 515

The two highest ranked CTP insurance features in terms of importance (combined 4 and 5 ratings) are; compensation being paid quickly to injured people (83%) and affordability of insurance premiums (77%). Being able to go to court to have your case heard was ranked the lowest at 57% and having individual circumstances taken into account when making a claim at 67%.

DEMOGRAPHICS

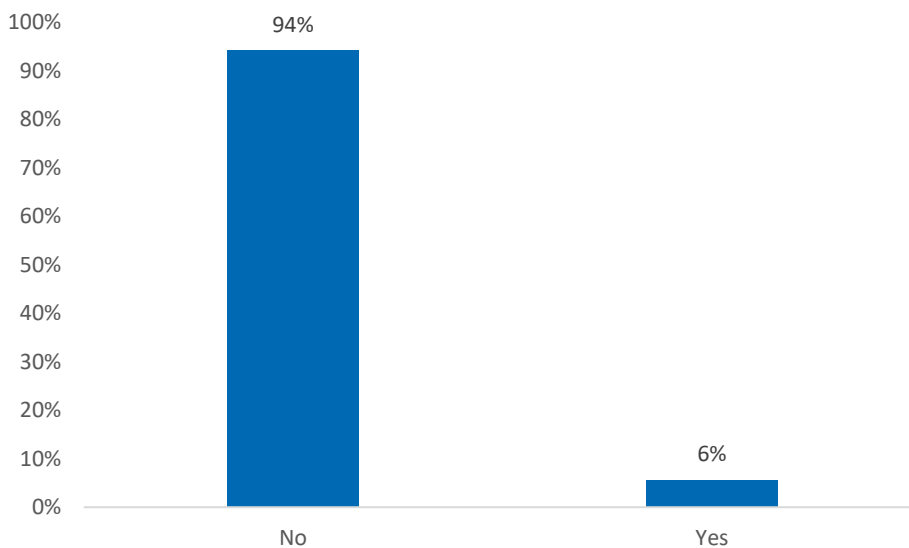
Q7. What year were your born?



The oldest age group (65 years and older) were the highest participants in this survey at 36%. 50-64 year olds were the second highest participants at 29%.

Base = 515

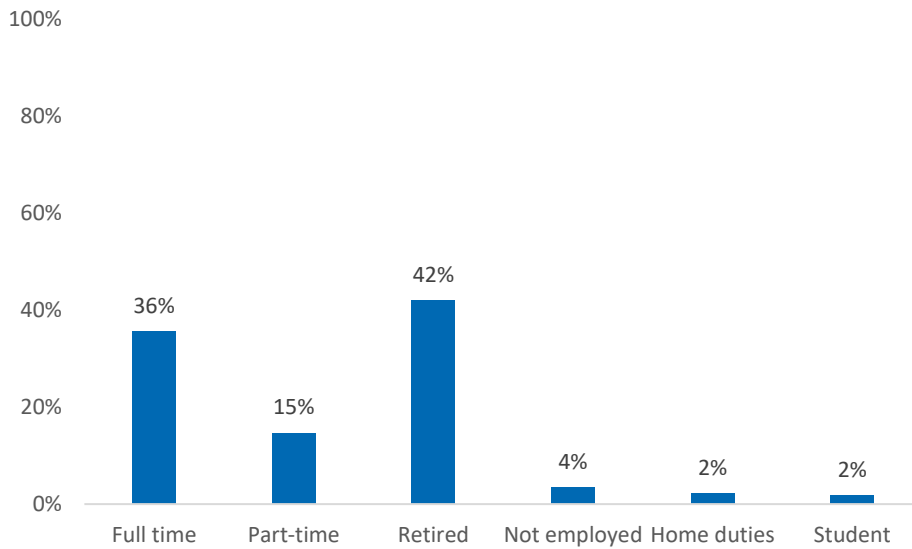
Q8. Have you been injured in a vehicle accident during the last 3 years?



Ninety-four per cent (94%) had not been injured in a vehicle accident during the last year.

Base = 515

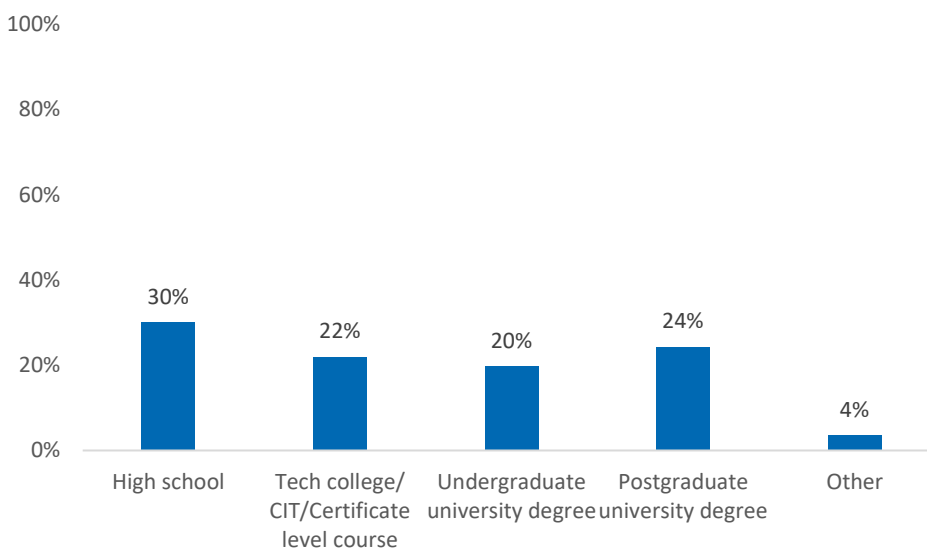
Q9. How would you describe your employment status?



Base = 515

The highest number of respondents (42%) described their employment status as retired. Individuals who worked full-time were the second-highest category.

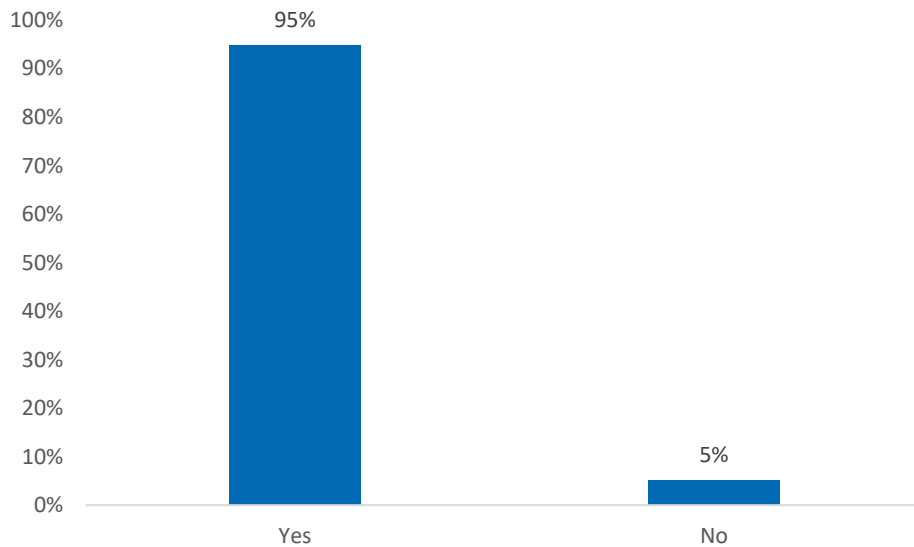
Q10. What is the highest level of education you've achieved so far?



Base = 515

The education levels of respondents were broadly balanced, with thirty per cent (30%) citing high school, 20% having undergraduate degrees, 24% with post graduate degrees and 22% with technical certificate level qualifications.

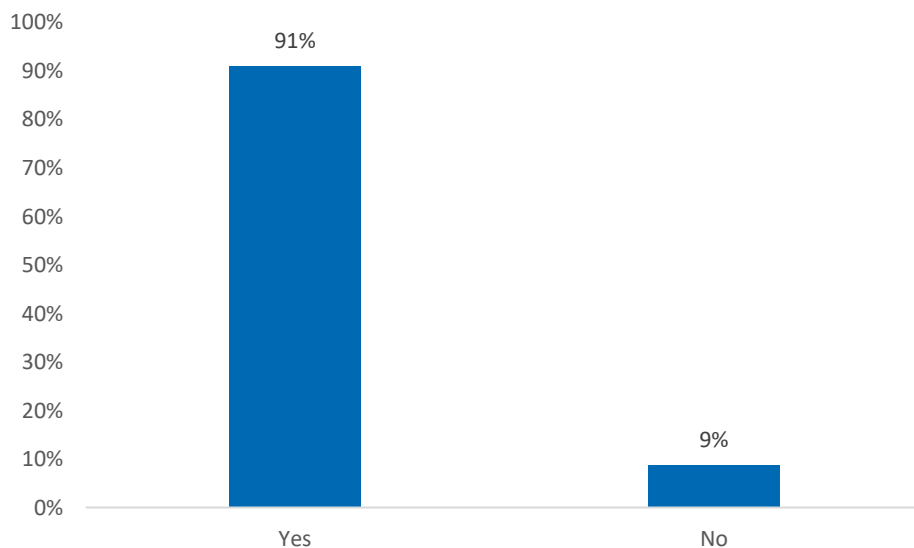
Q11. Do you have a current motor vehicle license?



Ninety-five per cent (95%) of respondents had a motor vehicle license.

Base = 515

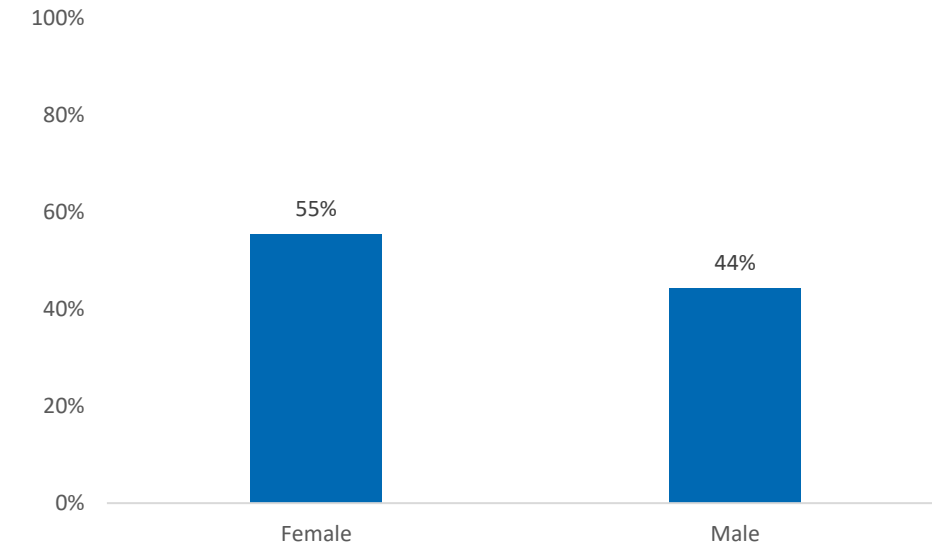
Q12. Do you own a car?



Ninety-one per cent (91%) of respondents owned a car.

Base = 515

Q13. What is your gender?



Fifty-five per cent (55%) of respondents were female, 45% were male.

Base = 515

SURVEY

INTRODUCTION

Good evening. I wonder if you can help me? My name's (FULL NAME) from Piazza Research calling on behalf of the ACT Government. The ACT Government is conducting a study to understand the community's views on compulsory third party insurance. Can you help me by answering some survey questions?

VALUES

Values intro

There are six survey questions and then some demographic questions but firstly I'm going to give you some information about Compulsory Third Party insurance.

Compulsory Third Party Insurance is insurance all motor vehicle owners are required by law to buy when they register their car. It's often called CTP Insurance. It covers other people injured in an accident that is found to be your fault.

The Government believes the ACT scheme could be improved to better protect Canberrans.

Right now, our CTP scheme does not cover everyone injured in a motor vehicle accident, it can take up to two years or longer to negotiate and receive a full payout after an accident, and the ACT has among the most expensive premiums in the country.

The government is consulting with the community to improve the scheme so it reflects the priorities of Canberrans.

Your answers will help us understand how the community feels about some of the possible trade-offs involved in improving the system.

I'm going to read out two options at a time and then ask how important that option is to you.

Q1 Would you prefer CTP insurance that *Select only one)*

- a) covers everyone injured in an accident regardless of whose fault it was 1
- or
- b) like it is now in the ACT, only covers people who have been injured in an accident that was someone else's fault. 2

3 (Don't know)

Q1a

How important is this to you?

Not
Important

1

Somewhat
Important

2

Neutral

3

Important

4

Very Important

5

ACT Government Compulsory Third Party Insurance Survey 2017

Q2 If you are injured through someone else's fault, would you prefer a CTP insurance process where ... *Select only one)*

a) compensation is based on going through a court or negotiated settlement process where your individual circumstances are taken into account 1

or

b) compensation is paid by insurers based on a set model of benefits, allowing for faster payment, but not having all your individual circumstances taken into account 2

3 (Don't know)

Q2a How important is this to you?

Not Important	Somewhat Important	Neutral	Important	Very Important
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

Q3 In some states and territories, the amount of compensation for less-serious injuries is fixed at levels considered reasonable for the type of injury. Do you think CTP compensation should be fixed in some way for people with less serious injuries? *Select only one)*

a) Yes 1

or

b) No? 2

3 (Don't know)

Q3a How important is this to you?

Not Important	Somewhat Important	Unsure	Important	Very Important
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

Q4 In addition to medical expenses and compensation for loss of income – CTP schemes can cover things like pain and suffering and loss of enjoyment of life – these are examples of non-financial loss. So with that in mind - Do you think compensation for non-financial loss: *Select only one)*

a) should be paid regardless of whether a person's injury is minor or severe? 1

or

b) should be available only for more serious injuries? 2

3 (Don't know)

Q4a How important is this to you?

Not Important	Somewhat Important	Neutral	Important	Very Important
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

Q5 This question is about the cost of premiums. The ACT's average passenger class CTP premium is the second-highest in Australia. This is largely because of the benefits structure, and court-based model of resolving claims.

One way to manage the cost of CTP premiums for everybody would be to make payouts less generous. We would like to understand how you feel about this tradeoff. Which of these would you prefer?

Select only one)

Less generous coverage and benefits reflected in a lower premium (compared to other Australian states and territories) 1

or

More generous coverage and benefits reflected in a higher premium (compared to other Australian states and territories) 2

3 (Don't know)

Q5a

How important is this to you?

Not Important	Somewhat Important	Neutral	Important	Very Important
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

Q6

With 1 being not at all important and 5 Extremely important, how important are the following CTP Insurance features:

Rating (1 to 5)

- a) Compensation being paid quickly to injured people _____
- b) Universal coverage where everyone injured has access to some compensation _____
- c) Having individual circumstances taken into account when making a claim _____
- d) Affordability of premiums _____
- e) The compensation payout being largely the same for people with the same injury severity _____
- f) Compensation being available when nobody is at fault _____
- g) Being able to go to court to have your case heard _____

DEMOGRAPHICS

Q7

In which year were you born? _____

Q8

Have you been injured in a vehicle accident during the last 3 years?

Yes	No
<input type="checkbox"/> 1	<input type="checkbox"/> 1

ACT Government Compulsory Third Party Insurance Survey 2017

Q9 How would you describe your employment status?

- | | | |
|--------------|--------------------------|---|
| Full time | <input type="checkbox"/> | 1 |
| Part-time | <input type="checkbox"/> | 2 |
| Retired | <input type="checkbox"/> | 3 |
| Not employed | <input type="checkbox"/> | 4 |
| Home duties | <input type="checkbox"/> | 5 |
| Student | <input type="checkbox"/> | 6 |

Q10 What is the highest level of education you've achieved so far?

- | | | |
|--|--------------------------|---|
| High school | <input type="checkbox"/> | 1 |
| Tech college/ CIT/Certificate level course | <input type="checkbox"/> | 2 |
| Undergraduate university degree | <input type="checkbox"/> | 3 |
| Postgraduate university degree | <input type="checkbox"/> | 4 |
| Other | <input type="checkbox"/> | 5 |

Q11 Do you have a current motor vehicle license?

- | | | | | | |
|-----|--------------------------|---|----|--------------------------|---|
| Yes | <input type="checkbox"/> | 1 | No | <input type="checkbox"/> | 1 |
|-----|--------------------------|---|----|--------------------------|---|

Q12 Do you own a car?

- | | | | | | |
|-----|--------------------------|---|----|--------------------------|---|
| Yes | <input type="checkbox"/> | 1 | No | <input type="checkbox"/> | 1 |
|-----|--------------------------|---|----|--------------------------|---|

ACT Government Compulsory Third Party Insurance Survey 2017

Q13 Record gender.

Male

1

Female

1

Thank you for taking the time to complete this survey. Your response will help us to inform future decisions about CTP insurance for the ACT. The results of this survey will be given to a citizens' jury considering improvements to the CTP scheme. If you'd like to know more go to the ACT Governments Your Say website.

If asked: (www.yoursay.act.gov.au/ctp)

END

This report was produced by Piazza Research Pty Ltd Ph (02)6282 4963, for the ACT Government.

Lead Consultants: Kelly Carroll, Mathilde Lamerton, Grant Piazza
Project reference number: #CMDCTP220917



CTP Around Australia

Geoff Atkins

14 October 2017



Overview of schemes nationally

ACT	Common Law	Private Insurers
QLD	Common Law	Private Insurers
NSW	Hybrid	Private Insurers
VIC	Hybrid	State Scheme
SA	Common Law	Private Insurers
WA	Common Law	State Scheme
TAS	Hybrid	State Scheme
NT	No fault	State Scheme

Everyone now has a Lifetime Care scheme

- Covers 'catastrophic' injuries
 - Spinal cord
 - Serious brain injury
 - Multiple amputations
 - Severe burns
- Regardless of fault – any injuries in a motor accident
- NDIS covers treatment and attendant care – not earnings loss and no lump sums
- In some states part of the CTP system (Vic, Tas, NT)
- In others a separate government fund (ACT, NSW, Qld, SA, WA)
- Came along with the National Disability Insurance Scheme
 - Covers most 'serious disabilities' whether from birth or acquired
 - Productivity Commission said if it's a current state-based insurance scheme, you keep paying for it
 - Motor accidents (and workers comp in progress) are in place across the country

The insurers and schemes



ACT

- NRMA
- Suncorp (GIO, AAMI, APIA)



WA

Insurance Commission of WA



NT

Motor Accidents Compensation Commission



VIC

Transport Accident Commission



TAS

Motor Accidents Insurance Board



NSW & SA

The big four

- IAG (NRMA, SGIC)
- Suncorp (GIO, AAMI)
- Allianz
- QBE



QLD

The big four plus RACQ



How would you like to deal with the information about other schemes?

Cover all 8 or only a select few?

Deal with it by topic?

- No fault entitlements (if any)
- Common law access limitations
- Rules for economic loss claims
- Rules for pain and suffering claims
- Rules for treatment and care
- Claim procedures, including litigation and legal fees
- Restrictions on what people are entitled to in certain circumstances (e.g. drink driving)

An information reference?

How detailed?

Q&A approach as needed?

Common law access limitations

ACT	No limitation
QLD	No limitation
NSW	Not a 'minor injury' (soft tissue or minor psych)
VIC	A 'serious injury' described in words
SA	No limitation
WA	No limitation
TAS	No limitation
NT	No common law available

Only if someone else was at fault



Rules for economic loss claims



No fault



**Common
law**



**% of
earnings**



Max time

How would you like to get this info?

Rules for general damages claims

ACT

tbc

QLD

an Injury
Severity Scale,
max \$, ranges

NSW

must be over 10%
whole person
impairment,
max \$, rule?

VIC

min \$54k,
max \$536k

SA

like Qld

WA

tbc

TAS

tbc

How would you like to get this info?



Contact



Geoff Atkins
geoff.atkins@finitv.com.au
(02) 8252 3337

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Scheme Comparison Summary

Thanks to SIRA for providing the source table from which a lot of this information was taken.
It was supplemented by information from websites and legislation.

This is a brief summary of the most important points. There are many details and variations not included.
Errors and omissions may be present. Finity is about 90% confident that the information is correct, but not 100%.
If you spot anything that is wrong, or you think may be wrong, please let us know.

	ACT	New NSW	VIC	TAS	QLD	SA	WA	NT
Scheme type	Fault-based	Hybrid	Hybrid	Hybrid	Fault-based	Fault-based	Fault-based	No-fault
Underwriting model	Private insurers	Private insurers	State scheme	State scheme	Private insurers	Private insurers (state up to 2015)	State scheme	State scheme
Lifetime treatment for catastrophic injuries	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	STATUTORY BENEFITS (NO FAULT)							
Treatment and care		At fault: 6 mths Minor injury: 6 mths with possible ext'n Other: For life	For life	For life				For life
Income benefits: % of earnings		95% for 13 weeks; 80% after that	80%	80%				85% of NT average weekly earnings regardless of your earnings
Income benefits: Time limit		At fault: 6 months Minor injury: 6 months Other: 2 to 5 years	3 years Retirement age for catastrophic injuries	5 years				Retirement Age
Income benefits: \$ per week cap		\$3,850	\$1,250	\$3,900				\$1,280 (flat)

Quality of life benefits for no fault		No	If greater than 10% impairment, maximum of \$330,000	No				If greater than 5% impairment, maximum of \$290,000
COMMON LAW BENEFITS (NOT AT FAULT ONLY)								
Main benefit types available?	All	Income Quality of life	Income Quality of life	All	All	All	All	
Threshold for any common law	None	Not a 'minor injury'	'Serious injury' based on a descriptive test	None	None	None	None	
Threshold for income benefits	No	No	Minimum entitlement of \$51,800	No	No	Injury Scale Value over 7 points	No	
Quality of life compensation: Threshold	No	Over 10% impairment	'Serious injury' based on a descriptive test	\$5,000 entitlement	Injury Scale Value over 5 points	Injury Scale Value over 10 points	\$19,500 entitlement	
Quality of life compensation: Maximum amount	No max	\$511,000	\$518,300	No max	\$316,000	About \$350,000	\$390,000	
Quality of life compensation: Method of assessment	Judgement of court	Relative to a 'most extreme case'	Judgement of court	Judgement of court	Formula based on ISV	Formula based on ISV	Judgement of court	

Model Designs

Citizens' Jury for ACT CTP Scheme

March 2018

9 March 2018

Members of the Citizens Jury
c/o democracyCo
c/o Chief Minister, Treasury and Economic Development Directorate
ACT Government
GPO Box 158
Canberra ACT 2601

Dear Jurors

Model Designs

It has been my pleasure to be responsible for developing four possible models for a reformed CTP scheme for your consideration at your meeting on March 24 and 25, 2018.

I wish to acknowledge and thank all the members of the Stakeholder Reference Group for their active participation and critique during the development process.

Best wishes for your deliberations. I look forward to joining you at the meeting and answering any questions you may have.

Yours sincerely

A handwritten signature in black ink, appearing to be "Geoff Atkins", written over a light grey rectangular background.

Geoff Atkins
Fellow of the Institute of Actuaries of Australia

Sydney

Tel +61 2 8252 3300
Level 7, 68 Harrington Street
The Rocks, NSW 2000

Finity Consulting Pty Limited

Melbourne

Tel +61 3 8080 0900
Level 3, 30 Collins Street
Melbourne, VIC 3000

ABN 89 111 470 270

Auckland

Tel +64 9 306 7700
Level 5, 79 Queen Street
Auckland 1010

finity.com.au / finityconsulting.co.nz

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1 Introduction

1.1 The Citizens Jury

In 2017 the ACT government commenced a ‘deliberative democracy’ process to consider the CTP scheme in the ACT.

Part of that process was to convene a citizens jury and, on 29 October 2017 the jury issued its report setting out the objectives it had agreed for a reformed scheme.

The next stage was for a nominated ‘scheme design expert’ (Geoff Atkins of Finity) to prepare four possible designs for the jury to consider. That work was undertaken in close consultation with the Stakeholder Reference Group and was complemented by work of Peter McCarthy (Ernst & Young) whose role was to estimate the premiums required for each model.

The activities of the jury and the overall deliberative democracy process are available at www.yoursay.act.gov.au. We understand that this report will be published on that website.

1.2 Outline of this Report

Section 2 summarises the four models and their key elements. Section 3 sets out in detail the entitlement to make a claim and the benefits available to an injured person under each model.

Section 4 deals with the support available to injured people and the processes for resolving disputes. Section 5 deals briefly with premiums and scheme costs, and Section 6 covers some other issues about the coverage provided by the CTP scheme.

1.3 Terminology

Where possible in the report we have tried to limit the amount of jargon and to use words and labels consistent with those in the jury report. There is a glossary of terms and abbreviations in Appendix A.

2 The Models

There are four proposed models: A, B, C and D.

Each model is structured and defined by:

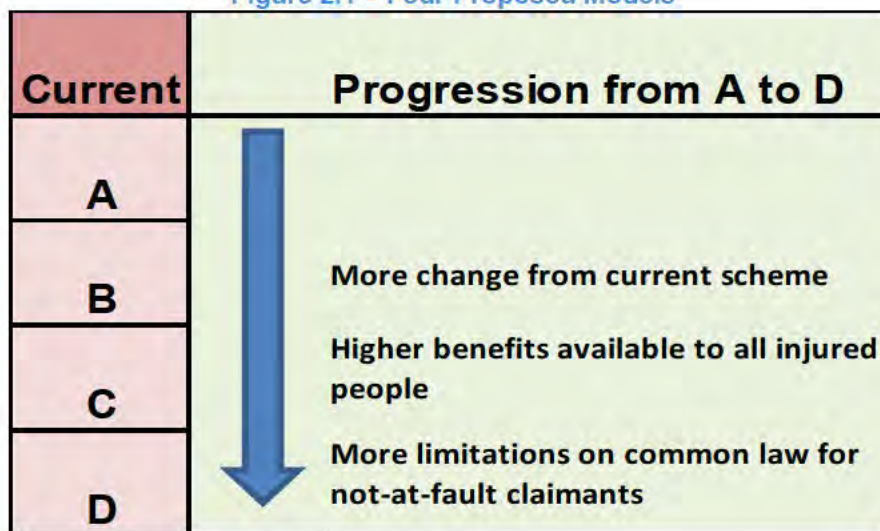
1. Benefits which are available to injured people regardless of fault – the ‘defined benefits’
2. Benefits which are available via common law (legal action) for injured people who are not-at-fault.

The key differences between the models are the level of defined benefits (this increases on a spectrum from A to D). As the defined benefits increase, there is greater limitation on the benefits available at common law for not-at-fault claimants, generating overall reductions in the estimated premium required to fund the scheme.

In the current scheme:

- There is an early payment available for up to \$5,000 in medical costs
- Not-at-fault claimants have unrestricted access to common law, and there are no limits on the compensation they may receive apart from those in the Civil Liability law that applies to all personal injury claims in the ACT.

Figure 2.1 – Four Proposed Models



2.1 Understanding the Models

This section sets out some background information relating to the proposed models. It discusses the payment types and some other key features.

2.1.1 Treatment

Treatment costs relate to medical, hospital and related costs such as physiotherapy. Under all of the proposed models, as in the current scheme, the treatment costs that are paid (if the injured person is eligible) are “all reasonable and necessary costs”.

2.1.2 Domestic Care

This benefit relates to payment for domestic care – assistance with bathing, housework etc. Scheme payments (if eligible):

- Provide reimbursement for commercial care (“paid care”)
- Compensate for care provided on an unpaid basis (generally family) and/or for care that the injured person can no longer provide to others (“gratuitous care”).

2.1.3 Income Replacement

This payment type compensates an injured individual for lost income when they are unable to work:

- In the defined benefits context, it compensates for actual (past) lost earnings.
- Under common law there may also be compensation for expected **future** lost earnings, termed “loss of earning capacity”. This will generally include an additional allowance for lost superannuation.

In a defined benefits scheme the rate of compensation is usually defined as a percentage of pre-injury earnings, and the percentage may change as the duration since injury increases.

2.1.4 Quality of Life (QoL)

This payment type compensates an injured person for non-monetary ‘loss’, i.e. a reduction in their quality of life (for example, due to ongoing impairment or pain). This type of payment may be termed a “permanent impairment benefit” (in a defined benefits context), or in the common law context: “non-economic loss”, “general damages” or “pain and suffering”.

The methods used to assess QoL payments (whether in defined benefits or common law) are discussed in Section 3.7.

Limiting access to QoL payments for individuals who have suffered relatively minor injuries is the most frequently used mechanism to direct more of the scheme resources to those more seriously injured and make a scheme more affordable.

2.1.5 Death

Payments may include reimbursement of funeral costs, and additional payments for individuals who were financially dependent on the claimant.

2.1.6 Thresholds

It is common for schemes to have ‘thresholds’ which apply to restrict access to some benefit types, or to limit the duration of payments; this draws a line between ‘more serious’ claims and other claims. For example:

- There may be a threshold for access to QoL payments
- Access to long term income replacement may be subject to a threshold.

Introducing thresholds limits total scheme costs, while shifting the balance of scheme payments towards the more seriously injured.

Thresholds will often be defined as a minimum Whole Person Impairment (WPI) or Injury Scale Value (ISV); see Section 3.7.

2.1.7 Indexation of Amounts

There are many dollar figures quoted in this report, such as for maximum weekly benefits or QoL payments. In each of the models, dollar amounts will be increased each year based on Average Weekly Earnings. This indexation maintains the level of benefits in real terms.

2.1.8 Information and Guidance

It is proposed that under each of the proposed models, better information about an individual’s entitlement to claim, the claim process, and benefit entitlements, will be available to all injured people.

2.1.9 Legal Support

Many injured people will need support in making their claims. Under all four proposed models, support from a legal adviser is available to all. There are no new regulations regarding legal costs in the common law part of the system.

One area which is discussed is solicitor-client fees; under the current common law arrangements, these fees – payable by claimants to their solicitors – are paid from the settlement amount. Disclosure to the claimant and the regulator of these fees and their makeup will be required under each of the proposed models.

2.1.10 Dispute Resolution

The proposal is that, if the injured person and the insurer cannot reach a negotiated agreement, disputes would be resolved as follows:

- Defined benefits – primarily under the jurisdiction of the Magistrates Court, with the possible use of ACAT for low value disputes
- Common law – via the courts, as happens now.

2.1.11 Determining Fault

It is proposed that two changes will be made to the current scheme (in all models):

- That common law benefits would be available to people injured in so-called ‘blameless accidents’ (see Section 3.1.1)

- That no ‘contributory negligence’ deductions would be made for children under age 16 (see 3.1.2).

2.2 The Four Models

In each of the tables that summarise the models, the middle column summarises the benefits available regardless of fault. The right-hand column outlines benefits available under common law for those who were not at fault. Those who are not at fault are entitled to both the defined benefits and the common law compensation, although there is no ‘double dipping’.

2.2.1 Model A

Model A is similar to the current scheme, but defined benefits for up to 6 months are available to all.

Table 2.1 – Model A

Benefit Type	For all: Defined benefits	Available to not-at-fault: (additional benefits via common law)
Treatment	6 months	Unlimited
Domestic care	6 months Paid care only	Unlimited Includes gratuitous care
Income replacement	6 months 95% of pre-injury earnings for first 3 months 80% thereafter Low income adjustment ¹	No time limit 100% of loss of past earnings and future earning capacity + Superannuation
Quality of life	Nil	Maximum \$500,000 Amount based on ISV ² and guidance scale
Death	Funeral cost	Funeral cost + common law for dependants

¹ Allows greater than 95%/80% for low income individuals. See Section 3.5.1.

² Injury Scale Value. See Section 3.7

During the six-month defined benefits period, the injured person can focus on recovery and determine whether someone else was at fault. If at six months the outcome in relation to determining fault is:

- **The injured person was at fault** – benefits cease.
- **The injured person was not at fault** – the claimant may make a common law claim, with the insurer obliged to pay treatment costs and income replacement up to three years while the common law claim is being resolved, unless there is reasonable cause not to.
- **Disputed** – benefits cease and the injured person will go to common law to prove fault; if needed, they can run a separate case deciding fault before the case about payment amount.

Similar logic applies for models B to D, though they have longer defined benefit durations and there is therefore more time to determine fault.

2.2.2 Model B

Model B has more generous defined benefits (up to 12 months). The scaling of common law QoL payments would provide lower benefits than in Model A for those with relatively minor injuries, providing additional savings.

Table 2.2 – Model B

Benefit Type	For all: Defined benefits	Available to not-at-fault: (additional benefits via common law)
Treatment	12 months	Unlimited
Domestic care	12 months Paid care only	Unlimited Includes gratuitous care on the 6/6 rule ²
Income replacement	12 months 95% of pre-injury earnings for first 3 months 80% thereafter Low income adjustment ¹	No time limit First 12 months: as per defined benefits After 12 months: 100% of loss of earning capacity (future earnings) + superannuation
Quality of life	Nil	Maximum \$500,000 Amount based on ISV and guidance scale
Death	Funeral cost + \$50,000 if dependants	Funeral cost + common law for dependants

¹ Allows greater than 95%/80% for low income individuals. See Section 3.5.1.

² See Section 3.4.2.

2.2.3 Model C

The defined benefits are extended to 2 or 5 years. QoL payments are available to all, subject to a 5% WPI¹ threshold. For additional QoL compensation at common law, the QoL threshold is 10% WPI.

Table 2.3 – Model C

Benefit Type	For all: Defined benefits	Available to not-at-fault: (additional benefits via common law)
Treatment	5 years	Unlimited
Domestic care	5 years Paid care only	Unlimited But with limitations on gratuitous care – see section 3.4.2
Income replacement	2 years 95% of pre-injury earnings for first 3 months 80% thereafter Low income adjustment ¹ Extended to 5 years for WPI 10% or above	No time limit First 12 months: as per defined benefits After 12 months: 100% of loss of earning capacity (future earnings) + superannuation
Quality of life	Maximum \$350,000 Benefit based on WPI Threshold: No benefit if WPI below 5%	Maximum \$500,000 Amount based on WPI (with ranges) Threshold: no benefit if WPI below 10%
Death	Funeral cost + up to \$250,000 if dependants (\$150,000 for spouse, \$25,000 per child)	Funeral cost + common law for dependants

¹ Allows greater than 95%/80% for low income individuals. See Section 3.5.1.

¹ Whole Person Impairment – see section 3.7

2.2.4 Model D

The defined benefits are extended to 5 years. The QoL payment available to all is subject to a WPI threshold of 5%. Under common law, a 10% WPI threshold applies for access to QoL payments and for continuation of income replacement beyond 5 years. There is no common law entitlement for gratuitous care.

Table 2.4 – Model D

Benefit Type	For all: Defined benefits	Available to not-at-fault: (additional benefits via common law)
Treatment	5 years	Limited to 5 years if WPI below 10%
Domestic care	5 years Paid care only	Limited to 5 years if WPI below 10% Paid care only (no gratuitous care)
Income replacement	5 years 95% of pre-injury earnings for first 3 months 80% thereafter Low income adjustment ¹	Limited to 5 years if WPI below 10% No time limit if WPI 10% or above First 12 months: as per defined benefits After 12 months: 100% of loss of earning capacity (future earnings) + superannuation
Quality of life	Maximum \$350,000 Benefit based on WPI Threshold: No benefit if WPI below 5%	Maximum \$500,000 Amount based on WPI scale Threshold: No benefit if WPI below 10%
Death	Funeral cost + up to \$350,000 if dependants (\$190,000 for spouse, \$40,000 per child)	Funeral cost + common law for dependants

¹ Allows greater than 95%/80% for low income individuals. See Section 3.5.1.

3 Entitlements

This section steps through the components of the eligibility to claim and then each of the benefit types. It compares the four models, gives more detailed explanations and some relevant background information.

3.1 Right to Make a Claim

The current common law system is based on negligence (according to law, not community morals or ethics). In the common law system, compensation is available if an injured person can demonstrate that they have been injured because of the negligence of the driver of a motor vehicle.

If a scheme has some benefits available to all injured people (which we refer to as “available to all”):

- It will include those who were at fault (often referred to as “at fault drivers”) up to the extent of the defined benefits.
- Those who are “not-at-fault” (injured due to someone else’s negligence) also have access to the defined benefits, and can choose to go on to make a common law claim (for example if the defined benefits have not met their reasonable needs) and if the individual meets any threshold criteria.

3.1.1 ‘Blameless’ Accidents

There are occasional situations where a person is injured clearly through no fault of their own, but where they cannot demonstrate that another person was at fault. The two most common examples are:

- A medical incident (e.g. heart attack) of a driver who crashes into others – legally, that driver may not be negligent
- A kangaroo jumping out into the road which a driver cannot avoid.

Following a couple of highly publicised cases, some jurisdictions added a “blameless accident” provision to their CTP laws. These laws “deem the driver to be at fault” in the nominated situations. This means that any passengers or pedestrians are categorised as not-at-fault, but the driver themselves (the one who had the heart attack or hit the kangaroo) is not.

On the basis of the views expressed by the jury, all proposed models include a provision that in a blameless accident situation the driver is deemed to be at-fault for the purpose of others being able to make a common law claim.

3.1.2 Benefits for Minors

For young people (generally defined for this purpose as under 16) it can be harsh to allege that the child contributed to the accident by their own negligence. The proposals include a provision that contributory negligence cannot be applied in the case of a minor.

3.1.3 Other Exclusions and Limitations

Some other specific situations where benefits may be excluded or limited are set out in section 6.1, mainly related to unlawful behaviour.

3.2 Benefit Entitlements

The balance of this section covers the main types of benefits that are covered by a CTP scheme:

- Treatment (also known as “Medical”)
- Care – domestic and personal services, whether paid or unpaid (“gratuitous”)
- Income replacement
- Quality of life (compensation not linked to financial loss)
- Death.

Some of the principles and options are discussed, along with the way each of the four models deals with the type of benefit. There is more detail here than in the summaries of Section 2.

Section 4 deals with the claiming process, support and advice, resolution of disputes, legal fees and other scheme costs.

3.3 Treatment Costs

Treatment costs include ambulance, hospital, doctors, specialists, surgery, allied health (sometimes subject to limits), pharmaceuticals, aids and appliances.

Table 3.1 – Treatment Costs by Model

	Model A	Model B	Model C	Model D
Available to all	6 months	1 year	5 years	5 years
Not-at-fault	Unlimited	Unlimited	Unlimited	Limited to 5 years if WPI below 10%

All models provide defined benefits to all injured persons for treatment that is “reasonable and necessary” for a condition arising from the accident.

The Clinical Framework for the Delivery of Health Services (as modified for the ACT) will be used. This framework is supported by the ACT Government and is based on five principles:

- (i) Measure and demonstrate the effectiveness of treatment
- (i) Adopt a biopsychosocial approach (which considers biological, psychological, and social factors and their interactions in understanding an injury’s impacts).
- (ii) Empower the injured person to manage their injury
- (iii) Implement goals focused on optimising function, participation and return to work
- (iv) Base treatment on the best available research.

The treatment section will include an obligation on the insurer to support rehabilitation, and an obligation on the injured person to participate in reasonable treatment and recovery programs.

3.3.1 Deferred or Delayed Surgery

The time limits on treatment in the defined benefits for Model A and Model B may give rise to anomalies around coverage for surgery costs:

- If surgery is needed it often takes some time before doctors reach a decision about the need for and type of surgery
- Even if surgery has been recommended, it may take some months between the decision and the actual surgery.

This anomaly needs to be dealt with, and it is also important to avoid incentives for surgery that is premature, unnecessary or of marginal benefit.

The proposed way of dealing with this in models A and B is to make insurers liable for 'reasonable and necessary' surgery that is identified as being likely to take place within two years of the end of treatment entitlements and which, at time of surgery, is 'reasonable and necessary'. This provides injured people and their medical providers with the option of delaying surgery and determining whether it is reasonable and necessary following injury stabilisation.

3.3.2 Home and Vehicle Modifications

In Models A and B, the defined benefit entitlements would not include home or vehicle modifications. These major costs would be available only for not-at-fault claimants as part of the common law payment. In Models C and D the defined benefits would extend to modifications carried out during the defined benefits period that will have a long term benefit.

3.3.3 Focus on Health and Recovery

The jury put high priority on the scheme providing the best possible support for recovery and return to health. The features of the scheme design supporting this objective are:

- Obligations on insurers to provide and fund services that support this objective
- Adoption of the Clinical Framework for the Delivery of Health Services (as modified for the ACT)
- Use of medical specialists, relatively early in the life of the claim, with an obligation to evaluate and guide treatments
- The requirement for an injured person to mitigate their situation and participate in efforts to optimise their recovery
- A 'moratorium' period of 6 months before common law claims can be negotiated or commenced, the intention being to give 'clear air' for the recovery focus. More detail is in sections 4.7 and 4.8.

3.4 Costs of Care

This benefit type refers to domestic help and personal care that is not provided by a health practitioner. This may be assistance with personal care, housework, shopping, gardening, childcare and the like. It may be help in keeping connections with society. It may include **services for the injured person** and also substitution for services previously provided **by the injured person**.

There are two types of gratuitous care payments – see Table 3.2.

Table 3.2 – Gratuitous Care Payments

Nature of care	Known as...	Comments
Care provided by family to injured person	GvK Griffiths v Kirkemeyer	In either case, the 6/6 rule (threshold) may apply – no compensation is paid unless care is needed for at least 6 hours per week for at least 6 months.
Loss of injured person's capacity to provide care to family	SvG Sullivan v Gordon	

Table 3.3 – Care Costs by Model

	Model A	Model B	Model C	Model D
Available to all: paid care only	6 months	1 year	5 years	5 years
Not-at-fault:	Unlimited	6/6 rule applies to gratuitous care	Limits on gratuitous care: 6/6 rule Minimum wage GvK only	Paid care only Limited to 5 years if WPI <10%

3.4.1 Available to All – Paid Care

The defined benefits will include provision for providing care services to the injured person (e.g. morning assistance with showering and dressing) and to substitute for care they can no longer provide to others (e.g. cooking, school pick-ups). The compensation is only for paid care by an external provider – there is no payment for gratuitous care.

In this area, it is a challenge to find a balance in the legislative provisions that will meet legitimate claimant needs but is not open to rorting. One option is to rely on assessment of “reasonable and necessary” as the control mechanism. Another option is to use some form of secondary legislation or guidelines to prescribe limits. This will need to be considered during drafting of the legislation.

3.4.2 Common Law – Gratuitous Care

The term “gratuitous care” refers to care provided either to or by the injured person on an unpaid basis, usually involving family members.

The first category of gratuitous care is that **provided to the injured person** after the injury (referred to legally as Griffiths v Kirkemeyer² or GvK). Under common law it is compensated at a commercial rate (about \$40 per hour). It is often subject to a threshold that “care is needed for at least six hour per week and for a period of at least six months”, commonly referred to as the “6/6 rule”. Gratuitous care awards can sometimes be very large and are often in the form of a ‘buffer’ (see Section 5.5 for a discussion of buffers and scheme sustainability).

The second category of gratuitous care is for loss of the capacity of the injured person to **provide care to others**, such as children, grandchildren or an elderly parent. It is referred to legally as Sullivan v Gordon³ or SvG and is less common than GvK.

² The name refers to the case that provided the legal precedent to pay for this type of care.

³ Again after the precedent-setting case.

The approach to gratuitous care costs in the common law provisions of the models are:

- Model A: no change from current scheme – only affected by limits in the Civil Liability law
- Model B applies the 6/6 rule for GvK and SvG
- Model C applies the 6/6 rule for GvK based on the minimum wage (roughly \$20 per hour, lower than the commercial rate), and has no cover for SvG
- Model D does not include compensation for gratuitous care, but covers paid care for up to 5 years if WPI is less than 10%. If WPI is 10% or more, the common law settlement may include an amount for continuation of paid care in the future.

3.4.3 Balance between Paid and Unpaid Care

As the common law has developed by new case law (and noting that both GvK and SvG are only a few decades old), these types of payment have been somewhat controversial. They were developed in a time when it was routine for 'care' to be provided by family members on an unpaid basis. Payment for commercial care was unusual.

As defined benefit schemes have evolved, the view has shifted towards a preference for use of paid care. The thinking is that if the care is reasonable and necessary then it should be provided and paid for as needed. The NDIS and all the NIS schemes operate on this basis – the only care paid for is commercial care, with no payment for care provided by family members or friends.

The rationale for the increasing restrictions on gratuitous care under common law in moving from Model A through to Model D is that the better the paid care provided by the defined benefits, the less need there is for common law damages.

3.5 Income Replacement

This payment type compensates claimants for income lost due to not being able to work as a result of their injury. The rate of payment is defined as a percentage of pre-injury earnings (or pre-injury earning capacity); the pre-injury earnings used in the calculations are subject to caps.

Table 3.4 – Income Replacement by Model

		Model A	Model B	Model C	Model D
Available to all: Lost earnings	Duration	6 months	12 months	2 years 5 years if WPI 10%+	5 years
	% of pre-injury earnings	95% first 3 months, then 80% Low income adjustment	95% first 3 months, then 80% Low income adjustment	95% first 3 months, then 80% Low income adjustment	95% first 3 months, then 80% Low income adjustment
	Max weekly income replaced	\$2,250	\$2,250	\$2,250	\$2,250
Not-at-fault: Includes loss of future earning capacity	Duration	No time limit	No time limit	No time limit	Defined benefits only if WPI below 10% No limit if WPI 10%+
	% of pre-injury earnings	100% + super	Defined benefits first 12 months (no super), 100% + super thereafter	Defined benefits first 12 months (no super), 100% + super thereafter	Defined benefits first 12 months (no super), 100% + super thereafter
	Max weekly income replaced	\$4,500	\$4,500	\$4,500	\$4,500

3.5.1 Percentages and Step-Downs

The most common income replacement level used in Australia is 80%, with some schemes having a higher percentage initially and reducing over time. The four proposed models all use the following structure in the defined benefits cover:

- 95% for the first 3 months
- 80% after that.

There is also a “low income adjustment” whereby a rate higher than 95%/80% of pre-injury earnings will apply for low income earners. The adjustment proposed is as follows:

- Weekly income \$800 to \$1,000 gross – 95% throughout
- Weekly income under \$800 gross – 100% throughout.

\$1,000 per week is about two-thirds of average full-time earnings in the ACT, while \$800 is approximately the minimum wage for a full-time worker.

3.5.2 Time Limits

Time limits for payment of income replacement payments run from the date of accident. Those who apply for defined benefits within 3 months are entitled to all income lost from the date of the accident.

Those who apply after this time will only be entitled to income loss from the date of their application, unless there is a reasonable justification. Benefits will cease at the defined time limit, or six months after retirement age (as per the age pension rules) if earlier.

3.5.3 Reimbursement of Sick Leave

Many injured people will have sick leave from their employment. If an injured person chooses, the insurer can be asked to reimburse the employer for any sick leave payments (up to the eligible defined benefit amounts). This enables people to reinstate any sick leave entitlement that may have been used, and allows employers to recover the cost of sick leave payments if the CTP insurance would otherwise have paid the amount.

3.5.4 Common Law ‘Top-Up’ Payments

Claimants with a common law entitlement (not-at-fault claimants) would have a claim for ‘topping up’ the 95% or 80% defined benefit to 100% income replacement, plus superannuation where this applies.

Without other measures, the top-up would apply even for very short term claims with just days or weeks of income loss paid.

In order to limit these top-up claims to only more serious injuries, there will be a modification to common law for models B, C and D stating that for the first 12 months after the accident the entitlement to loss of earnings is limited to the defined benefit amount, with no superannuation allowance. An individual with income replacement paid for less than 12 months would receive just the defined benefits in respect of those 12 months, while a person whose income loss extends beyond 12 months would receive 100% plus superannuation from year 2 onwards (paid on a net of tax basis).

3.5.5 Defining ‘Earnings’

The scheme needs to define ‘pre-injury earnings’ for those who were in work, and to define ‘pre-injury earning capacity’ for those that were not in work, but could have been or would be in future.

For defined benefits, the proposal is:

- For those in regular employment, the average gross earnings over the previous 12 months (or shorter period if employed for less than 12 months), including regular overtime and shift allowances
- For those in irregular employment, the expected average gross earnings over the next 12 months having regard to the previous pattern of employment and earnings
- For self-employed, the average income is taken from the most recent annual tax return; for directors of family-owned companies the business tax returns will be used.
- For students, the award rate for the job they are most likely to be qualified for on completion of their current course of study, starting from the time when they would have joined the workforce.

For common law, the existing legal approaches and rules would apply. It is possible that during drafting there might need to be some modifications to avoid anomalies.

3.5.6 Maximum Weekly Amount

For defined benefits, the maximum gross earnings taken into account is proposed as \$2,250 per week (1.5 times AWE). The maximum benefit paid after the first 3 months would be 80% of this amount, or \$1,800 per week.

For common law the maximum benefit is specified as “to ignore any gross earnings or earning capacity in excess of a maximum amount”. This maximum is \$4,500 gross per week (3 times AWE Adult Total Earnings for the ACT). This is the same limit as that currently in the Civil Law (Wrongs) Act.

3.5.7 Partial Income and Earning Capacity

If an injured person is working (or is able to work) in a reduced capacity, all models would calculate the defined benefit as 95%/80% of the difference between pre-injury earnings and the earnings that the person is (or is capable of) receiving. That is, if actual earnings are A and pre-injury earnings are P, the benefit is 95% or 80% of (P minus A).

In considering whether a person is able to work at full or reduced capacity, the relevant reference is employment to which the person is “reasonably suited by education, training and experience”. Other aspects of the definition such as age, residence or the availability of work will need further consideration during drafting.

3.5.8 Capacity to Work

Defined benefits for income replacement are based on the injured person’s **capacity to work**, whether or not they are actually working:

- A person who is off work because their injury prevents them from working is entitled to income replacement
- An individual who could work but isn’t working is not entitled to income replacement.

The rules and procedures for making this decision are important and can be difficult in practice.

Each of the models will have the same set of rules regarding capacity to work, with the detail left to the drafting stage. The dispute resolution procedures (see Section 4.6) will need particular consideration of this type of dispute. One point to note is that if an insurer makes an evidence-based decision that a person has capacity to work, it may stop payment of income replacement. If subsequently the injured person successfully challenges that decision, they would get ‘back-pay’.

3.5.9 Income Tax

It is likely that an insurer will need to deduct PAYG tax instalments from defined benefits and remit separately to the ATO. All defined benefits are worked out on a gross-of-tax basis but paid net of this withheld tax.

All common law benefits are paid on an after-tax basis as at present.

3.5.10 Superannuation

In defined benefits contexts, income replacement is generally paid without superannuation. We understand that this is for practical purposes rather than a matter of principle.

3.6 Quality of Life (QoL) Compensation

This payment type represents monetary compensation that is not related to a direct financial loss. In the defined benefits context it is usually referred to as a “permanent impairment” benefit. In common law it is referred to as “general damages”, “pain and suffering”, or “non-economic loss”.

Table 3.5 – Quality of Life Compensation by Model

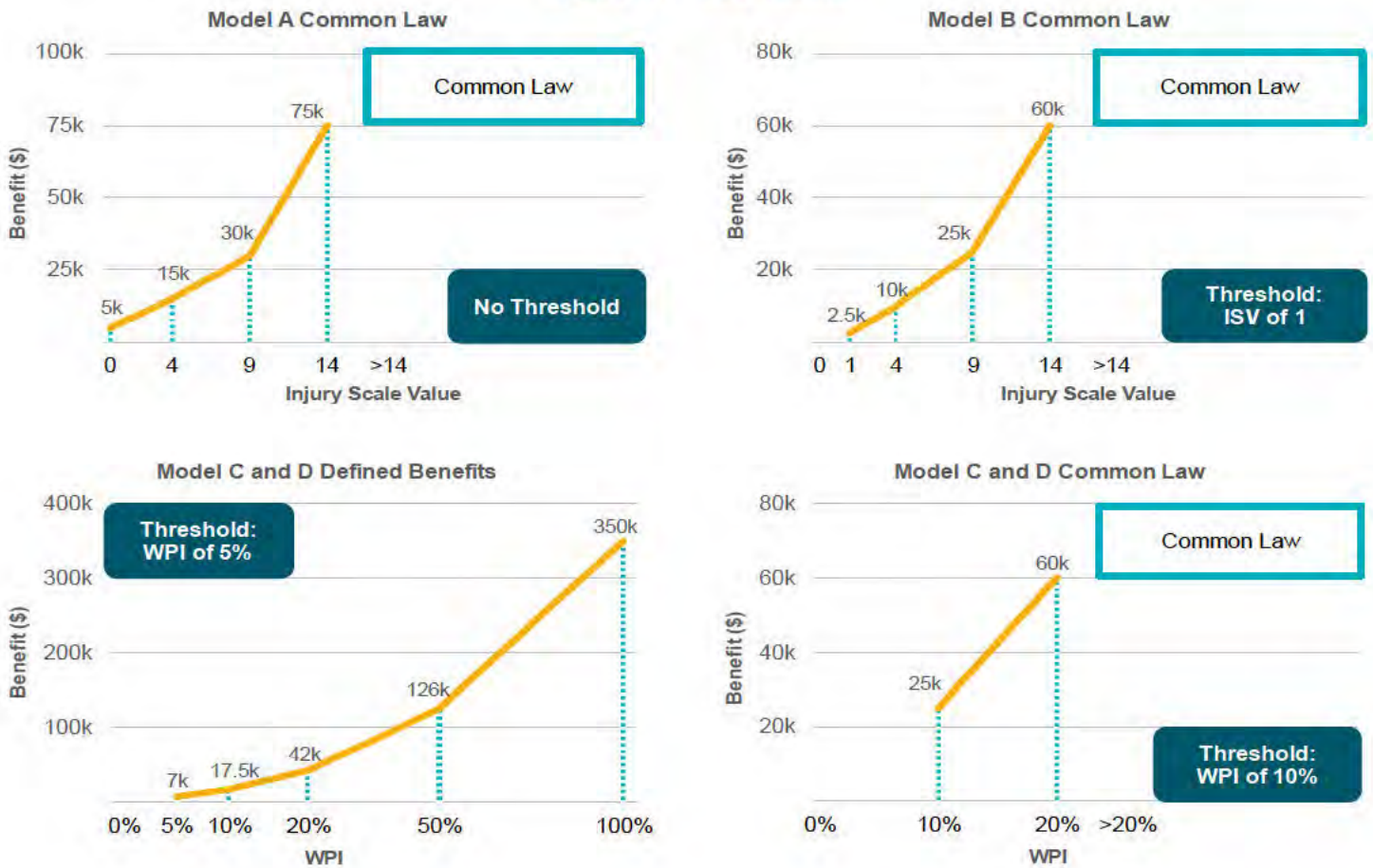
		Model A	Model B	Model C	Model D
Available to all	Threshold	n/a	n/a	WPI 5%	WPI 5%
	Maximum	n/a	n/a	\$350,000	\$350,000
	Calculation of amount	n/a	n/a	WPI scale	WPI scale
Not-at-fault	Threshold	None	None	WPI 10%	WPI 10%
	Maximum	\$500,000	\$500,000	\$500,000	\$500,000
	Calculation of amount	ISV + guidance	ISV + guidance	WPI + ranges	WPI scale

In models A and B, the defined benefits (available to all) do not include QoL compensation, while the common law is modified by requiring use of the ISV and having dollar ranges for ISV up to about 20 (see 3.7.2).

In models C and D there is some QoL compensation available for all people with a sufficiently serious permanent impairment (WPI 5% or higher). The defined benefit is a maximum of \$350,000 with the actual amount based on a scale using the WPI. Those people with a common law entitlement who have WPI of 10% or more are entitled to higher amounts.

Figure 3.1 summarises the QoL compensation scales under each model, both for defined benefits and common law.

Figure 3.1 – QoL Benefits



3.6.1 Interaction of Defined Benefits and Common Law

In models C and D, QoL compensation is available to all. For those who were not at fault there is also access to QoL under common law.

Part of the intention of the defined benefit design is that some people who would be entitled to make a common law claim will be satisfied to accept the defined benefit amount rather than go through the common law process. The proposed rules are:

- Any injured person may claim the defined benefit QoL compensation and receive an assessment from the insurer
- If a person who is not-at-fault accepts the defined benefits QoL amount, they automatically relinquish any right to QoL compensation at common law.

3.7 Severity of Injury

Each of the proposed models uses a measure of ‘injury severity’ to restrict access to certain benefits and/or define the payment amount. The two measures used to do this are (models C and D) Whole Person Impairment (WPI) and (models A and B) Injury Scale Value (ISV), which are outlined at a high level here. For the jury meeting we propose to give some examples of where sample injuries fit on WPI and ISV.

3.7.1 Whole Person Impairment (WPI)

WPI is widely used in Australia in workers compensation and CTP:

- Thresholds which allow access to specific benefit types (notably QoL) or to higher levels of payment (e.g. longer term income replacement) are commonly defined as a minimum WPI score
- The level of QoL compensation is sometimes defined using a scale which is based on WPI (e.g. WPI of 12% gives you \$14,000; WPI of 38% gives you \$186,000, etc). Usually, the QoL amount increases more steeply at higher WPI values.

WPI is a measure of an injured person’s level of permanent impairment as the result of their injury. A person’s WPI is determined by a medical practitioner using a very detailed and specific medical guide.

The assessment is usually based on one of the recent editions of the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides). The two editions commonly used are AMA4 and AMA5; they are mostly consistent but have some important differences in respect of neck and back injuries. All Australian jurisdictions that use WPI also apply modifications to the AMA Guides.

The WPI assesses impairment as a percentage. For example a WPI of 23% means that the person is “23% impaired” compared to a healthy person.

The proposed instrument for applying WPI in the ACT CTP context is the (Australian) National Guideline, developed for workers compensation purposes and now adopted in several jurisdictions. The WPI Guideline is based on AMA5 with modifications covering:

- Psychological injuries
- Pain
- Hearing loss
- Loss of vision
- Elements of the assessment of spinal injuries of low to moderate severity
- Consideration of the ‘impact of life’, mainly based on Activities of Daily Living (ADL).

Why use WPI?

One advantage of WPI is that its use is common, and its application is generally well accepted and understood. There is a large workforce of doctors familiar with and competent to make the assessments, in all parts of Australia.

Using a WPI-based scale with ranges rather than a defined score for each injury can allow for the impact of the injury on an individual claimant’s circumstances.

3.7.2 Injury Scale Value (ISV)

The ISV is used in Queensland in personal injury cases (CTP, workers compensation and public liability). It is a measure of the “level of adverse impact” of injury on an individual, and is used to determine the level of QoL compensation.

The ISV rules identify 162 different injury definitions. For each injury there is a **range** of ISV scores (such as 0-2, 3-7 or 16-30).

An injured person's actual ISV is determined by the court; it is not a medical determination. However medical assessment will be an important input, and in particular the individual's WPI is a consideration.

The injured person is assigned an ISV which is a whole number between 0 and 100. In Queensland there is then a scale which 'converts' the ISV to a QoL damages amount. The QoL amount increases more steeply at higher ISVs. In practice, the actual ISV can be the subject of negotiation/argument as part of a court case.

Why use ISV?

The advantage of the ISV is that it provides a way to combine a medical assessment of the injury (e.g. WPI) with an allowance for the adverse impact of the injury on an individual person's life.

The ISV process requires a certain amount of professional support in establishing the necessary regulation, keeping the regulation up to date and training.

3.8 Benefits on Death

If a person's death is caused by the negligence of another person, the entitlement to damages is governed by Part 3.2 sections 25 to 31 of the Civil Law (Wrongs) Act. There will be no change to these provisions.

The proposal is to introduce death benefits that are available in respect of all victims:

- Funeral – reasonable costs to a maximum of \$15,000
- A lump sum payment if the deceased person has dependants:
 - ▶ \$50,000 in Model B
 - ▶ Up to \$250,000 in Model C (\$150,000 for spouse, \$25,000 per child up to 4 children)
 - ▶ Up to \$350,000 in Model D (\$190,000 for spouse, \$40,000 per child up to 4 children).

Any lump sum will be paid to the estate.

4 Support and Dispute Resolution

The jury put a high priority on providing support for injured people in navigating the system. This links to dispute resolution processes that are needed for defined benefit and common law aspects of the scheme, and both support and dispute resolution are covered in this section. It also deals with medical determinations and disputes.

The proposals in this section are the same for each of the four models, although the emphasis on different parts will vary.

4.1 Dispute Resolution in the New Scheme

The introduction of defined benefits will result in a new category of disputes, as a claimant and the insurer may not agree about eligibility for, or level of, defined benefits. Examples of the types of disputes include:

- Reasonable and necessary treatment and care
- Whether a person is fit to return to work
- Disputes around quantum of weekly income benefits
- The degree of permanent impairment of the injured person (for some of the models).

The same dispute resolution process is currently proposed for each of the models, with a focus on a timely process. It is proposed that defined benefit disputes will be dealt with primarily under the jurisdiction of the Magistrates Court. The Chief Magistrate's role in managing the business of the court would not change. The Chief Magistrate may wish to direct the registrar of the Magistrates Court to take on the central role in case management of disputes – referring parties to alternative dispute resolution, where appropriate.

The use of the ACT Civil and Administrative Tribunal (ACAT) for low value disputes is a possibility which will be considered in the broader context of bedding down processes for managing disputes, recognising that this potentially provides faster resolution for low value disputes.

Common law disputes would continue to go through the courts in the normal way, according to the size of the claim and jurisdictional limits.

4.2 Aspects of Support

We think of the support for injured people in three categories, although there is overlap between them:

- (i) Information – both general and personalised information to assist an injured person and their family in understanding and navigating the system
- (ii) Advocacy – support and advice in obtaining evidence, dealing with the insurer and in lower level disputes (but not necessarily legal advice)
- (iii) Representation – legal representation of an injured person in respect of a claim, and particularly a dispute over a claim.

4.3 Providing Information

It will be a function of the regulator, with assistance from insurers, to provide multiple sources of information that will enable injured people to begin to access the scheme at the earliest opportunity. This may include:

- System-triggered contacts after a first responder (ambulance or police) has responded to an accident
- Agreement with hospitals to provide information to patients on discharge, whether from ED or admissions, and during the delivery of any pastoral care or social worker support
- Information available from GPs and physiotherapists – including the possibility of automatic reminders in practice management software (such as Medical Director) for the practitioner to pass on this information, where a consultation relates to a motor vehicle accident.

The initial notification of a claim can be on-line (including by App as insurers develop their technology) or by telephone, as well as on paper.

As well as initial information, there needs to be follow-up personalised information (such as a help-line) that can give relevant information to the individual, taking into account what is known about their claim and the activities to date. ‘What happens next, and what do I do?’

Insurers will have an obligation to support claimants in this way, but as noted below there will be some people who will not feel confident trusting the insurer to do the right thing by them.

4.4 Support with Advocacy

Having considered the options available for navigating the system and support in relevant parts of the process, we are proposing that (apart from insurers) law firms be the main providers of this service.

A fee will be paid to the law firm by the insurer for this activity.

The support might include assistance with completing documentation, explaining next steps, organising evidence and the like. It does not extend at this point to ‘legal representation’ of the person so that, for example, the insurer and the injured person will deal directly with each other, not solely via the law firm.

Options considered but not proposed were for the regulator to provide this service, to create a new specialised entity or to use existing community-based services.

The regulator currently receives, and will in future receive, complaints from time to time. The role of the regulator is to be helpful with such complaints, confirm that correct processes have been followed and accurate information supplied. This also gives the regulator some visibility of the day-to-day operational performance of insurers. Handling of complaints by the regulator is not a formal conciliation service and the regulator has no role as a decision-maker.

The scheme will explicitly allow an injured person to have support from anybody at, for example, a medical examination or a dispute conference. This could be family, a friend, a not-for-profit help service, a lawyer or other support person. Only a solicitor (or their delegate) would be entitled to payment and only in specified circumstances.

The process during any dispute resolution is covered below in Section 4.6.

4.5 Process of Making a CTP Claim

A claim for defined benefits can be initiated with a relatively small amount of information. This encourages early reporting and early response by the insurer, even though it implies that there will be further information needed later in the process.

The proposal is that there be a deadline of three months from the accident date to lodge a claim for defined benefits, with late claims being accepted only if there is a full and satisfactory explanation. Benefits for income loss will only commence from the date one month prior to the claim being notified to the insurer.

4.5.1 Early Treatment and Care

If a claim is made for defined benefits, the claimant must provide claim information and a medical report from the initial treating practitioner. The insurer will pay a standard fee for such a report.

The insurer will establish a claim file and advise the claim number which can then be used for medical and care providers to bill directly in permitted circumstances.

The insurer will advise the claimant about the circumstances in which treatment and care would need to be pre-approved and an agreed timeframe before another review of treatment progress and plans. Insurers will be encouraged to be reasonable about pre-approval.

If an insurer is billed for a service that is not within the pre-approved boundaries, it will advise the claimant and the practitioner immediately.

Regarding income support, insurers will have a service standard regarding the time to obtain and assess information and (if agreed) to commence payments. Insurers will be encouraged to make interim payments if they are satisfied that there is a loss of income entitlement but do not know the amount (e.g. pay 75% of the amount requested until evidence is obtained).

4.5.2 Denying a Claim Outright

There can be several reasons for an insurer to deny a claim outright, even for defined benefits. For example, the insurer may suspect fraud – the accident did not occur, the claimant was not in the accident, the claimant was not injured, any injury was not caused by the accident – or the insurer may not be the insurer.

The normal standard should be that an insurer makes such a decision within three months of the claim being reported. If after that time the insurer has not made a decision, the claimant or the insurer may lodge a dispute.

4.5.3 Fault and Negligence

If at any time a claimant chooses to pursue a common law claim, they will notify the insurer by way of a secondary claim form. The insurer should normally decide on negligence within three months of receiving that claim. The insurer may reserve its position on contributory negligence until evidence is received.

If, after six months, the insurer has not accepted common law liability (i.e. negligence of another) the claimant may lodge a dispute.

Note that this provision only deals with whether there was negligence. Other aspects of a common law claim, particularly quantum, are dealt with in Section 4.8.

4.6 Disputes about Defined Benefits

Both legal and medical skills are needed for an effective dispute assessment process, and lawyers or doctors may be directly involved as decision-makers or provide expert reports from which others make decisions.

The regulator can play a role in trying to improve consistency of approach and greater efficiency, by publishing de-identified dispute decisions and producing guidance notes for certain medical or other disputes in defined benefit claims.

4.6.1 Internal Review by Insurer

It is now common practice to require ‘internal review’ by an insurer if a decision is disputed. The review must be undertaken by a knowledgeable and authorised person not closely involved with the original decision. There may be more specific procedural and communication requirements, such as timetables and advice on further appeal rights.

A requirement for internal review is included in all four models for defined benefits.

4.6.2 Medical Disputes

In CTP the majority of disputes involve (at least to some degree) medical issues. The types of questions that need to be dealt with include:

- Does the person have an injury?
- Was the injury caused by the motor accident?
- What symptoms and consequences continue, at any point in time?
- Is particular treatment or care reasonable and necessary?
- What is the influence of pre-existing, co-morbid and subsequently occurring conditions, including substance abuse (legal and illegal)?
- What is the appropriate determination of severity of injury, permanent impairment or impact on quality of life?
- To what extent does the injury impair a person’s capacity for work?

At present if there is a dispute of this nature, it is dealt with in the legal system either by negotiation between insurer and solicitor or, if it escalates, by the Court. It is an adversarial process, with each party obtaining its own expert evidence and then providing that evidence for decision-making. This process is known colloquially as ‘duelling doctors’.

Most compensation schemes now have an alternative process for medical disputes, whether it is an ‘independent medical examiner’ a ‘medical panel’ or some other variant.

Development of the details of the dispute process will need to incorporate practical provisions for decision-making on medical disputes.

4.7 Dispute Resolution in the Magistrates Court

As discussed in Section 4.1, it is proposed that defined benefit disputes will be dealt with primarily under the jurisdiction of the Magistrates Court. The Chief Magistrate's role in managing the business of the court would not change. The Chief Magistrate may wish to direct the registrar of the Magistrates Court to take on the central role in case management of disputes, referring parties to alternative dispute resolution, where appropriate.

We also note that the Magistrates Court deals with workers compensation disputes, including defined benefits, and there may be opportunities to improve and leverage this part of the system as well.

It is hoped that the Chief Magistrate can develop a system for managing CTP disputes that allows prompt referral to relevant experts for appropriate and quick decisions.

If there is a common law dispute, the matter would move from one part of the law to the other; the reports of any expert(s) can be used for the common law dispute and the same procedures should be available to the Registrar for suitable cases. The decision-making would, however, be subject to the relevant civil law provisions relating to personal injury cases.

If a claimant has a common law claim, then defined benefit disputes may be left undecided and 'rolled into' the common law claim.

4.7.1 Appeals

A decision of the Magistrates Court (or Supreme Court) on a defined benefit or common law matter may be appealed in the same way as at present.

4.7.2 Independent Medical Examiners

Dealing with medical questions and disputes in the scheme is likely to be based around a system of Independent Medical Examiners (IMEs). IMEs are typically accredited in relevant specialties, taking a broad view of a specialty rather than a narrow one (e.g. an orthopaedic specialist not a knee specialist). IMEs may also be accredited in clinical psychology and some allied health areas such as physiotherapy.

IMEs can be automatically accredited if they are accredited in NSW, and potentially for other jurisdictions.

Details of the system and mechanisms will need to be worked out at a later date, alongside the development of the Magistrates Court procedures. The two must dovetail together.

4.8 Negotiations and Offers

4.8.1 Defined Benefits

Any negotiations, including during internal review, are informal and 'without prejudice'. An insurer may offer a 'closed period' or 'partial' settlement in limited circumstances. If a claimant accepts such an offer they may not subsequently dispute the resolution unless their circumstances have changed significantly after the offer was made.

4.8.2 Common Law Negotiations

There will be a moratorium period of 6 months before common law negotiations can commence. The purpose of the moratorium period is to allow 'clear air' for a focus on health and recovery without complicating the situation by also dealing with a potential future claim.

If, after the moratorium period, the parties agree that an injury has stabilised sufficiently that a common law process can commence without undue waste of time and effort then, by notice and acceptance, a common law negotiation process is commenced. Failure to agree on stabilisation can be taken to dispute resolution by either party.

From that time there will be a period of six months for the parties to obtain and exchange evidence and negotiate in good faith. This negotiating period may be extended by mutual agreement for up to a further six months.

By the end of the negotiating period each party is obliged to make an offer of settlement that is open for at least one month. If agreement is not reached, either party may initiate a common law claim with the Magistrates Court.

4.8.3 Existing Civil Law Provisions

The *Civil Law (Wrongs) Act* contains provisions about pre-trial procedures, negotiations, offers and the like. There are corresponding provisions regarding legal costs.

Those provisions will be considered carefully during drafting, with the goal of making CTP consistent with them unless there is a good reason to deviate.

4.9 Regulation of Legal Costs

The question of regulation of legal costs is an important one for any compensation scheme, as it is with most litigation undertaken by individuals.

4.9.1 Definitions

Legal and investigation costs are incurred by both the injured person and the insurer. If the injured person has a successful claim, the insurer is obliged to pay the reasonable legal costs and disbursements of the injured person. These are referred to as ‘**party-party costs**’ and comprise (1) legal fees on a scale that includes hourly rates, and (2) disbursements that are reasonable for the claim involved. It is common for not all disbursements to be included, and for the calculated legal fees to be less than the actual hours worked at market rates.

The injured person will have a legal services agreement with their lawyer which includes, among other things, the basis of remuneration for the law firm. To the extent that the remuneration according to the contract is greater than the party-party costs, it is paid to the law firm by the injured person, and is referred to as ‘**solicitor-client costs**’. The solicitor-client costs are nearly always deducted from the settlement amount after it is received – the insurer pays to the lawyer’s trust account, the law firm takes its solicitor-client costs and pays the remainder to the injured person.

4.9.2 Proposals

Specific provisions for legal costs need to follow from other elements of the system design, rather than leading the design.

In respect of **defined benefits** the proposal is as follows:

- (i) A law firm will receive a fixed fee to provide the initial support and advocacy service described in Section 4.4

- (ii) If a claimant uses assistance from a law firm with a defined benefit dispute, the law firm will receive a reasonable fee for a dispute that goes beyond internal review. There will be a maximum over the life of a claim. The details for determining this ‘reasonable fee’ will need to be worked out once other details of the mechanism have been drafted and fleshed out with the Magistrates Court.

For **common law** claims there is no proposal to change from the current regulation of legal fees, which in summary are:

- Party-party costs are based on a scale in the Court rules, and are agreed by negotiation between the insurer and the law firm, or failing agreement determined by the Court.
- Solicitor-client costs are based on the legal services agreement and are paid after resolution of the claim
- For claims with a settlement or award under \$50,000, the regulation limits legal fees (solicitors and barristers combined) to a cap of \$10,000 including GST. If party-party costs are less than \$10,000 the balance may be made up in solicitor-client fees.

The SRG discussed at some length the merits of, and alternatives for, regulation of legal costs. The arguments are complex, and none of the proposed models has adopted any changes to current regulations. Noting the transparency provisions (see Section 4.10), future oversight and supervision of the scheme performance may identify a need for further regulation.

4.10 Transparency of Legal and Other Costs

The objectives stated by the jury (value for money and efficiency) call for transparency about where the CTP dollar is spent.

Payment for referrals will be explicitly prohibited.

For all models the new scheme will require:

- Disclosure by insurers of their relevant finances, both in terms of annual totals and on a per-claim basis through the claims register
- Disclosure by claimant representatives of their costs, showing separately the party-party and solicitor-client costs and the breakdown of each.

The individual disclosures will be strictly confidential to the regulator, and the regulator will use aggregates and averages to fulfil its reporting functions.

5 Premiums and Scheme Costs

5.1 The Current Premium System

The amount paid by a motorist when they register their car is made up of:

- The registration fee
- The CTP premium – set by the insurer to meet its own financial obligations and profit target
- A levy to fund the regulator and the nominal defendant scheme
- A levy to fund the Lifetime Care and Support Scheme
- A levy to fund emergency recovery and Road Safety programs
- GST.

5.2 Limitations on Reform

The boundaries set by government mean that a reformed system will be competitively underwritten, community rated and with an expected premium no higher than at present. For this reason, this is a short section included only for completeness.

It is assumed that there would be no changes to registration, taxes or LTCS levy.

5.3 Road Safety Funding

The scheme objectives established by the jury put a priority on road safety (objective 4).

Road safety already benefits from a levy paid with registration. The money goes into a special trust, and the use of that money has its own governance arrangements, in which the CTP regulator plays a part.

For this reason the models do not include any specific provision relating to road safety funding. The decision about the appropriate level of funding through registration is a policy question best dealt with separately from the CTP review.

5.4 Funding Other Scheme Costs

It is reasonable for CTP premiums under a revised scheme to be the source of funding for 'external' scheme costs such as:

- The direct cost of the scheme regulator
- Additional resources needed by the Magistrates Court
- The cost of alternative dispute resolution.

5.5 Scheme Sustainability and Buffers

"Buffer" is the term used for an amount of damages that is not worked out on any specific numerical basis but is a 'just in case' amount. For example a person with a recovered knee injury might be awarded a lump sum of \$20,000 for future treatment by way of a buffer, in case the knee deteriorates in later life and needs to be replaced.

It is common, after scheme reform that tightens rules about QoL damages, for Courts to be more liberal in awarding buffers – say, for future economic loss, future medical costs, and future care. This is the phenomenon where “you squeeze the balloon and it bulges out somewhere else”.

Sometimes reform legislation includes specific provisions intended to control the emergence of buffers, but these are generally limited in their success. It is proposed that Models C and D will include legislative provisions to discourage buffers, despite their limited success elsewhere.

6 Other Coverage Issues

Beyond the issues of no fault coverage there are some details that need to be determined, including:

- Blameless accidents – this was covered in Section 3.1.1
- Exclusions or limitations for illegal behaviour
- Contributory negligence
- Redemption or commutation
- Fraud minimisation.

6.1 Illegal Behaviour

6.1.1 Exclusions in No-Fault Schemes

The Australian CTP schemes that provide benefits to injured people regardless of fault (Victoria, NSW, Tasmania, NT) all have specific provisions in the law to partly or totally exclude benefits to drivers (and sometimes passengers) in the following situations.

Table 6.1 – Exclusions for Illegal Behaviour

Situation	Victoria	NSW	Tasmania	NT
Unregistered vehicle	No income replacement	Total	?	Total
Unlicensed driver	No income replacement	No exclusion	Total exclusion	Partial (b)
DUI Alcohol or drugs	Partial (a)	Partial	Partial (a)	Partial (b)
Serious driving offence	No income replacement	Total	Total exclusion	Partial (b)
During commission of a crime	No income replacement	?	Total exclusion	Total exclusion
Seatbelt or helmet	No exclusion	Partial	None	Partial (25%)

(a) Reductions to income replacement – 1/3 for low-range, 2/3 for mid-range, 100% for high-range

(b) Applies to income replacement and permanent impairment only

None of the schemes provide coverage for motor sports, and there is no plan for the ACT scheme to be any different.

The proposal is that, for all models, in respect of the benefits available to all the exclusions are:

- Exclusion of all benefits for 'more serious' offences (e.g. commission of a crime)
- Exclusion of income replacement and QoL only for some offences (e.g. serious driving offence)
- Partial reduction of income loss and quality of life for seatbelt, helmet and low range DUI.

Further consideration will be needed at the drafting stage.

6.1.2 Exclusion for Acts of Terrorism

The current law specifies that the CTP policy does not cover injuries caused during commission of a terrorist act. This provision was introduced in most states and territories after 2001, when international reinsurance markets withdrew coverage for terrorist acts.

If the ACT government wishes to remove this exclusion, and cover injuries caused during a terrorist act, there are three main alternatives:

- (iv) Agree with insurers that they will cover terrorist acts, which in turn would require insurers to get agreement from reinsurers that relevant reinsurance will cover terrorist acts
- (iii) Request that the Australian Government and the Australian Reinsurance Pool Corporation (ARPC) agree that the ARPC will give reinsurance cover to ACT CTP insurers for claims arising from acts of terrorism
- (iv) Make the nominal defendant responsible for claims arising from acts of terrorism, with the understanding that future levies will have to be increased, possibly substantially, to pay for claims.

6.2 Contributory Negligence

Contributory negligence is a **common law** concept whereby the damages paid to a claimant may be reduced due to them contributing to the accident (or to the seriousness of their injuries) through their own legal negligence. It is usually expressed as a percentage reduction in the damages, e.g. 20% or 50%.

Note that deductions and exclusions from defined benefits for illegal activities are dealt with in Section 6.1, and would operate alongside the contributory negligence provisions.

6.2.1 Defined Benefits

To the extent that defined benefits are available to all injured people (regardless of fault), the idea of contributory negligence is meaningless. However there may still be deductions for behaviour such as not wearing a seatbelt, which is covered in Section 6.1.

6.2.2 Common Law Benefits

For common law benefits (available only to those who can prove fault by another party) the concept of contributory negligence is relevant.

Under all the proposed models extent of contributory negligence, if any, would be determined by the legal process including the Court system.

The percentage will then be applied to reduce the common law damages amount. The percentage reduction would be applied to the amount by which the common law damages exceed the defined benefits:

$$\text{Deduction} = \text{Contributory Negligence \%} \times (\text{total claim} - \text{defined benefits}).$$

As noted in Section 3.1.2, the proposals include a provision that contributory negligence cannot be applied in the case of a minor.

6.3 Redemptions or Commutations

This topic deals with the ability of an insurer and a claimant to agree to completion of a defined benefit claim by payment of an agreed lump sum (which effectively replaces all expected future payments). The two terms “redemption” and “commutation” are used interchangeably, and here we use the latter.

In practice the use of commutations has, in many schemes, become the ‘norm’ and defeated some of the goals of defined benefits arrangements whereby payments are provided as the need arises.

The proposed models will generally not permit commutation of defined benefit entitlements. Of course if an injured person has a common law claim then whenever the claim is resolved it will be completed by payment of a lump sum that replaces any future defined benefits. For models C and D it is expected that many if not most common law claims would be resolved before the end of the defined benefit period.

6.3.1 Early Resolution

The jury emphasised the desire for early resolution of claims. At the very least, the design needs to minimise barriers to early resolution and, at best, may include specific provisions to encourage (or mandate) early resolution.

Most claims, other than the most minor, seem to be suited to a resolution between 12 and 24 months after the accident. Injuries have generally stabilised, employment patterns have settled and evidence is available. For most claims medical costs and income replacement should have been paid regularly along the way, and part of the design rationale is that many people will not see the need or benefit of pursuing a common law claim since their needs have been met.

6.3.2 Expedited Finalisation

There will be circumstances where an injury is stable, the course is relatively predictable and both insurer and claimant are ready to wrap up a defined benefit claim even though there is still some time to run.

While the legal effect of an expedited finalisation may be similar to a commutation, the concept and application is different because the amounts involved are relatively small and there is no negotiation based on perceived probabilities of potential outcomes.

Under all four proposed models:

- An insurer and a claimant may agree on an expedited finalisation within three months of the end of a defined benefit entitlement period.
- Neither an insurer nor a claimant has the right to **require** an expedited finalisation, and if they do not agree there is no dispute process.

6.4 Fraud Minimisation

The jury established an objective to minimise fraud, and the potential for fraud, in the scheme. Insurers and the regulator have a joint responsibility to detect fraud, deter recurrence and, if thought fit, work with the police. This activity will be included in the remit of the regulator and can take advantage of work already done in NSW.

In terms of fraud prevention, there are several aspects of the scheme design that are intended to make fraud more difficult and less attractive. These include:

- Earlier reporting of claims in order to access defined benefits
- The need to determine eligibility for defined benefits early makes it more likely that investigations and enquiries will identify possible fraud
- The restrictions on a lump sum claim for loss of earnings
- The threshold (depending on the model) for lump sum QoL compensation.

A Appendix A – Glossary of Terms

AWE	Average Weekly Earnings – measured for the ACT as a whole or a subset of the working population and published by the Australian Bureau of Statistics.
Common law	The system of law developed by courts and judges. Personal injury claims at common law require proof that the injury was caused by someone else's negligence.
Common law benefits	Compensation available via the legal and court system.
Contributory negligence	Where claimants have, through their own negligence, contributed to the harm they suffered.
CTP	Compulsory Third Party Insurance
CTP benefits	Compensation that an injured person can claim under a CTP policy.
CTP insurers	Private insurance companies licensed by the ACT CTP Regulator to provide CTP insurance in the ACT. Current insurers are AAMI, GIO, APIA and NRMA.
CTP policy	Mandatory insurance paid when a vehicle is registered. It covers people (including pedestrians, passengers and cyclists) injured in an accident with a motor vehicle. Policy terms are set by legislation. Currently, the ACT policy covers those injured through someone else's negligence.
CTP premium	The amount motorists pay for CTP. Premiums are set by insurers and must be approved by the ACT CTP Regulator.
CTP Regulator	Independent office set up to regulate CTP insurance in the Territory, such as licensing insurers and reviewing CTP premium changes.
Defined benefits	Entitlements to compensate for injury defined by legislation and available outside common law (that is, it is not necessary to prove negligence of another).
Domestic care benefits	Domestic services or care benefits cover domestic help and personal care that is not provided by a health practitioner. This may include domestic help with housework, shopping, gardening and childcare. It may also include assistance with personal care, such as showering.
Gratuitous care	Refers to care provided either to or by the injured person on an unpaid basis, usually involving family members.
IME	Independent Medical Examiner. IMEs are typically accredited in relevant specialties, taking a broad view of a specialty rather than a narrow one.
Income Benefits	Benefits provided to compensate for lost income if an injured person cannot return to work or cannot work as much as a result of their injuries.
Injury Scale Value (ISV)	ISV is a measure of the 'level of adverse impact' of an injury on an individual, and is used to determine the level of quality of life compensation.
Lifetime Care and Support Scheme (LTCS)	The LTCS offers early intervention and lifetime treatment and care to eligible persons who have sustained catastrophic injuries in a motor vehicle accident in the ACT. The Scheme provides coverage on a no-fault basis. That is, not-at-fault, at-fault, single vehicle and blameless accidents are all covered.
Nominal Defendant	An entity created to provide compensation to those injured if the at-fault vehicle cannot be found or is uninsured. In the ACT it is the ACT Insurance Authority (ACTIA).
Pre-injury earnings / earnings capacity	Used to calculate the income benefits. Pre-injury earnings are the earnings the injured person made prior to the accident. Pre injury earnings capacity is the pre injury capacity of those not in work, but who could have or would have been in work in the future.

Quality of life compensation	This payment compensates an injured person for non monetary loss, such as a reduction in their quality of life due to ongoing impairment or pain. At common law, it is known as “General Damages”.
Settlement	Financial payment at common law to cover the losses arising from a personal injury claim such as motor accident injuries.
Thresholds	Minimum injury severity levels that must be met to access some benefits (in some models).
Treatment Benefits	These are benefits to cover the cost of reasonable and necessary treatment as a result of injuries sustained in a motor vehicle accident. They include things like medical costs and allied health costs.
Whole Person Impairment (WPI)	A measure of an injured person’s level of permanent impairment as a result of their injury and is based on the American Medical Association (AMA) 5 guidelines (modified).

Estimated costs of alternative benefit designs for the ACT's Compulsory Third Party (CTP) Insurance Scheme

ACT CTP Citizen's Jury

13 March 2018

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1. Executive Summary

1.1 Introduction and scope

The Chief Minister's Treasury and Economic Development Directorate has requested Ernst & Young (EY) to provide estimated costings of alternative insurance scheme benefit design models for the ACT Compulsory Third Party (CTP) Scheme. These costings will be presented to a Citizens' Jury considering how the ACT CTP scheme can be improved to best balance the interests of all road users.

The scope of our role is to provide an assessment of the cost of the four proposed alternative model designs for the ACT CTP scheme as developed by the scheme designer with the Stakeholder Reference Group, compared to the premium of the current ACT CTP scheme. That is, a breakdown of the overall premium or estimated cost for each alternative benefit design to derive an estimated risk premium (i.e. claims cost) by payment type plus loadings for insurer expenses and profit, scheme levies and GST. The split of the current cost or premium for the ACT CTP scheme serves as a baseline for the scheme and is used as a comparison when assessing the new benefit design against alternative model designs.

Under all models, an estimate of the relative cost is only presented for the passenger vehicle class (i.e. class 1).

This report explains the data, assumptions and methodology used to derive the costing for the current scheme and each of the four proposed model designs. It also contains a number of metrics that flow from the costings that the Citizens' Jury can use to assess each model in their deliberations. This report should be read in conjunction with the report prepared by the scheme designer, which outlines the detail of the four proposed alternative model designs for the ACT CTP scheme.

1.2 Citizens Jury

In late August 2017, the ACT government announced a review of the CTP scheme by setting up a 'deliberative democracy' process. Once the 50 citizens' jury members (the jury) were randomly selected by the facilitators, the jury met during two weekends in October. The jury issued a report on 29 October 2017 titled "Citizens' Jury on Compulsory Third party Insurance Final report" (the jury's report) setting out the objectives it had agreed for a reformed CTP scheme to best balance the interests of all road users.

Since the jury's report was issued the 'scheme design expert', Geoff Atkins of Finity Consulting, has prepared four possible scheme designs for the jury to consider as set out in the report "Model Designs - Citizens' Jury for ACT CTP scheme", dated 9 March 2018 (referred to as the scheme design in this report). His work was undertaken in close consultation with the Stakeholder Reference Group (SRG) and EY. The SRG's role and responsibilities under the deliberative democracy process include model development, identifying witnesses, appearing as witnesses (where appropriate), providing evidence and advice, and building understanding and awareness of the jury process in the wider community. There are 10 members of the SRG comprising of two representatives from the health industry, two legal profession representatives, a single representative from each of the ACT CTP insurers (IAG and Suncorp), two representatives from government, the scheme design expert and EY. It is recognised that not all SRG members supported all aspects of the design options presented in the scheme design report.

EY's role is to produce an estimated cost of the four proposed model designs set out in the scheme design expert's report and to compare the cost to the existing premiums in the ACT CTP scheme. This report sets out the results of our work as noted above.

At the final citizen's jury meeting in late March 2018, the jury will consider the four proposed model designs and the associated cost estimates set out in this report and decide which of the four models

best meets the objectives they identified in their October 2017 jury's report. The Government will pursue the jury's preferred model.

The ACT government set out some constraints of the design of the scheme design models options as follows:

- ▶ Premiums are not to increase over current levels
- ▶ No change in type of vehicles covered (e.g. not to include off road bikes, bicycles)
- ▶ The review excludes the design of the Lifetime Care and Support scheme (LTCS scheme)
- ▶ The scheme will continue to be underwritten by private insurers.

1.3 Nature of cost estimates presented in this report

1.3.1 Existing scheme costs

For the existing scheme we have not undertaken a ground up estimate of the current ACT CTP scheme claims costs and overheads. Instead we used the existing premiums charged by the insurers as the basis of the current scheme costs. To be able to undertake a detailed comparison of existing scheme costs against the four model designs the average cost of claims component in insurers' current premiums has been split by type of payment based on the historical ACT CTP scheme experience (which has been relatively stable in recent years). Insurer expenses and profit margins have been taken from insurer's existing premium filings to the ACT CTP Regulator. To the extent that the existing scheme's future development differs from past claims experience, this development has not been incorporated in the costings. For a full discussion on the uncertainty in the costings see Section 5.

1.3.2 Four proposed model designs

The four proposed model designs are outlined in Finity Consulting's report "Model Designs - Citizens' Jury for ACT CTP scheme", dated 9 March 2018. We present a summary of the four proposed model designs in section 2 of this report and further detail is included in the above report.

The cost per policy results for the four proposed model designs presented in this report:

- ▶ Represent the average cost for all passenger vehicles (from approximately 290,000 registered vehicles)
- ▶ Reflect a mature scheme where motorists and the general public are fully aware of their rights under the Scheme, relationships between the service providers are well established and the infrastructure of the regulator is fully operative. This means that the estimated cost of the four model designs in the first few years may be different (i.e. likely lower) than our cost estimates (as discussed below and described further in Section 4)
- ▶ Do not represent the premium that will actually be charged in the four model designs since:
 - ▶ Premiums are set by licensed insurers who operate in the ACT CTP Scheme within the guidelines set by the ACT CTP Regulator; these guidelines aim to ensure that premiums fully fund the reasonable cost of claims, expenses and a reasonable insurer profit margin (i.e. profits are not inadequate) and that premiums are not excessive. In the ACT, insurers operate competitively and are allowed to offer different prices based on the class of vehicle (i.e. no other risk factors can be used by insurers to vary vehicle owner premiums)
 - ▶ The estimated cost is the average for all passenger vehicles which by definition means the actual cost for some vehicle owners will be higher than the average cost and the actual

cost for others will be lower than the average cost. This arises from the different premiums charged by each insurer

- ▶ The estimated cost in the four model designs does not allow for the treatment of any unearned premium surplus arising for insurers following the transition to the selected model design (see Section 4.3.2 for further details)
- ▶ There may be other factors that the ACT CTP Regulator will take into account in guiding insurer premiums during the first few years of the new Scheme. The premium guidelines will determine the actual premiums individual vehicles owners pay in the new Scheme
- ▶ In the first few years of the new Scheme it is possible the volume of claims will be lower than assumed for both not at-fault and at-fault drivers; this could mean that the cost for each of the four model designs in the first few years is lower than the estimated cost set out in this report. Refer to Section 4 for more details
- ▶ Premiums to be paid by vehicles owners will depend on the details of the regulations and guidelines that will be issued under the new Act, for both benefits and premium system. Any differences in the assumed details of the content of the regulations and guidelines on which the costings in this report are based will result in changes to the estimates of the cost per policy and ultimately the premiums vehicle owners pay
- ▶ The existing LTCS Scheme is excluded from the deliberative democracy process. The most seriously injured road users will continue to be supported by the LTCS Scheme in its current form.

As noted in Section 1.6.2 below and Section 5 there is considerable uncertainty in estimating costs for a new CTP scheme and it is possible that the actual average cost per policy in the first few years of the four model designs will be higher or lower than our estimated costs set out in this report excluding the impact of factors extraneous to the reforms (e.g. changes in interest rates, changes in state/federal government taxes, changes in ACT road accident crash rates, etc.). Past experience of reforms to personal injury schemes such as CTP and workers compensation in Australia and internationally, indicates that the cost for the first few years of a scheme are typically lower than the estimated cost. The reasons for this are set out in Section 5 of the report.

1.4 Jury's scheme objectives and priorities

The jury's report set out the objectives it agreed on and listed them in the following order of priority:

1. Early access to medical treatment, economic support and rehabilitation services
2. Equitable cover for all people injured in a motor vehicle accident
3. A value for money and efficient system
4. Promote broader knowledge of the scheme and safer driver practices
5. Implement a support system to better navigate the claims process
6. A system that strengthens integrity and reduces fraudulent behaviour

We have calculated and included a number of metrics are derived from the costing and directly address the first three objectives above. The purpose of showing these metrics is to assist the jury assess each of the four design scheme models. In addition we have included other metrics that will assist the jury assess the impact each has on claimants that we have found useful in other CTP reforms. These metrics are summarised below and in Section 4.1.1 of the report.

1.5 Structure of this report

This report consists of the following sections:

- ▶ Section 1 sets out the executive summary. A glossary of terms is included at the end of the executive summary
- ▶ Section 2 sets out the scope of our work, background, a summary of each of the four model designs and the benefit design of the current scheme
- ▶ Section 3 documents the data, approach and key assumptions adopted to estimate the current average passenger vehicle CTP premium breakup for the current ACT scheme and the four model designs, including a split of the claims cost by payment type, insurer expenses, profit margins and various levies
- ▶ Section 4 sets out the results of the costing of the four model designs compared to the current scheme premium breakup. It also includes the results of the metrics of each model and a discussion of the results.
- ▶ Section 5 considers risks and uncertainty - a discussion of the sources of uncertainty in the costing results
- ▶ Section 6 sets out the reliances and limitations of this report.

1.6 Results and other metrics

This section contains the results of our costing for the four model designs compared to current scheme premium. In addition, this section illustrates the results of various metrics derived from the costings for the four models in response to the jury's objectives. As discussed in previous sections, our costings are based on a mature scheme environment where the motorists and the general public are fully aware of their rights under the selected model, relationships between insurers and medical and allied health providers are well established and the general infrastructure of the ACT CTP Regulator and insurers is fully setup.

Our estimated cost for the four model designs is not the actual premium that would be charged to individual vehicle owners due to various factors including a potential honeymoon period, competitive pricing, awareness of benefits, regulations, guidelines, etc. Refer to Section 4.3 for a full discussion on the difference between the estimated cost and the actual premium paid under any selected model.

More detailed results of the costing for each model design are contained in Appendix B.

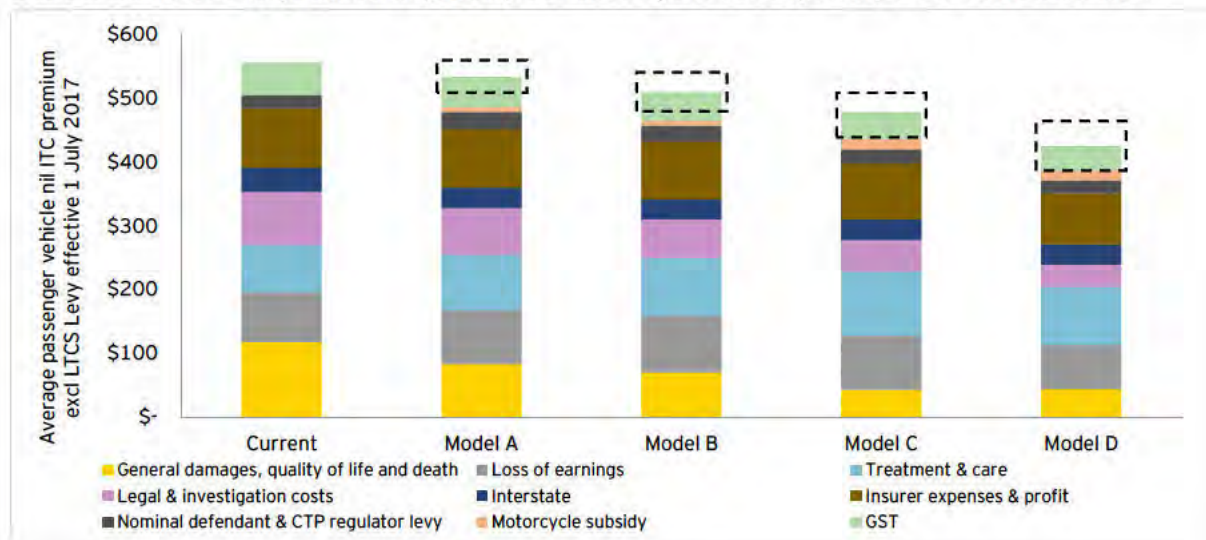
1.6.1 Estimated premium by modelled scenario

The following chart summarises the results of our estimated costs for the four model designs compared to the current scheme premium. The results show:

- ▶ Cost of claims broken up into four groups of benefits and costs which include defined benefits and common law awards plus legal costs for both not at-fault and at-fault claimants:
 - ▶ General damages, quality of life and death (including funeral expenses and compensation to dependents) at common law and defined benefits
 - ▶ Loss of earnings

- ▶ Treatment and care which includes all medical, private and public hospital, allied health services (e.g. occupational therapy, physiotherapy, etc.) domestic and personal care. Note the public ambulance is excluded as these services are funded via a separate levy as part of vehicle registration fees
- ▶ Legal and investigation costs which include insurer and plaintiff legal costs and insurer investigation costs. The benefits described above (general damages, loss of earnings, treatment, care, etc.) are shown inclusive of solicitor-client fees which would be deducted from settlements
- ▶ Interstate claims costs are shown separately. These are claims ACT insurers are liable to pay where an ACT-registered vehicle causes an accident while travelling in another state. These costs are unaffected by any reforms to the ACT CTP scheme as the benefits of the state in which the accident occurs apply
- ▶ Insurer acquisition expenses, insurer claims handling costs and insurer profit margin included in premium filings to the ACT CTP Regulator
- ▶ Nominal defendant levy which is the cost of claims for uninsured vehicles or for unsighted vehicles that caused an injury to a person
- ▶ Motorcycle subsidy. For motorcycles, the introduction of defined benefits for at-fault drivers results in a substantial increase in the cost of claims for motorcycle accidents. This arises because data in ACT and other states show that most motorcycle accidents are single vehicle accidents (i.e. the motorcycle rider is at-fault) and hence there are many more at-fault injured motorcyclists than not at-fault motorcyclists (up to 10 times more). In addition the average claim size experience of motorcycle claims is about twice the amount for other claims. Consequently the premium that would need to be charged for motorcycles in each of the four model designs would need to increase significantly above current premiums for motorcyclists. To meet the government's objective of no increase in premiums we have estimated the size of the subsidy passenger vehicles would need to pay to cap motorcycle premiums at current levels. We expect the premiums in some commercial classes (e.g. large trucks, buses and taxis) to fall by more than the percentage reduction in passenger vehicles under each model as drivers of such vehicles are more likely to be covered through workers compensation and hence the impact of including the at-fault driver is low
- ▶ Regulator levy and GST

Chart 1: Estimated CTP premium for passenger vehicles by model design compared to current scheme



The dotted line illustrates the uncertainty in the estimated costings - actual premiums could be higher or lower than the average estimated premiums as shown above. The range gets progressively wider going from Model A to Model D, with Model A estimates having the least uncertainty and Model D estimates having the most uncertainty. This is driven by the level of change under each model design compared to the current scheme.

More detailed results are set out in Appendix B including the split of claims costs between at-fault and not at-fault claimants and between defined benefits and common law claims costs. Note that the above premiums and costs exclude the LTCS levy.

Our key observations from the above chart in respect of passenger vehicles are:

- ▶ Average estimated premiums for all models represent a reduction from the current level of \$556.
 - ▶ Under Model A the estimated premium lies in the range of \$510-\$560 with an average reduction of about \$20.
 - ▶ Under Model B the estimated premium lies in the range of \$480-\$540, with an average reduction of about \$50.
 - ▶ Under Model C the estimated premium lies in the range \$440-\$510, with an average reduction of about \$75.
 - ▶ Finally under Model D the estimated premium lies in the range \$385-\$465, with an average reduction of about \$130.
 - ▶ Across all models, the largest reduction in the estimated claims cost arises from a decrease in general damages and legal costs.
- ▶ The differences in estimated costs in each model reflect:
 - ▶ Progressively more at-fault benefits available under the designs going from Model A to Model D
 - ▶ Progressively more defined benefits available under the designs going from Model A to Model D, which partially replace common law under each model - particularly under Models C and D
 - ▶ Lower general damages under Models C and D compared to Models A and B, particularly for less severe injuries (see scale of amounts in Appendix A)
 - ▶ Lower common law benefits under Model D compared to all other models due to a threshold restricting access to these benefits for not at-fault claimants to the most seriously injured
- ▶ The reduction in estimated legal costs going from Model A to Model D reflects a reduction in the cost of claims paid at common law (replaced by defined benefits) and hence overall legal costs for the scheme reduce for both insurers and plaintiffs. Legal costs related to defined benefits are significantly lower than legal costs for common law awards
- ▶ The reduction in the cost of claims across the four models results in a reduction in the dollar cost of insurer profits and GST as these are a percentage of premiums
- ▶ Overall there is little change in insurer expenses (excluding insurer legal expenses as they are treated as a claims cost). For claims handling costs, there is more work for insurers managing defined benefit claims so this increases slightly for all models (despite the reduction in claims

costs under all models). We have assumed there is no change in insurer acquisition expenses (see section 4.2.6 for further details)

- ▶ The cost of the nominal defendant levy reduces in line with the reduction in claims cost in each Model. For interstate claims under all models we have allowed for a reduction of \$5 compared to current scheme costs. This reduction represents the lower claims costs in the NSW scheme (where most interstate claims are expected to arise) which we assumed was not incorporated in insurers' current premiums (which were as at July 2017). In addition the subsidy for motorcycles adds about \$7 to Models A and B to about \$16 in Models C and D. There is also an estimated increase in the Regulator levy to \$10 in each model due to additional functions (such as an enhanced information role and some dispute resolution mechanism supports) and enhanced ICT requirements due to the introduction of defined benefits.

1.6.2 Other scheme metrics

The metrics below have been estimated to assist the jury with their assessment of each model. The metrics address the first three priorities set by the jury. In addition we have included various metrics on claim numbers and other characteristics of the models.

1.6.2.1 Early access to treatment, care and loss of earnings

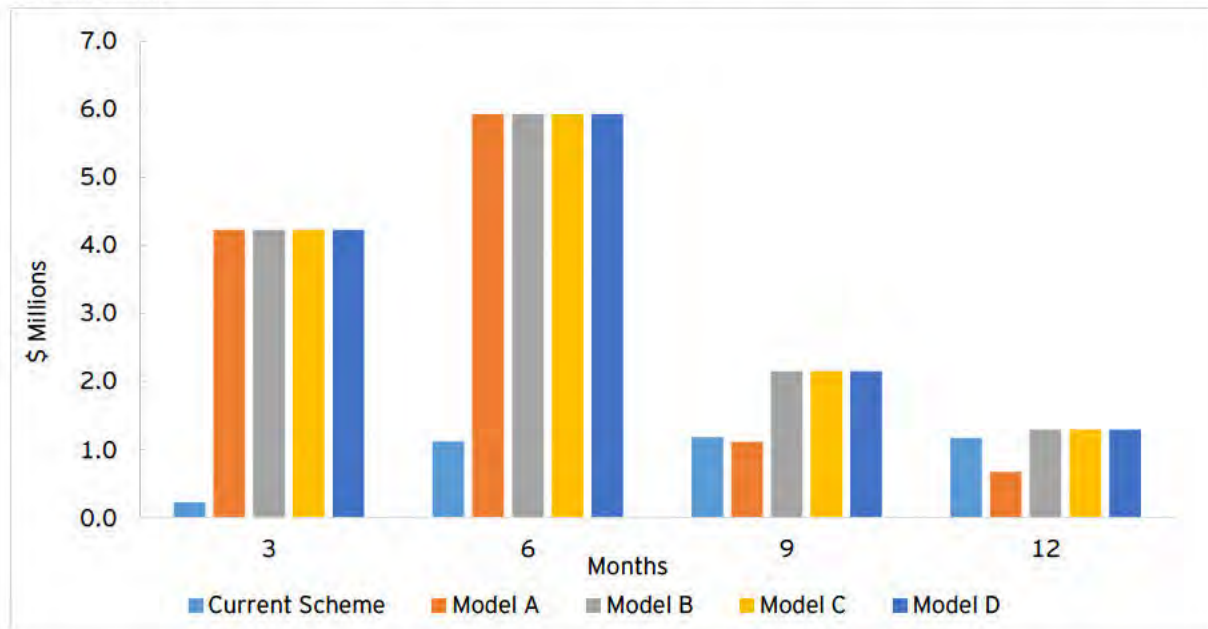
The jury's first priority in its report was "early access to medical treatment, economic support and rehabilitation".

The following chart sets out the estimated benefits paid by quarter for the first year after the claimant's accident for claims which occur in the same 3 month period. There is a significant delay between the medical service provided to a claimant and the payment of the fee by the insurer for that service. Our past analysis has estimated the delay at about three months. The delay includes:

- ▶ Time between the date of the service and the provider of the service sending an invoice to the insurer for the service
- ▶ Time between provider sending the invoice and the insurer receiving the invoice
- ▶ Period where the insurer assesses the invoice which may include questions to the provider and in some cases where errors in the invoice have been identified sending a correct invoice
- ▶ Delay in payment of the invoice by the insurer.

The figures for the current scheme include all payments made by insurers including interim or progressive claims payments for treatment, care and loss of earnings prior to the settlement of a claim.

Chart 2: Estimated claim payments¹ by insurers by quarter for treatment, care and loss of earnings for not at-fault claims



The above chart clearly shows that each model allows for substantially earlier access to treatment, care and loss of earnings than in the current scheme especially for the first 6 months.

The benefits paid to claimants in the current scheme in the early quarters are underestimated in the above chart as many claimants access Medicare benefits which are then recovered by Medicare from the common law lump sum. In addition, some employers may pay claimants sick leave for limited periods. Despite this many claimants in the current scheme are left out-of-pocket or cannot access treatment that is not covered by Medicare until the common law claim is settled. In the current scheme, the average time to settlement is around 4 years, in other words, half of settlement payments are paid after 4 years.

1.6.2.2 Equitable cover for all people

The jury's second priority in its report was "equitable cover for all people injured in a motor vehicle accident".

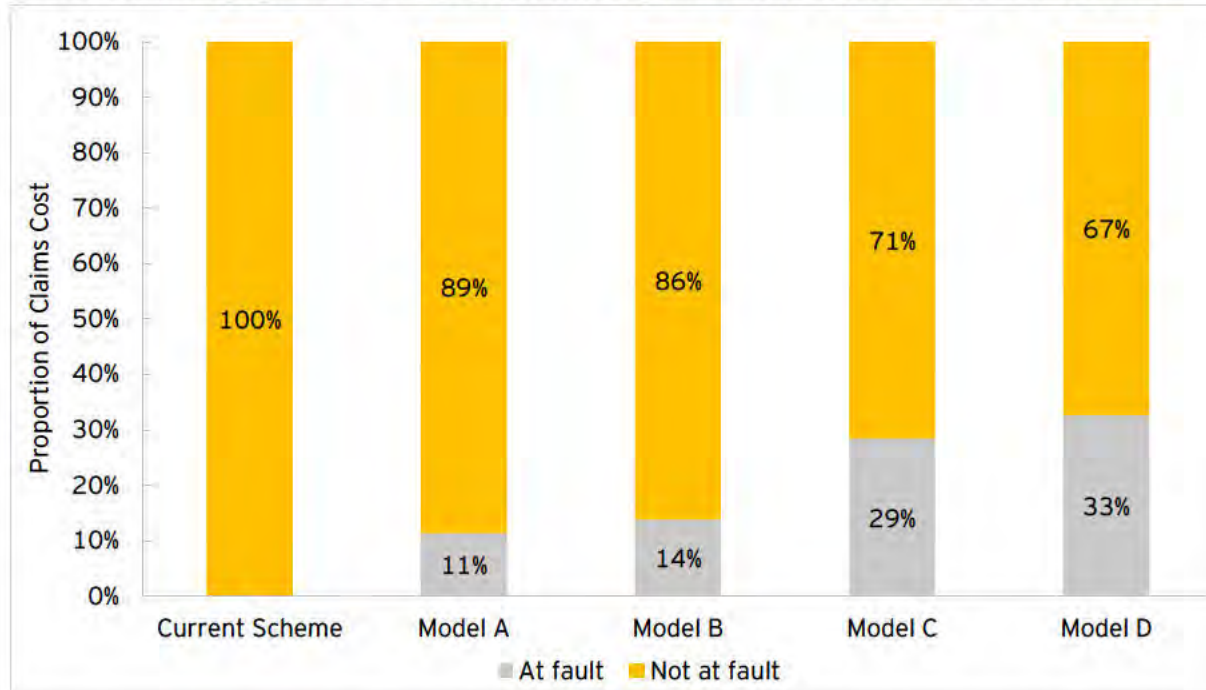
For each model we have set out two metrics compared to the current scheme:

- ▶ The estimated proportion of claims costs received by claimants for at-fault and not at-fault claimants (excluding legal and investigation costs)
- ▶ For not at-fault claimants only, the proportion of claims costs paid to those above and below the 10% WPI threshold and their average claim size.

In both metrics we have excluded all legal and investigation costs from claim payments (i.e. we also excluded estimated solicitor-client costs from claim payments).

¹ Estimated claim payments shown represent the middle of a range of best estimates. Actual payments could be higher or lower than shown

Chart 3: Estimated proportion of claims costs received by claimants for at-fault and not at-fault claims



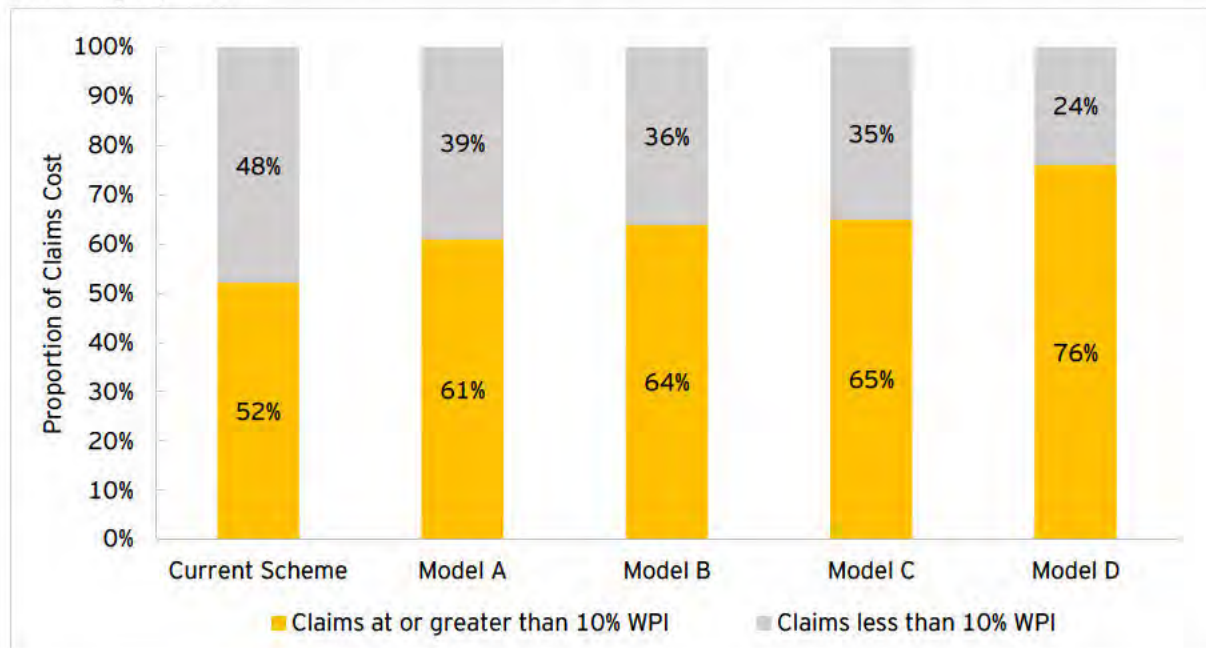
Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as they represent the benefits claimants receive

The above chart shows that the estimated proportion of claims costs (excluding legal and investigation costs) received by at-fault claimants increases from almost 0% in the current scheme (MANF benefits) to 11% in Model A where benefits are limited to six months, to 14% in Model B where benefits are limited to one year, to 29% in Model C where benefits are limited to two or five years and 33% in Model D where all benefits are limited to five years. Models C and D also make a quality of life statutory lump sum available to at-fault claimants and not at-fault claimants.

These proportions should be compared to the 40% of the potential claims population which we estimate could be at-fault claims made under each model in a mature scheme situation. The proportion does not reach 40% in Model D since not at-fault claims meeting the 10% WPI threshold have access to common law benefits unlike at-fault claimants whose benefits cease at five years.

The chart below for not at-fault claims shows the estimated proportion of the cost of claims split between claims with at least 10% WPI and those below 10% WPI.

Chart 4: Estimated proportion of claims costs for not at-fault claimants split by WPI above and below 10% (excluding legal costs)



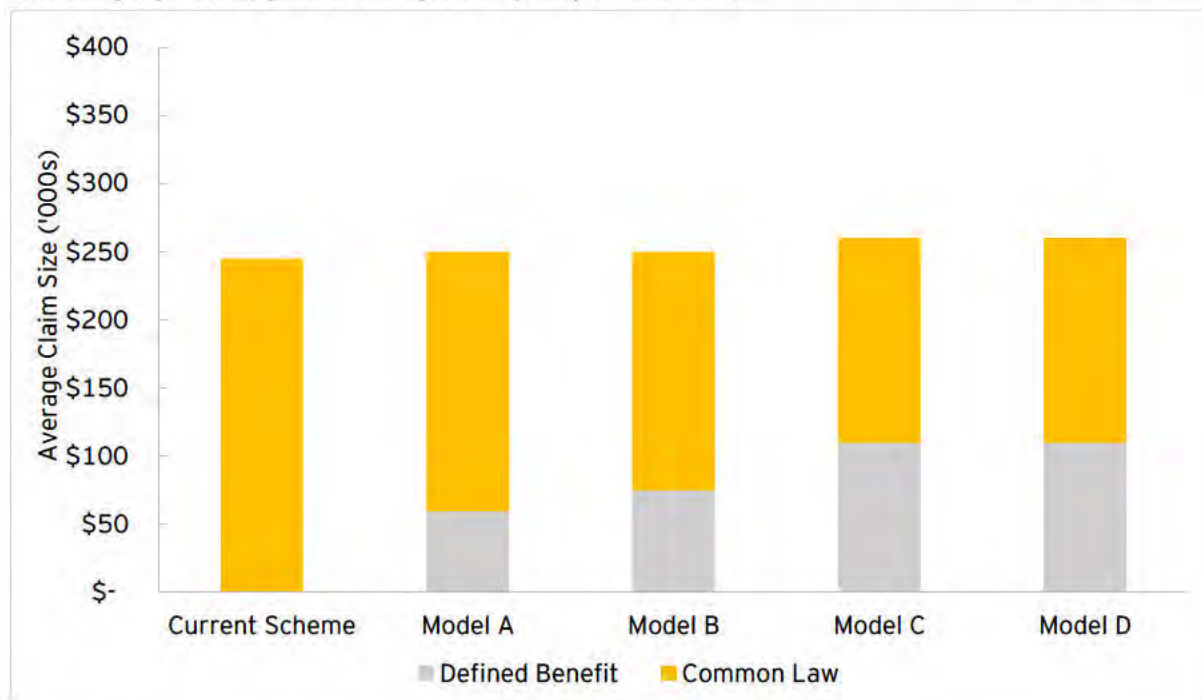
Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as they represent the benefits claimants receive

The estimated proportion of claims costs (excluding all legal costs) received by not at-fault claimants with a WPI of 10% or greater in the current scheme is 52%. This proportion gradually increases across the model designs to 61% in Model A, 64% in Model B, 65% in Model C and 76% in Model D. The increases reflect aspects of the differences in benefit design across the four design models including:

- ▶ Reduction in generosity of general damages at common law especially for claims below 10% WPI
- ▶ Reduction in the number of claims accessing common law in each model with the most impact under Model D where there is a 10% WPI threshold for all common law claims. Moving from Models A to C there are progressively less minor injured claimants expected to pursue common law remedies
- ▶ Increase in defined benefits to all claimants. Experience in other schemes shows that this typically leads to a greater proportion of claim payments being received by more seriously injured claimants than under a fully common law scheme. This is particularly the case for Models C and D where the defined benefits are payable for up to five years compared to at most one year in Models A and B.

The following two charts for not at-fault claims show the estimated average claim size for claims with a WPI of at least 10% received by claimants. There is significant uncertainty in these estimated average claim sizes as they rely on the assumed number of claims in each cohort which is difficult to estimate. Therefore, average claim sizes shown are indicative only; actual claims sizes could be significantly higher or lower than illustrated in the charts. The level of uncertainty is much more significant for claims less than WPI 10% for those claims at or above this level of impairment due mostly to the much larger level of uncertainty in the estimated number of claims that will be reported for the first group of claims.

Chart 5: Estimated average claim size for not at-fault claimants with a WPI greater than or equal to 10% (excluding legal costs, general damages and quality of life benefits)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

A significant proportion of common law benefits relate to general damages, especially under the current scheme and Models A and B. Under Models C and D however, general damages and quality of life benefits represent a much smaller proportion. Hence, excluding general damages from common law and excluding quality of life from defined benefits provides a view of economic loss under each of the models compared to the current scheme (i.e. shows loss of earnings, treatment and care only).

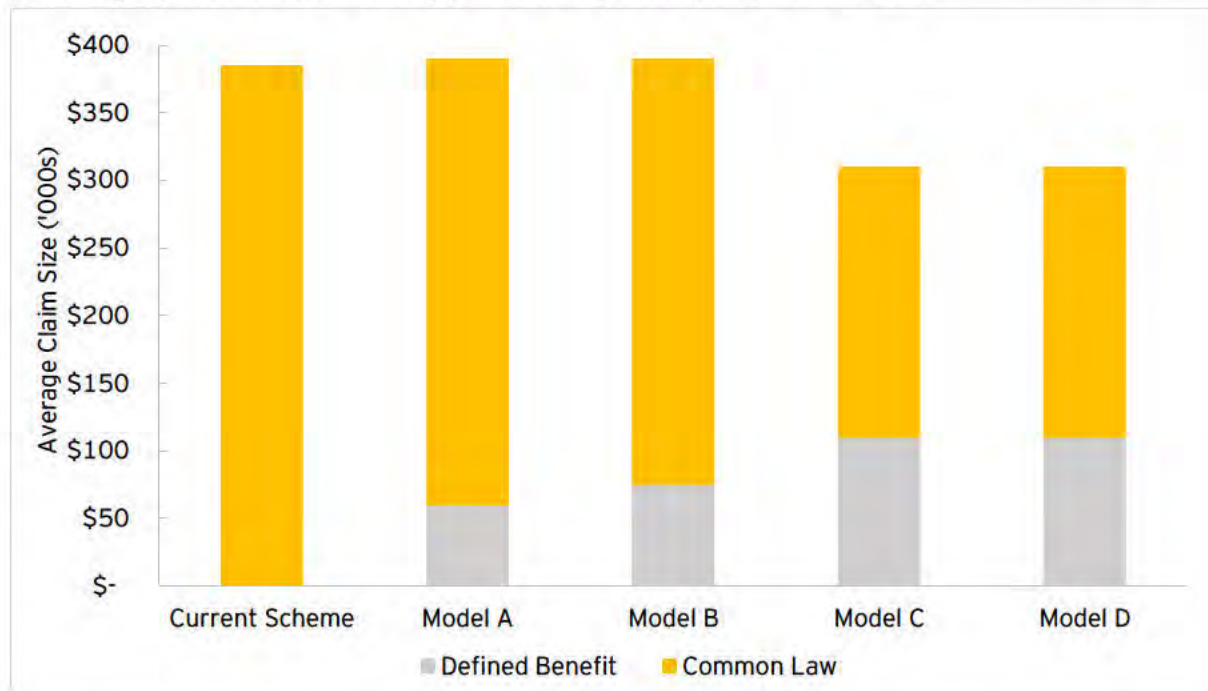
The above chart show that the average claim size for these benefits for claims with a WPI of at least 10% in the current scheme and under each of the model designs is around \$250,000, i.e. relatively unchanged from the current scheme. The proportion of defined benefits increases in moving from Model A (about 25%) to Model D (around 40%).

The estimated average claim size increases slightly under Models A and B compared to the current scheme as a result of some benefits being received as defined benefits (paid directly to claimants) rather than common law settlements (with solicitor-client legal fees deducted). A greater impact is seen under Models C and D, where more benefits are received directly by claimants as defined benefits (up to five years).

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

The chart below shows the estimated average claim size for these claimants including general damages and quality of life benefits.

Chart 6: Estimated average claim size for not at-fault claimants with a WPI greater than or equal to 10% (excluding legal costs only) - including general damages and quality of life benefits



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

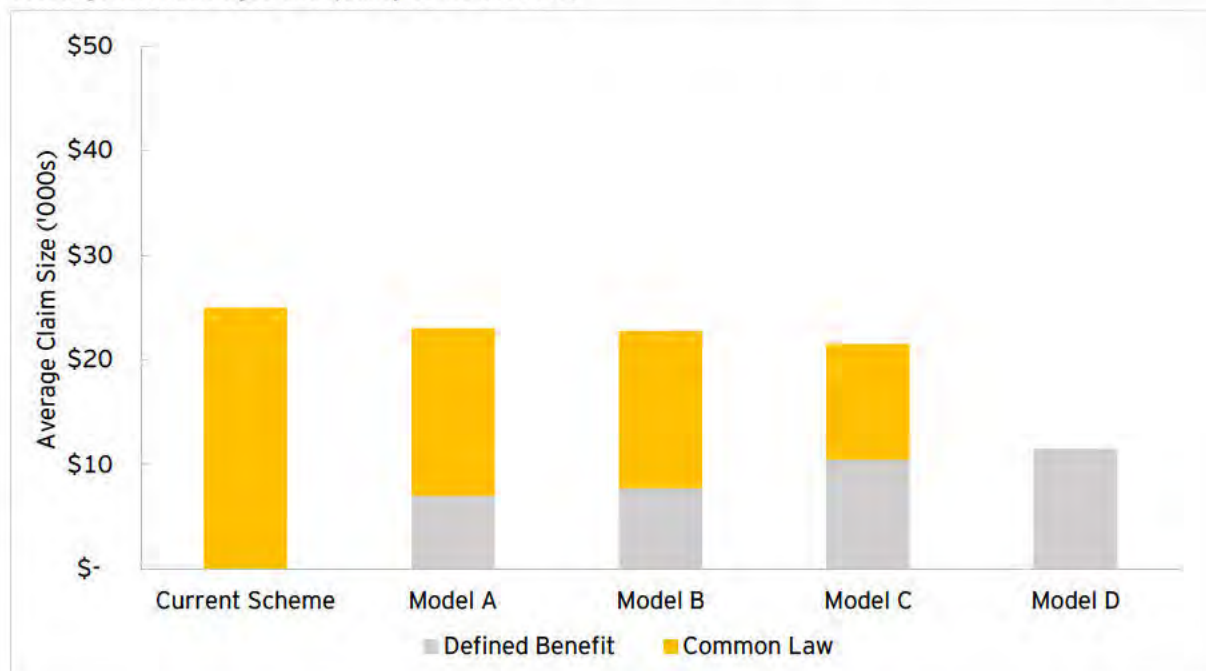
The difference in the figures between the above chart and the previous chart is the amount of general damages and quality of life benefits received by claimants after legal expenses (the figures also exclude estimated solicitor-client costs).

The above chart shows that the average claim size for all benefits for claims with a WPI of at least 10% in the current scheme and under Models A and B is around \$400,000, i.e. relatively unchanged from the current scheme. This arises because these claimants are expected to receive similar levels of general damages and other benefits under these models as they do in the current scheme.

In contrast, under Models C and D there is a prescribed scale for general damages (as shown in Appendix A) which is much lower than current levels; hence the estimated average claim size is lower than the current scheme under these models. The other benefit types are at similar levels as shown in the previous chart.

The corresponding figures for not at-fault claims less than 10% WPI are set out in the following two charts.

Chart 7: Estimated average claim size for not at-fault claimants with WPI less than 10% (excluding legal costs, general damages and quality of life benefits)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

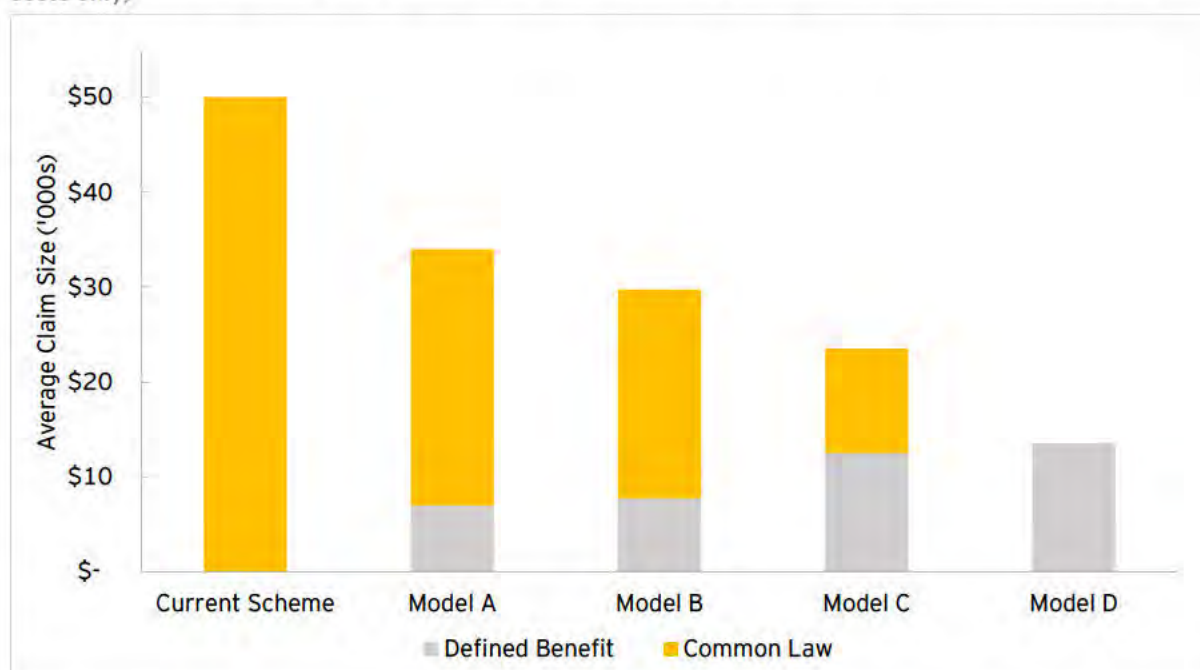
As discussed above, excluding general damages and quality of life benefits from the estimated average claim size for claims below 10% WPI provides a view of economic loss under each of the models compared to the current scheme (i.e. shows loss of earnings, treatment and care only).

The above chart shows that the average claim size for these benefits for claims below 10% WPI is around \$25,000 in the current scheme. This reduces slightly under Models A, B and C representing the lower number of claims expected to access common law due to the availability of defined benefits. Under Model D, there is no access to common law for these claimants (due to the threshold of 10% WPI) hence the average claim size is made up of defined benefits only. Under Model D these claimants have access to defined benefit loss of earnings for up to 5 years whereas under Model C this is limited to 2 years. Hence the average size of defined benefits is higher in Model D than in Model C.

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

The chart below shows the estimated average claim size for these claimants including general damages and quality of life benefits.

Chart 8: Estimated average claim size for not at-fault claimants with WPI less than 10% (excluding legal costs only)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

The difference in the figures between the above chart and the previous chart is the amount of general damages and quality of life benefits received by claimants after legal expense including estimated solicitor-client costs are excluded.

The average claim size for claims with WPI below 10% in the current scheme is around \$50,000. Under Models A and B the amounts of general damages available is significantly lower and this drives the estimated average claim size downwards.

Under Models C and D there is no general damages available at common law for claimants with WPI less than 10%. Defined benefits increase slightly compared to the previous chart, representing the quality of life benefit.

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

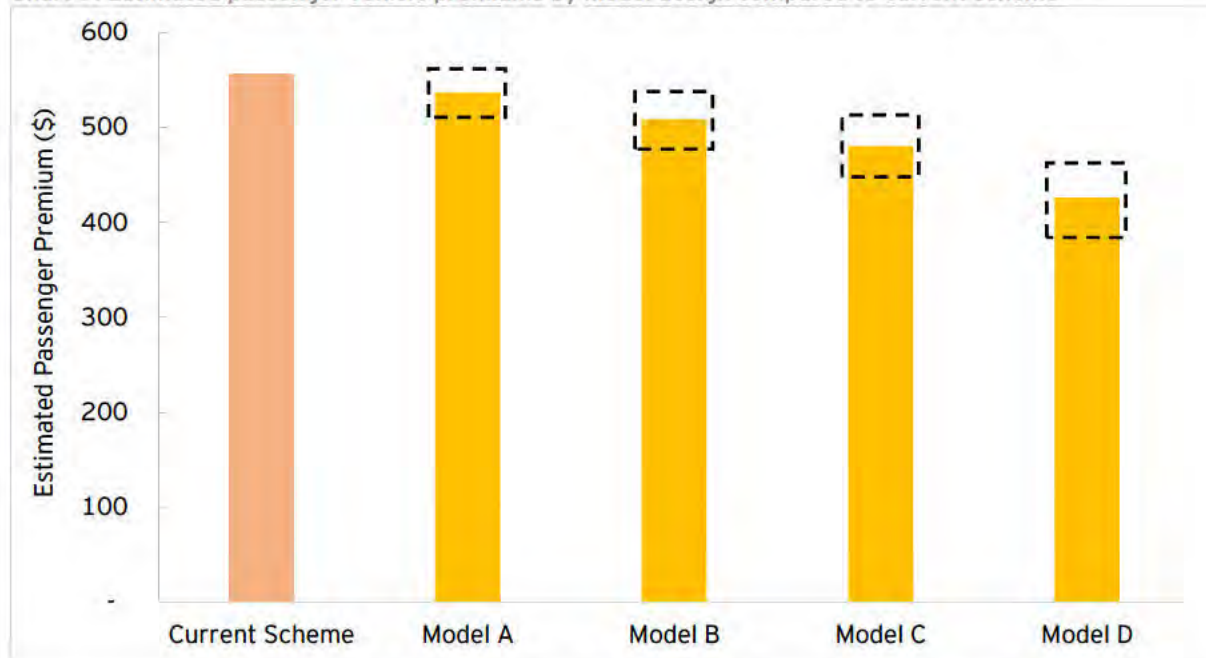
1.6.2.3 Value for money and efficient scheme

The jury's third priority in its report was "a value for money and efficient scheme".

The costing results provide information for the jury to assess value for money as represented by the average premium paid for passenger vehicles under each of the model designs compared to the current scheme.

Premiums (excluding the ACT LTCS scheme levy and costs) are set out below.

Chart 9: Estimated passenger vehicle premiums by model design compared to current scheme



The dotted line illustrates the uncertainty in the estimated costings - actual premiums could be higher or lower than the average estimated premiums as shown above. The range gets progressively wider going from Model A to Model D, with Model A estimates having the least uncertainty and Model D estimates having the most uncertainty. This is driven by the level of change under each model design compared to the current scheme. Refer to Section 5 for further details on risks and uncertainty and more details on the makeup of premiums in Appendix B.

Premiums are estimated to reduce from the current scheme average of \$556 to between \$510 to \$560 under Model A, \$480 to \$540 under Model B, \$440 to \$510 under Model C and \$385 to \$465 under Model D.

The second metric relevant to the jury's objective is the efficiency of the scheme. We have defined efficiency as the proportion of each premium dollar that is returned (or estimated to be returned) to injured people. This is calculated as follows:

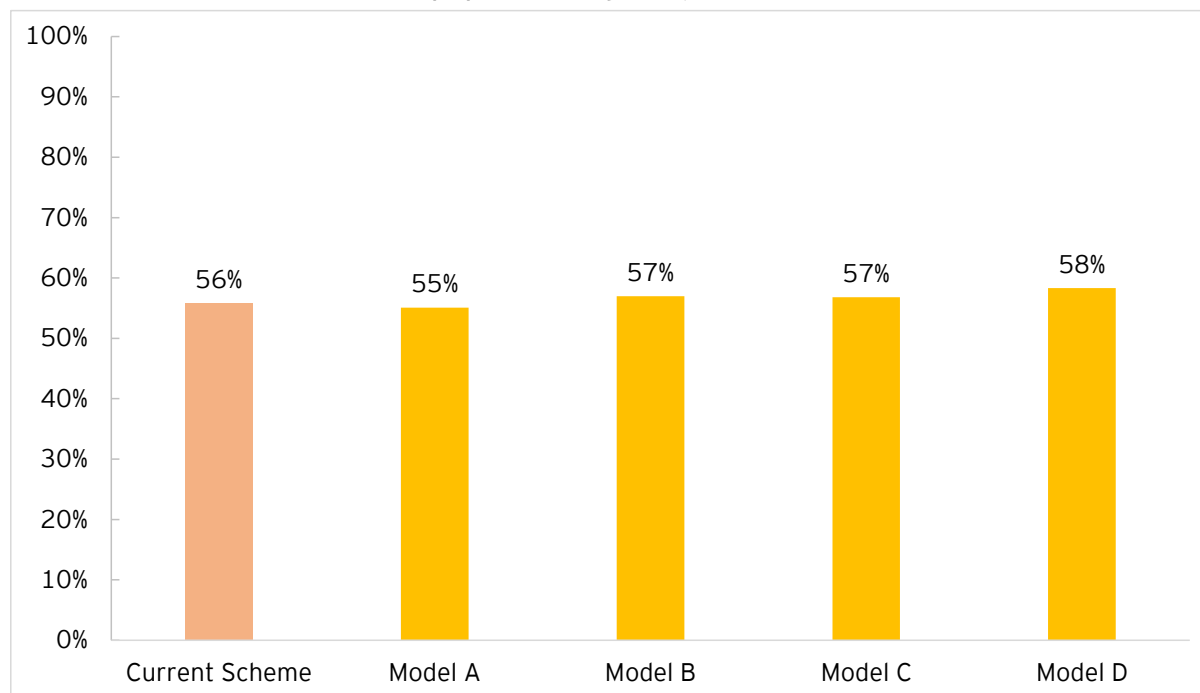
$$\text{Scheme efficiency} = \frac{\text{claim payments received by claimant } \{ 1(a) \}}{\text{Premium } \{ 1(a) + 1(b) + 2 + 3 + 4 \}}$$

Where:

1. Claims payments:
 - a. All claim costs excluding those in 1 (b). Claims costs including public hospital but not public ambulance services
 - b. Legal, investigation and medico legal costs including an estimate of solicitor-client legal costs
2. Insurer expenses
3. Scheme expenses (ACT CTP Regulator levies)
4. Insurer profits

The chart below illustrates the efficiency of the scheme under each model design compared to the current scheme.

Chart 10: Estimated scheme efficiency by model design compared to current scheme



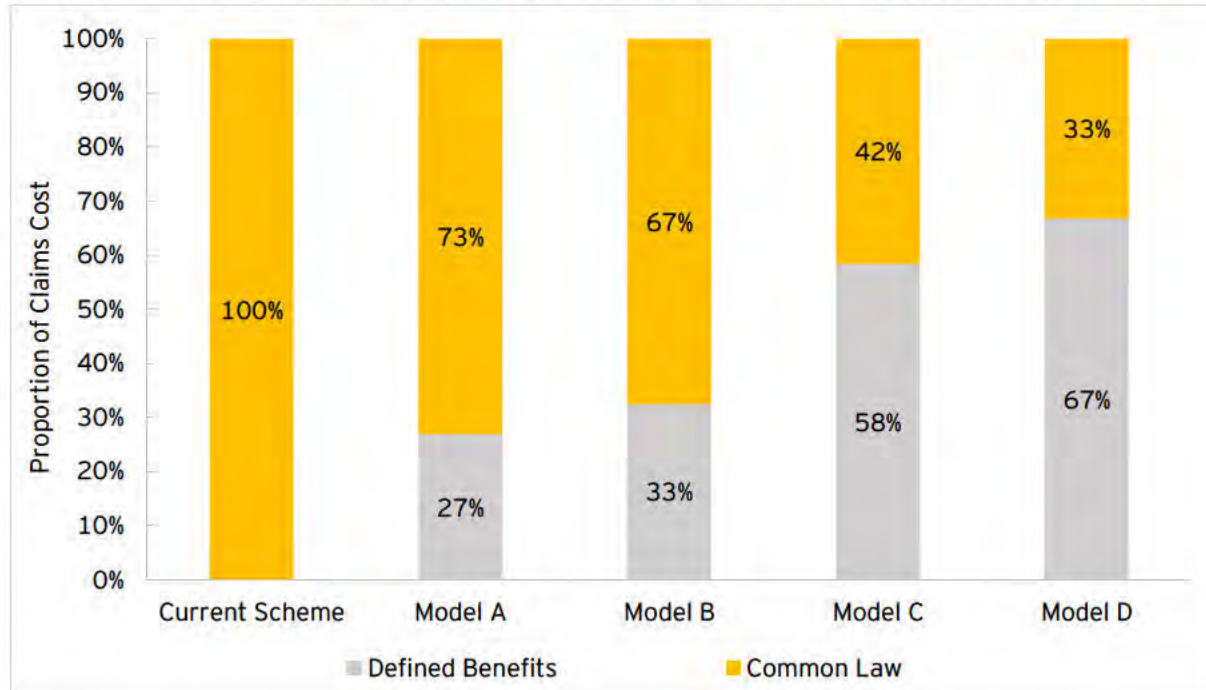
The chart shows the current estimated scheme efficiency of 56% is expected to gradually increase from Model A at 55% to Model D at 58%. In Model A the reason for the reduction in efficiency is due to insurer expenses and profit not reducing in line with the reduction in claims costs and the additional regulator levy (as these are held at a constant level across all models). For more details on insurer expenses and profits see Section 1.6.2.6

The main driver of the increase in scheme efficiency is the reduction in legal costs associated with increasing defined benefits and a reduction in common law numbers and benefits offset by insurer expenses and profit not decreasing as much as the reduction in claims costs and the additional regulator levy. In addition the efficiency of intestate claims does not change in any of the models from the current scheme.

1.6.2.4 Split of defined benefits and common law

The distribution of benefits in each model varies between mostly defined benefits and mostly common law. Models A and B are most similar to the current scheme with most of the benefits paid at common law. Models C and D are more similar to schemes such as Victoria and the reformed NSW scheme with most benefits paid as defined benefits and with restrictions for accessing common law damages. The split of benefits received by claimants between common law and defined benefits is set out in the following chart excluding legal and investigation costs (and excluding estimated solicitor-client costs).

Chart 11: Estimated split of benefits between defined benefits and common law for not at-fault claims



Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive

The above chart shows the proportion of defined benefits in each model for not at-fault claims increases from almost 0% in the current scheme (MANF benefits) to 27% under Model A and 33% under Model B. Under Models C and D the proportion increases significantly as defined benefits can be paid for up to five years and there is a quality of life defined benefit included in the design. Note that defined benefits make up 100% of at-fault claims.

1.6.2.5 Claim numbers

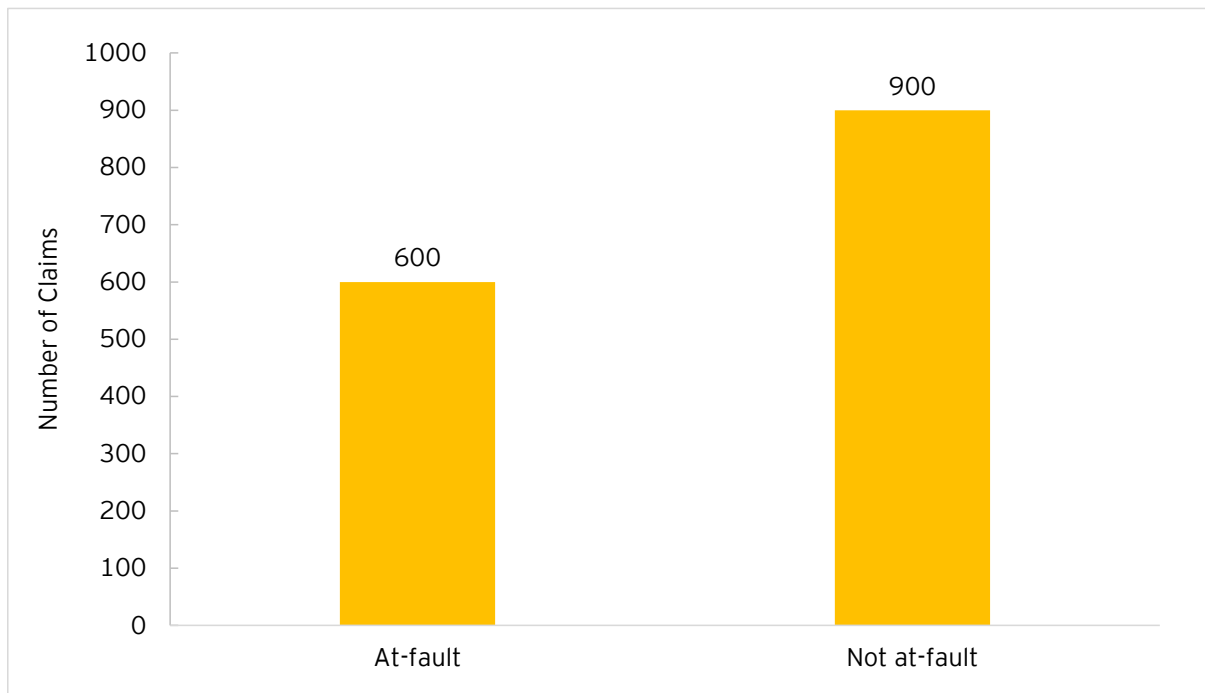
The number of claims accessing benefits under each model compared to the current scheme illustrates how cover is extended to more road users via defined benefits (more equitable cover) and the numbers accessing common law damages reduce across the models.

The following charts and tables set out the estimated claim numbers in relation to:

- ▶ The annual estimated potential claims population for at-fault and not at-fault claims per annum. We have separately identified the number of interstate claims
- ▶ The annual estimated number of not at-fault claims accessing common law with legal representation. For these claims we have also included estimates of the average size of legal and investigation costs per claim for party-party plaintiff legal costs, solicitor-client plaintiff legal costs and insurer legal and investigation costs
- ▶ The annual estimated number of claimants entitled to additional benefits once they meet the 5% and 10% WPI thresholds in Models C and D
- ▶ The annual estimated number of claims that are entitled to treatment, care and loss of earnings for defined benefits for not at-fault claims from one year onwards.

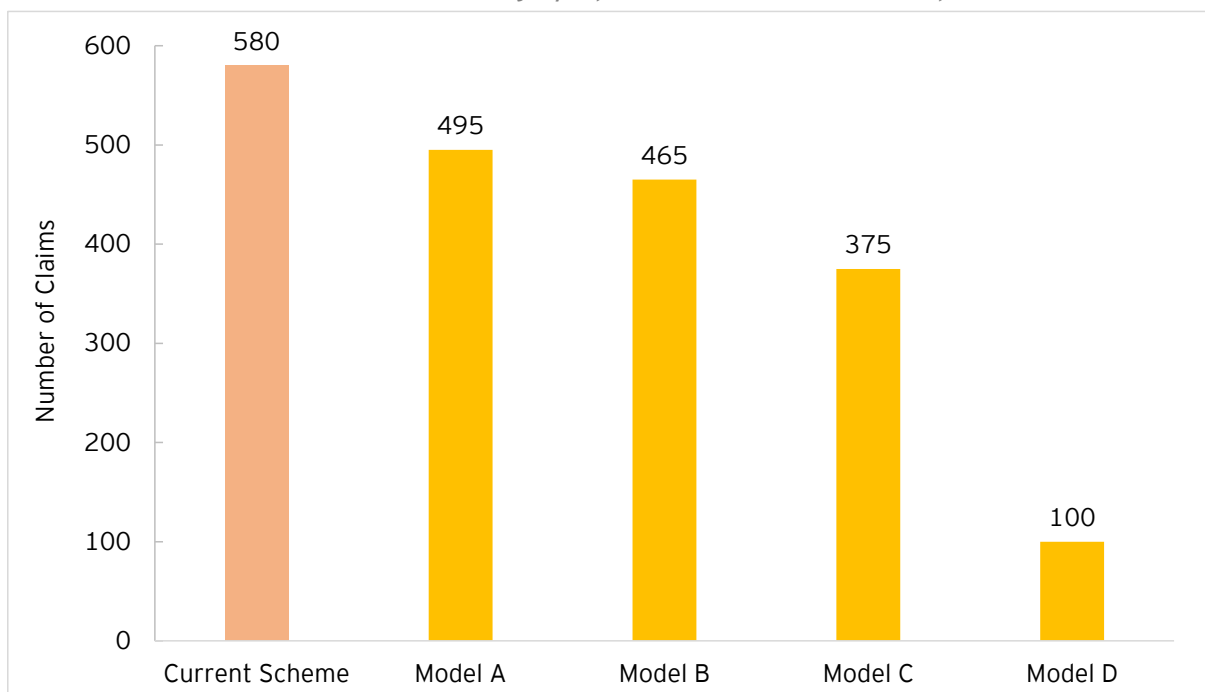
We have estimated a total potential claims population of 1,500 claims per annum split into 900 not at-fault (current scheme numbers) and 600 at-fault claims. Of the not at-fault claims we estimate about 75 are interstate claims. These numbers apply to each of the four model designs.

Chart 12: Estimated total potential population of defined benefit claims per annum (including interstate claims)



The estimated number of legally represented common law claims (excluding interstate claims) for each model design are set out in the following chart.

Chart 13: Estimated number of not at-fault legally represented common law claims per annum

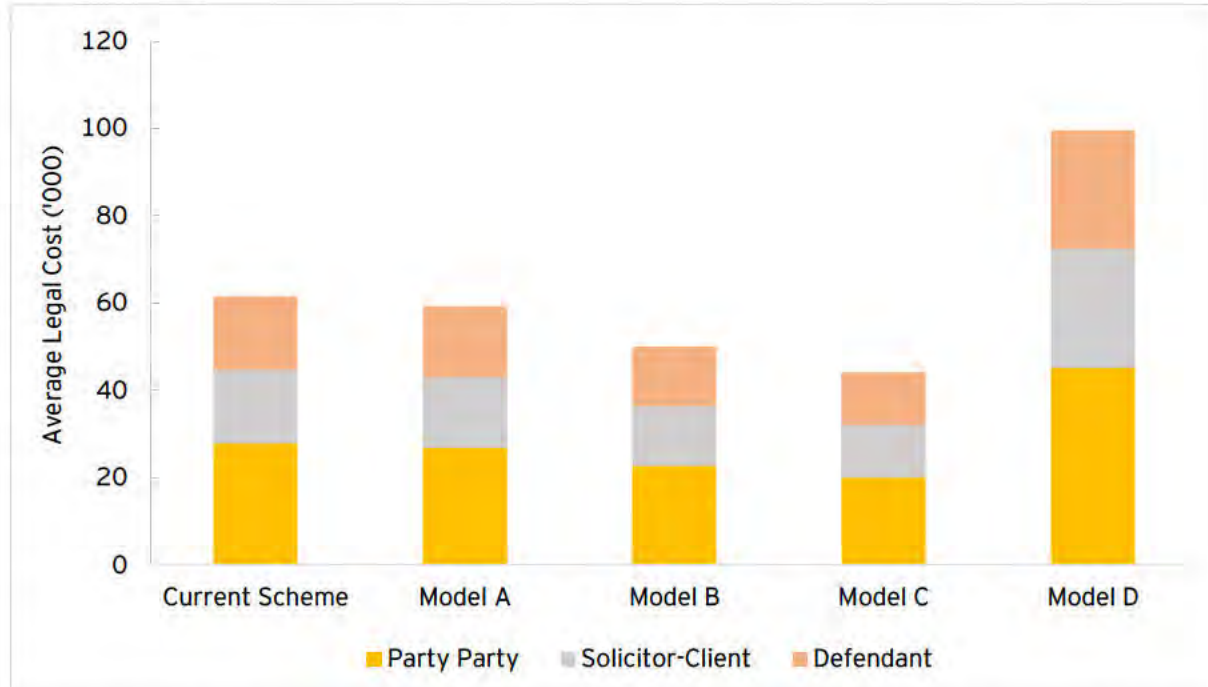


The estimated number of legally represented claims in the current scheme is about 580 per annum (excluding interstate claims) and we estimate these numbers will reduce to 495, 465, 375 and 100 in each of Models A to D. The reductions in Models A and B are due to the inclusion of an Injury Scale Value (ISV) scale for general damages awards at common law, while the reduced numbers for Model C are due to the 10% WPI threshold for access to general damages at common law. For Model

D the numbers are significantly lower than all other models due to the 10% WPI threshold for access to common law damages.

For each not at-fault common law legally represented claim, the average legal costs under each model are shown in the chart below, split into party-party costs, estimated solicitor-client costs and defendant/investigation costs.

Chart 14: Estimated average legal costs per not at-fault legally represented common law claim (excluding interstate claims)



Note: Average legal costs shown above are indicative only and represent the middle of a range of best estimates. Actual legal costs under the scheme could be lower or higher than shown.

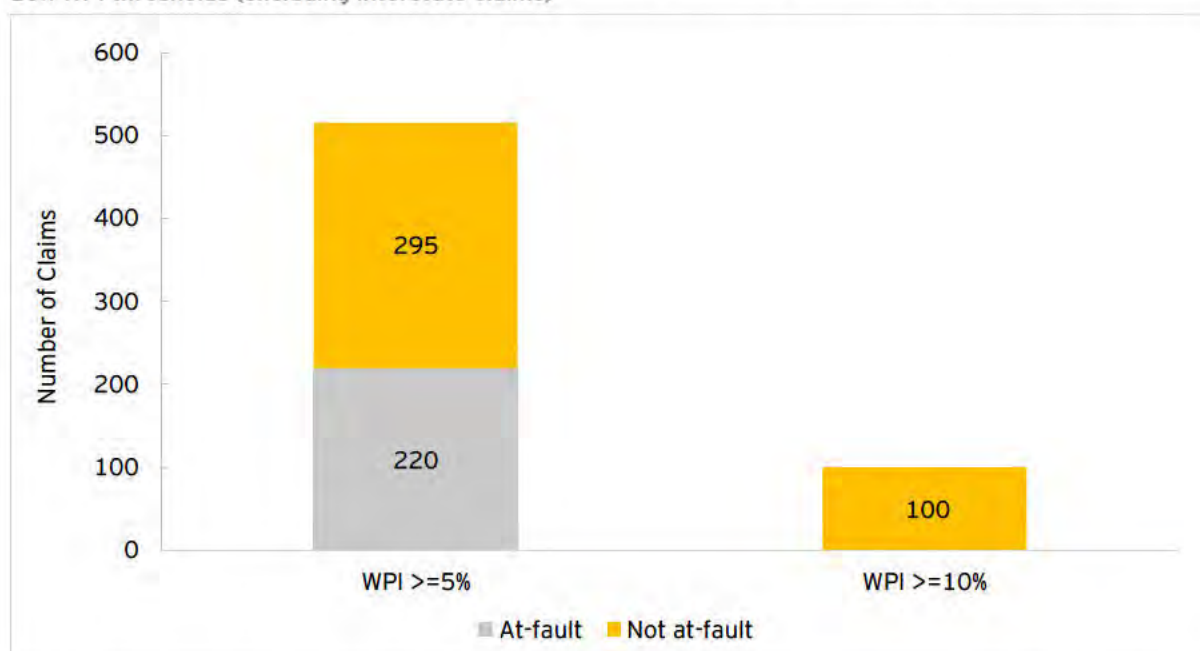
The main reasons for the reduction in average legal costs per legally represented claim at common law are:

- ▶ Reduction in numbers of overall common law claims (as shown in the previous chart) mainly due to the availability of defined benefits. The proportion of legally represented claims is expected to remain the same as the current scheme (about 70%) for Models A to C but in Model D all claims WPI 10% or higher are assumed to be legally represented
- ▶ Defined benefit payments already received will reduce the absolute amount of common law damages across the models.

Under Model D, average legal costs are high as the common law threshold of 10% WPI restricts common law to the most seriously injured claimants only. The estimated number of not at-fault claimants expected to fit this criteria is shown in the next chart.

Also illustrated in the next chart is the estimated number of both at-fault and not at-fault claims equal to or greater than 5% WPI. The 5% WPI threshold applies to the quality of life lump sum statutory benefit for Models C and D. These numbers exclude interstate claims.

Chart 15: Estimated annual number of claimants entitled to additional benefits once they meet the 5% and 10% WPI thresholds (excluding interstate claims)



For Models C and D claimants are entitled to additional benefits once they reach the 5% and 10% WPI thresholds. We estimate about 100 not at-fault claims out of the estimated potential population of not at-fault claims of 900 claims to be able to meet the 10% WPI threshold. For the 5% threshold we estimate about 220 at-fault and 295 not at-fault claims out of the estimated potential population of not at-fault claims 900 claims and at-fault numbers of 600 to meet the 5% threshold.

Note that the 10% WPI threshold does not apply to at-fault claimants as they do not have access to common law benefits (we estimate there would be about 65 at-fault claimants that are equal to or over 10% WPI).

We have estimated the number of not at-fault claims that are entitled to receive defined benefit treatment, care and loss of earnings from one year to five years after the accident date in the following three charts. Due to excesses applying for treatment and care and loss of earnings in the Victorian scheme (from which the ACT costings were based), we are unable to estimate the numbers receiving benefits before one year. The at-fault benefits are estimated to be about two thirds of the numbers in the following charts.

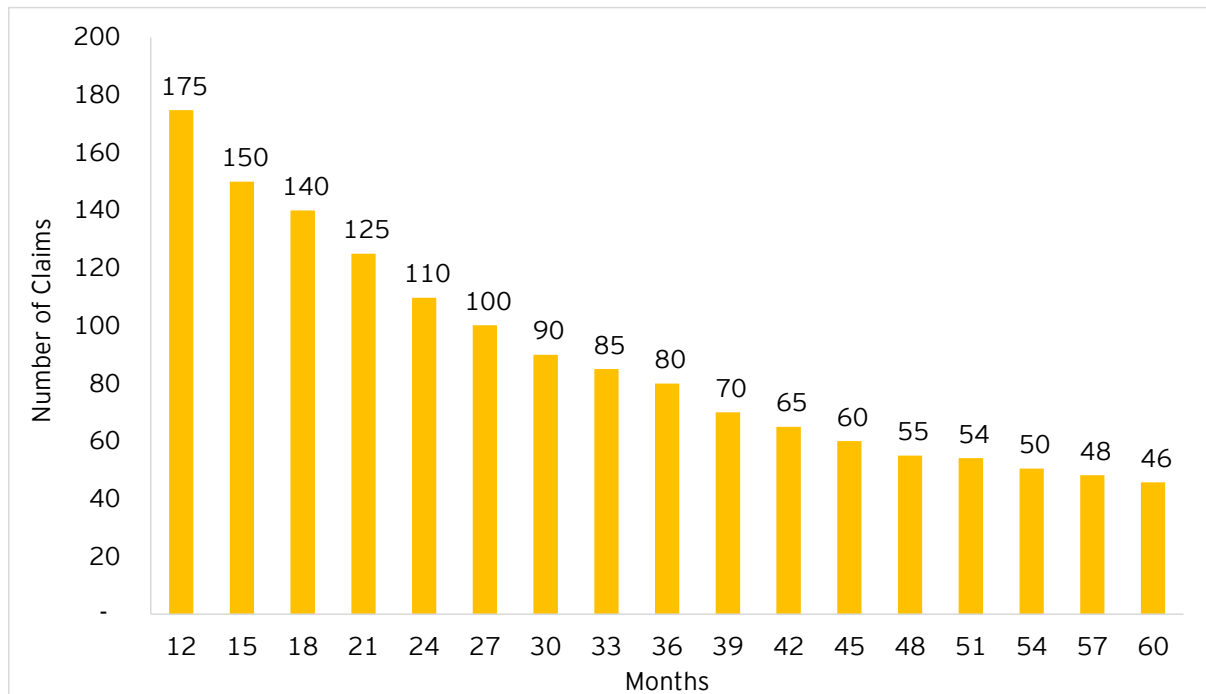
Note that the following three charts apply to Model D whilst only the treatment and care charts apply to Model C due to the benefit design. For Models A and B the charts are not applicable as defined benefits cease at six months for Model A and 12 months for Model B.

In all three charts below please note:

- ▶ It is claims receiving payments in the three months beginning at each period. For example, the 12 month figures relate to the number of claims receiving benefits in the three months from the 12 months to 15 months after the accident date.
- ▶ The same claims do not receive benefits each quarter. For example in the treatment chart below, for the 110 estimated claims receiving treatment in the 24 month figure, some may have received treatment benefits in the 21 month period and some may not have received benefits in the 21 month period. In other words, the number of unique claims receiving benefits after 60 months for treatment may be more than the estimated 46 claims.

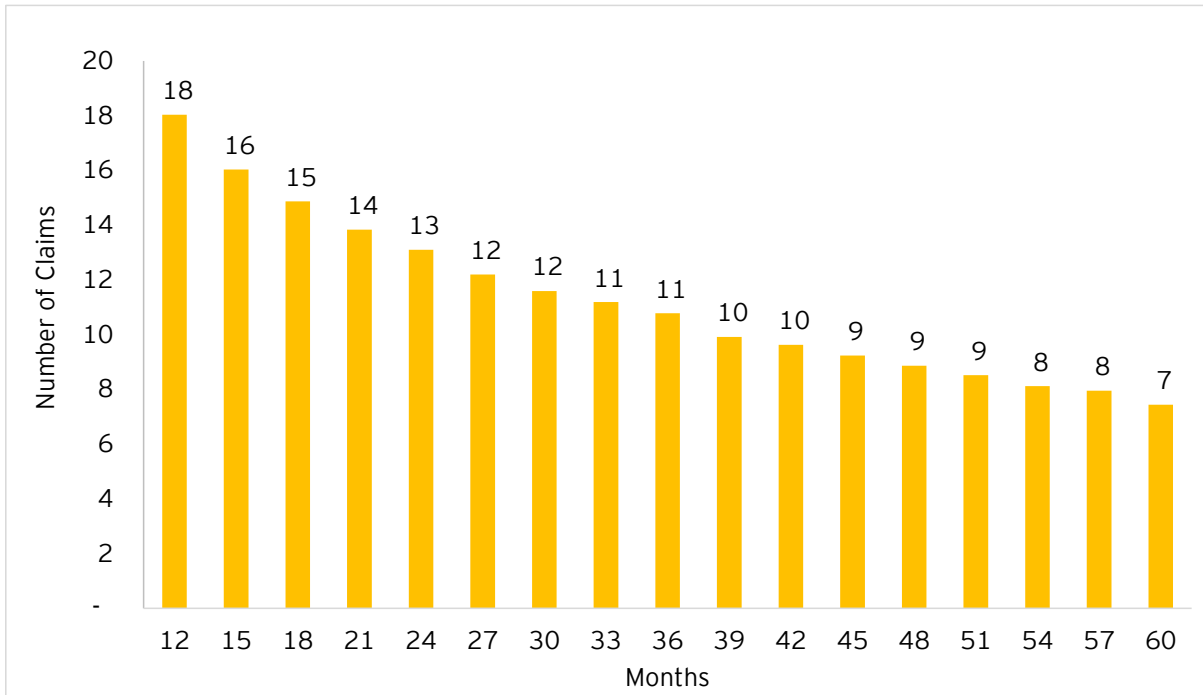
- ▶ The same claims do not receive economic loss, care and treatment in each period. For example in the loss of earnings chart for the 15 month period, the estimated 60 claims may or may not also receive treatment or care in that same period.
- ▶ You cannot add the numbers in each chart to estimate how many claims receive benefits in the same period as some claim will receive all three payments types in the same period and others will only receive one or two of the available payment types
- ▶ We have ignored any common law benefits paid to claimants in the charts below, i.e. they represent defined benefit payments only which claimants are entitled to.

Chart 16: Estimated annual number of not at-fault claimants receiving treatment payments from one year after the accident date



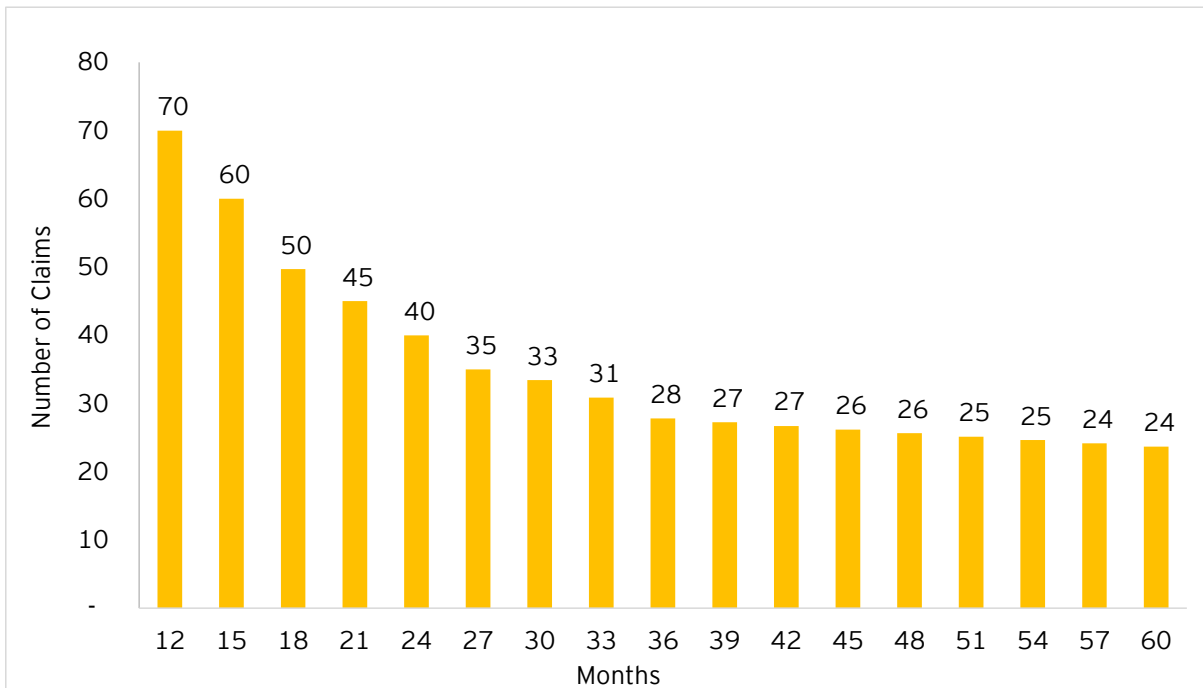
The estimated number of claims requiring treatment in each three month period out of the potential estimated 900 potential claims receiving defined benefits gradually reduces over time. Most of the claims requiring treatment from three years are those that meet the 10% WPI threshold. The average treatment benefit from three years is around \$1,300 per quarter (except for a small number of claims requiring surgery). Note that these amounts exclude treatment for LTCS claims.

Chart 17: Estimated annual number of not at-fault claimants receiving care payments from one year after the accident date



The estimated number of claims requiring care in each three month period out of the potential estimated 900 potential claims receiving defined benefits is small compared to those requiring treatment (i.e. varies from about one in six to one in ten claims receiving treatment) and they gradually reduce over time. Most of the claims requiring care from three years are those that meet the 10% WPI threshold. The average care benefit from three years is less than \$2,000 per quarter. Note that these amounts exclude treatment for LTCS claims.

Chart 18: Estimated annual number of claims with loss of earnings from one year



The estimated number of claims requiring loss of earnings in each three month period out of the potential estimated 900 potential claims receiving defined benefits is typically less than those

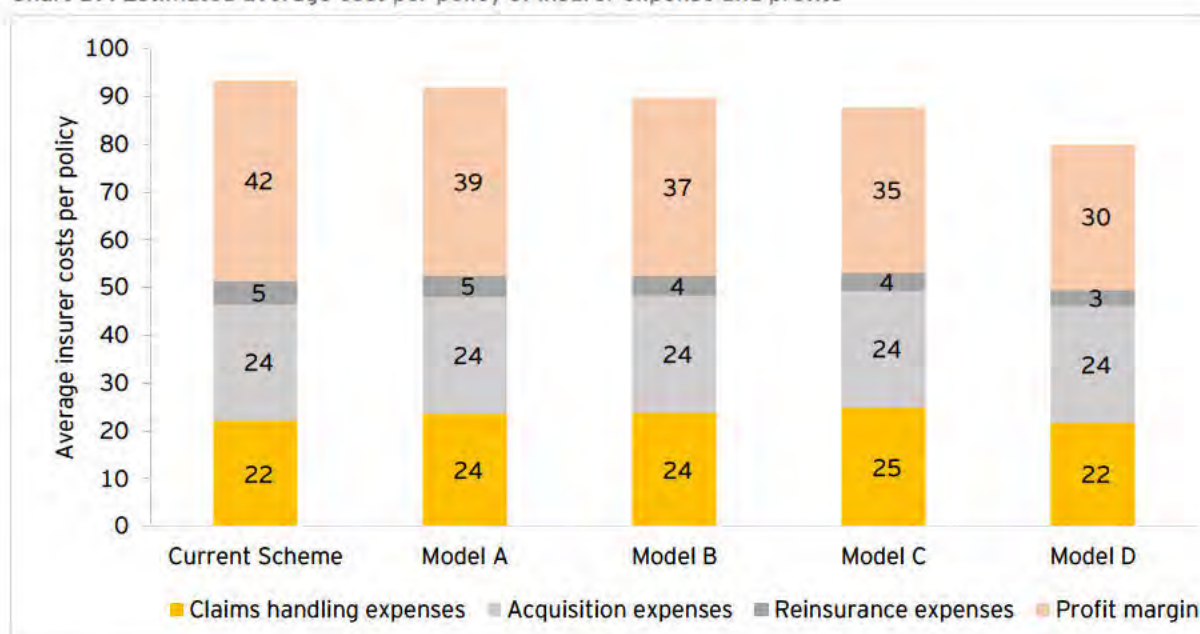
requiring treatment. As the numbers gradually reduce over time at longer durations, the number of claims receiving loss of earnings is about half the number receiving treatment. Most of the claims requiring loss of earnings from three years are those that meet the 10% WPI threshold. The average loss of earnings benefit from three years is around \$1,500 per quarter.

1.6.2.6 Insurer loadings

The average cost per policy of insurer expenses and profits under each model is derived from the current scheme as follows:

- ▶ Claims handling expenses - assumed to be higher as a proportion of claims costs than the current scheme (almost 6% of claim payments) as the availability of defined benefits increases the cost of handling claims for insurers. Hence the proportion of claims handling costs increases across from Model A to D in line with increasing defined benefits available
- ▶ Acquisition costs - assumed to remain at the same level as the current scheme (around \$24) as they are not likely to vary as the claim cost varies (a minor exception being commission costs; assumed to have a negligible impact)
- ▶ Reinsurance costs - assumed to remain at the same proportion of claim costs in the current scheme (around 1%)
- ▶ Profit margin - assumed to remain at the same proportion of claim costs in the current scheme (about 9%).

Chart 19: Estimated average cost per policy of insurer expense and profits



The level of insurer expenses does not change much between the current scheme and the four proposed model designs despite the reduction in claims costs whereas as the level of insurer profits reduces from \$42 in the current scheme in each model being only \$30 in Model D.

1.7 Risks and uncertainties

There is significant uncertainty associated with actuarial estimates. Estimates of future claims experience (claim numbers and payments) are always inherently uncertain because they depend on the outcome of future events which cannot be forecast precisely. Examples of claims experience that are particularly challenging to forecast include changes to social, economic and legal

environments. Therefore, actual claims experience may emerge at levels higher or lower than the actuarial estimates

This report contains results relating to the current scheme and the proposed four model designs. As there is no actual claims experience for the four model designs the results relating to them have been estimated using relevant experience in the ACT, Victoria, NSW and Queensland CTP Schemes. However, as this claims experience is not actual experience from the four model designs; naturally the uncertainty associated with the results is greater than for the current scheme. Our costing estimates are based on the assumption that the claims cost in the four model designs will reflect the claims experience observed in the reference schemes after allowing for different benefit design, demographic, operational differences and estimated behavioural aspects. Implicitly, our estimates assume that the reference schemes provide a reasonable basis upon which to estimate the cost under each of the proposed models. There are many uncertainties associated with this assumption which in practice may mean that actual experience differs from estimated experience.

The four model designs will represent a significant change for all stakeholders who interact with the scheme. This creates significant uncertainty around the ultimate cost of the scheme under each of the models; compounded further as the proposed models will impact stakeholders differently and therefore their responses to the four model designs will differ. We have based these behaviours on experience observed in other schemes which should prove a reasonable guide.

There is no detailed legislation yet available for the four model designs including any regulations or guidelines; as a result, scheme costs are difficult to estimate. Any differences in the assumed details of the content of the Act, regulations and guidelines on which the costings are based will result in changes to the estimates of the cost per policy and ultimately the premiums vehicle owners pay. Further comments on uncertainty are included throughout the report; however the most important are outlined in Section 5.

1.8 Reliance and limitations

In undertaking this costing analysis, reliance has been placed upon the data provided to us by the ACT CTP Regulator, State Insurance Regulatory Authority, the Victorian Transport Accident Commission, Roads and Maritime Services, VicRoads, the Motor Accidents Insurance Commission, IAG and Suncorp. With regards to the ACT CTP Regulator claims data we are specifically relying on the accuracy of the data provided by insurers to the Regulator, including the classification of payment types and injury severity coding over time.

We have also made judgements and estimates where the information provided was based on discussions with people with relevant specialist knowledge where it was not part of the analysis conducted as part of the costing analysis. In general, reliance was placed on but not limited to the information provided. Except where indicated, the information has been used without independent verification. However, it was reviewed where possible for reasonableness and consistency.

We have performed the work assigned and have prepared this document in conformity with its intended utilisation by persons technically familiar with the areas addressed and for the stated purposes only. Judgements based on the data, methods and assumptions contained in the report document should be made only after studying the presentation and attached costing results in its entirety, as conclusions reached by a review of a section or sections on an isolated basis may be incorrect. EY staff are available to explain or amplify any matter presented herein.

It is essential that any reader of this report understand its associated qualifications and limitations. These are described throughout this report; however the most important are outlined in Section 5 and Section 6.

Glossary

Term	Definition
Accident year	Denotes the year in which the vehicle accident giving rise to the claim occurred. Accident years generally run from 1 July to 30 June.
Acquisition expenses	All expenses insurers incur to acquire and retain CTP business. These expenses include personnel costs and associated costs (e.g. rent, insurance premiums, etc.), IT costs, finance costs (e.g. accounting, audit, actuarial, etc.), stationery, marketing and advertising costs, commissions and other costs including allocated overhead costs.
ACT CTP Regulator	The ACT CTP Regulator is an independent Territory authority established under section 14 of the Road Transport (Third-Party Insurance) Act 2008 (CTP Act) to regulate compulsory third-party (CTP) insurance in the Territory.
ACT CTP Regulator Levy	The ACT CTP Regulator Levy is a separate levy payable in respect of each CTP policy as part of the registration process. It is paid to the ACT CTP Regulator to fund its operations.
Care claims costs	Refers to the costs of domestic help and personal care that is not provided by a health practitioner. This may be assistance with personal care, housework, shopping, gardening, childcare and the like. It may be help in keeping connections with society. It may include services for the injured person and also substitution for services previously provided by the injured person There are two types of care payments: <ol style="list-style-type: none"> 1. Griffiths v Kirkemeyer (GvK): for care provided by family to injured person 2. Sullivan v Gordon (SvG): for loss of injured person's capacity to provide care to family
Casualty	Any person killed or injured as a result of an accident attributable to the movement of a road vehicle on a road, as recorded by the Transport Canberra and City Services (TCCS), based on police reporting.
Citizens' jury	A group of 50 individuals from the ACT chosen randomly to take part in a 'deliberative democracy' process that will ultimately decide the new model design for the ACT CTP scheme.
Claim frequency	Ultimate number of claims divided by the number of vehicles.
Claimant benefits	Loss of earnings and earning capacity, treatment and care, rehabilitation, allied health, general damages and other payments made to the claimant (i.e. excluding legal and investigation costs).
Claims Cost Disclosure ("CCD") data	Data received by SIRA from plaintiff lawyers on total legal costs inclusive of contracted-out legal costs and others amounts paid including to claimants, Centrelink and Medicare.
Claims handling expenses	Refers to insurer expenses related to managing and administering CTP claims. These expenses include costs of claims staff managing claims, rehabilitation staff, managers and support staff. Treatment
Commission	Refers to payments made to agents/brokers by insurers for writing CTP insurance on behalf of the insurer.
Cost per policy	Defined in this report for each head of damage as the total cost of claims, before any overheads, divided by the number of insured motor vehicles in ACT
General damages	Refers to compensation at common law for loss of enjoyment of life. Is also referred to as "pain and suffering", or "non-economic loss". In the defined benefits context, it is usually referred to as a "permanent impairment" benefit.

Term	Definition
Head of damage	Another term for a benefit type that can form a claim payment to an injured person e.g. loss of earnings. Normally a terminology used for common law settlements and judgements.
Investigation costs	Costs incurred by the insurer for investigating the circumstances of a claim and for determining whether benefits should be paid to the claimant.
Lifetime Care and Support (LTCS) scheme	This scheme provides treatment, rehabilitation and attendant care services to people catastrophically injured in motor accidents in ACT, regardless of who was at-fault in the accident.
Loss of earnings	Refers to compensation provided to claimants for pre-injury earnings/pre-injury earnings capacity lost due to not being able to work as a result of their injury. Pre-injury earnings are defined as earnings in the past 12 months for those who were in regular employment. Pre-earnings injury capacity are defined as earnings expected over the next 12 months for those in irregular employment
Motor Accident Notification Forms (MANFs)	The form provides for the early payment of reasonable and necessary treatment and care expenses up to a maximum of \$5,000 and for a period of up to six months. MANFs can be lodged by at-fault and not at-fault injured parties.
Motor Accidents Insurance Commission (MAIC)	MAIC is the regulator of the Queensland CTP scheme
Net reinsurance cost	Refers to the net cost of reinsurance after allowing for recoveries (i.e. reinsurance claim payments).
No-fault	The insured is covered against losses, regardless of fault in the incident generating the loss.
Nominal defendant	The Nominal Defendant is a statutory office which exists to enable persons injured by unregistered vehicles without CTP insurance or by unidentified vehicles (e.g. hit and run accidents) to be compensated. In ACT, nominal defendant claims are managed by the Australian Capital Territory Insurance Authority (ACTIA).
Party-party legal costs	Costs payable to the claimant by an insurer for the claimant's legal expenses
Passenger vehicle	Motor cars, station wagons and 4WDs used for the movement of passengers, with 9 or less seats (including the driver). It excludes 4WDs that are made to be used for the transfer of goods
Permanent impairment or Whole person impairment (WPI)	An assessment of the degree of impairment to a body part, system or function, based on the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment. The four model designs use the 5 th edition of those guidelines.
Personal Injury Register (PIR)	A database maintained by the CTP Regulator which collates and records CTP claims related data provided by the licensed insurers.
Premium relativities	Values by vehicle class that insurers adopt in determining the range of premiums charged by vehicle class.
Profit margin	Refers to the proportion of premium in excess of all insurer claims and expenses. Levies including the LTCS levy and GST are excluded when assessing the profit margin.
Propensity to claim	Ultimate number of claims divided by the number of road casualties.
Quality of life	Refers to compensation that is not related to direct financial loss. In the defined benefits context, it is usually referred to as a "permanent impairment" benefit. In common law, it is referred to as "general damages", "pain and suffering", or "non-economic loss"

Term	Definition
Risk premium	Expected claim payout before insurer expenses, profit margin, levies and GST.
Scheme efficiency	<p>The amount of each premium dollar that is returned (or expected to be returned) to injured people.</p> $\text{Scheme efficiency} = \frac{\text{claim payments received by claimant [1(a)]}}{\text{Premium [1(a)+ 1(b) + 2+ 3+ 4]}}$ <p>where:</p> <ol style="list-style-type: none"> 1. Claims payments: <ol style="list-style-type: none"> a. All claim costs excluding those in 1 (b). Claims costs including public hospital but not public ambulance services b. Legal, investigation and medico legal costs including solicitor-client legal costs 2. Insurer expenses 3. Scheme expenses (ACT regulator levies) 4. Insurer profits. <p>Premiums exclude the ACT Lifetime Care and Support Scheme.</p>
Solicitor-client legal costs	Costs payable to the legal practitioner representing the claimant, by the claimant, under an agreed private arrangement i.e. those costs in excess of party-party legal costs. These costs are paid out of the common law settlement or judgment and are not paid by the insurer to the claimant.
Stakeholders Reference Group (SRG)	A group of insurance, legal and health professionals who will use the objectives and views of the jury to design and cost workable models for the jury's final deliberations
State Insurance Regulatory Authority of NSW (SIRA)	SIRA is the regulator of the NSW CTP scheme
Statutory benefits	A schedule of benefits prescribed in the legislation, with limits on some benefits.
Superimposed inflation	The increase in claim costs over time, over and above wage inflation.
Transport Accident Commission ("TAC")	Victorian Government-owned organisation who manages the Victorian transport accident scheme for the benefit of the general public.
Treatment claims costs	Refers to the costs of treatment expenses including public hospital costs and private medical costs. Public hospital costs include ambulance costs, medical and other allied health costs delivered to the patient while in the public hospital. Private medical costs include all hospital, medical and allied health costs after the claimant leaves the public hospital system
Type of payment	Another term for HOD benefit type that can form a claim payment to an injured person e.g. loss of earnings, treatment, care and quality of life
Underwriting or policy year	The year the CTP policy was sold.
Unearned premium surplus	Unearned premium is the portion of premiums written that have not yet been earned over the policy term. Since premium is earned regularly over the life of a policy, a reduction in expected claims costs as a result of moving to a new model will result in a surplus in unearned premium
Uninsured vehicle	A motor vehicle is an uninsured vehicle if no CTP policy has been taken out

2. Introduction, scope and benefit design

2.1 Introduction and scope

The Chief Minister's Treasury and Economic Development Directorate has requested Ernst & Young (EY) to provide estimated costings of alternative insurance scheme benefit design models for the ACT Compulsory Third Party (CTP) Scheme. These costings will be presented to a Citizens' Jury considering how the ACT CTP scheme can be improved to best balance the interests of all road users.

The scope of our role is to provide an assessment of the cost of the four proposed alternative model designs for the ACT CTP scheme as developed by the scheme designer with the Stakeholder Reference Group, compared to the premium of the current ACT CTP scheme. That is, a breakdown of the overall premium or estimated cost for each alternative benefit design to derive an estimated risk premium (i.e. claims cost) by payment type plus loadings for insurer expenses and profit, scheme levies and GST. The split of the current cost or premium for the ACT CTP scheme serves as a baseline for the scheme and is used as a comparison when assessing the new benefit design against alternative model designs.

Under all models, an estimate of the relative cost is only presented for the passenger vehicle class (i.e. class 1).

This report explains the data, assumptions and methodology used to derive the costing for the current scheme and each of the four proposed model designs. It also contains a number of metrics that flow from the costings that the Citizens' Jury can use to assess each model in their deliberations. This report should be read in conjunction with the report prepared by the scheme designer, which outlines the detail of the four proposed alternative model designs for the ACT CTP scheme.

2.2 Citizens Jury

In late August 2017, the ACT government announced a review of the CTP scheme by setting up a 'deliberative democracy' process. Once the 50 citizens' jury members (the jury) were randomly selected by the facilitators, the jury met during two weekends in October. The jury issued a report on 29 October 2017 titled "Citizens' Jury on Compulsory Third party Insurance Final report" (the jury's report) setting out the objectives it had agreed for a reformed CTP scheme to best balance the interests of all road users.

Since the jury's report was issued the 'scheme design expert', Geoff Atkins of Finity Consulting, has prepared four possible scheme designs for the jury to consider as set out in the report "Model Designs - Citizens' Jury for ACT CTP scheme", dated 9 March 2018 (referred to as the scheme design in this report). His work was undertaken in close consultation with the Stakeholder Reference Group (SRG) and EY. The SRG's role and responsibilities under the deliberative democracy process include model development, identifying witnesses, appearing as witnesses (where appropriate), providing evidence and advice, and building understanding and awareness of the jury process in the wider community. There are 10 members of the SRG comprising of two representatives from the health industry, two legal profession representatives, a single representative from each of the ACT CTP insurers (IAG and Suncorp), two representatives from government, the scheme design expert and EY. It is recognised that not all SRG members supported all aspects of the design options presented in the scheme design report.

EY's role is to produce an estimated cost of the four proposed model designs set out in the scheme design expert's report and to compare the cost to the existing premiums in the ACT CTP scheme. This report sets out the results of our work as noted above.

At the final citizen's jury meeting in late March 2018, the jury will consider the four proposed model designs and the associated cost estimates set out in this report and decide which of the four models

best meets the objectives they identified in their October 2017 jury's report. The Government will pursue the jury's preferred model.

The ACT government set out some constraints of the design of the scheme design models options as follows:

- ▶ Premiums are not to increase over current levels
- ▶ No change in type of vehicles covered (e.g. not to include off road bikes, bicycles)
- ▶ The review excludes the design of the Lifetime Care and Support scheme (LTCS scheme)
- ▶ The scheme will continue to be underwritten by private insurers.

2.3 Nature of cost estimates presented in this report

2.3.1 Existing scheme costs

For the existing scheme we have not undertaken a ground up estimate of the current ACT CTP scheme claims costs and overheads. Instead we used the existing premiums charged by the insurers as the basis of the current scheme costs. To be able to undertake a detailed comparison of existing scheme costs against the four model designs the average cost of claims component in insurers' current premiums has been split by type of payment based on the historical ACT CTP scheme experience (which has been relatively stable in recent years). Insurer expenses and profit margins have been taken from insurer's existing premium filings to the ACT CTP Regulator. To the extent that the existing scheme's future development differs from past claims experience, this development has not been incorporated in the costings. For a full discussion on the uncertainty in the costings see Section 5.

2.3.2 Four proposed model designs

The four proposed model designs are outlined in Finity Consulting's report "Model Designs - Citizens' Jury for ACT CTP scheme", dated 9 March 2018. We present a summary of the four proposed model designs in section 2 of this report and further detail is included in the above report.

The cost per policy results for the four proposed model designs presented in this report:

- ▶ Represent the average cost for all passenger vehicles (from approximately 290,000 registered vehicles)
- ▶ Reflect a mature scheme where motorists and the general public are fully aware of their rights under the Scheme, relationships between the service providers are well established and the infrastructure of the regulator is fully operative. This means that the estimated cost of the four model designs in the first few years may be different (i.e. likely lower) than our cost estimates (as discussed below and described further in Section 0)
- ▶ Do not represent the premium that will actually be charged in the four model designs since:
 - ▶ Premiums are set by licensed insurers who operate in the ACT CTP Scheme within the guidelines set by the ACT CTP Regulator; these guidelines aim to ensure that premiums fully fund the reasonable cost of claims, expenses and a reasonable insurer profit margin (i.e. profits are not inadequate) and that premiums are not excessive. In the ACT, insurers operate competitively and are allowed to offer different prices based on the class of vehicle (i.e. no other risk factors can be used by insurers to vary vehicle owner premiums)
 - ▶ The estimated cost is the average for all passenger vehicles which by definition means the actual cost for some vehicle owners will be higher than the average cost and the actual

cost for others will be lower than the average cost. This arises from the different premiums charged by each insurer

- ▶ The estimated cost in the four model designs does not allow for the treatment of any unearned premium surplus arising for insurers following the transition to the selected model design (see Section 4.3.2 for further details)
- ▶ There may be other factors that the ACT CTP Regulator will take into account in guiding insurer premiums during the first few years of the new Scheme. The premium guidelines will determine the actual premiums individual vehicles owners pay in the new Scheme
- ▶ In the first few years of the new Scheme it is possible the volume of claims will be lower than assumed for both not at-fault and at-fault drivers; this could mean that the cost for each of the four model designs in the first few years is lower than the estimated cost set out in this report. Refer to Section 0 for more details
- ▶ Premiums to be paid by vehicles owners will depend on the details of the regulations and guidelines that will be issued under the new Act, for both benefits and premium system. Any differences in the assumed details of the content of the regulations and guidelines on which the costings in this report are based will result in changes to the estimates of the cost per policy and ultimately the premiums vehicle owners pay
- ▶ The existing LTCS Scheme is excluded from the deliberative democracy process. The most seriously injured road users will continue to be supported by the LTCS Scheme in its current form.

As noted in Section 1.6.2 below and Section 5 there is considerable uncertainty in estimating costs for a new CTP scheme and it is possible that the actual average cost per policy in the first few years of the four model designs will be higher or lower than our estimated costs set out in this report excluding the impact of factors extraneous to the reforms (e.g. changes in interest rates, changes in state/federal government taxes, changes in ACT road accident crash rates, etc.). Past experience of reforms to personal injury schemes such as CTP and workers compensation in Australia and internationally, indicates that the cost for the first few years of a scheme are typically lower than the estimated cost. The reasons for this are set out in Section 5 of the report.

2.4 Jury's scheme objectives and priorities

The jury's report set out the objectives it agreed on and listed them in the following order of priority:

7. Early access to medical treatment, economic support and rehabilitation services
8. Equitable cover for all people injured in a motor vehicle accident
9. A value for money and efficient system
10. Promote broader knowledge of the scheme and safer driver practices
11. Implement a support system to better navigate the claims process
12. A system that strengthens integrity and reduces fraudulent behaviour

We have calculated and included a number of metrics are derived from the costing and directly address the first three objectives above. The purpose of showing these metrics is to assist the jury assess each of the four design scheme models. In addition we have included other metrics that will assist the jury assess the impact each has on claimants that we have found useful in other CTP reforms. These metrics are summarised below and in Section 4.1.1 of the report.

2.5 Structure of this report

This report consists of the following sections:

- ▶ Section 1 sets out the executive summary. A glossary of terms is included at the end of the executive summary
- ▶ Section 2 sets out the scope of our work, background, a summary of each of the four model designs and the benefit design of the current scheme
- ▶ Section 3 documents the data, approach and key assumptions adopted to estimate the current average passenger vehicle CTP premium breakup for the current ACT scheme and the four model designs, including a split of the claims cost by payment type, insurer expenses, profit margins and various levies
- ▶ Section 4 sets out the results of the costing of the four model designs compared to the current scheme premium breakup. It also includes the results of the metrics of each model and a discussion of the results.
- ▶ Section 5 considers risks and uncertainty – a discussion of the sources of uncertainty in the costing results
- ▶ Section 6 sets out the reliances and limitations of this report.

2.6 Spectrum of personal injury insurance models

Different models exist for personal injury insurance products like CTP and workers' compensation around Australia and internationally. In Australia, the models vary on a spectrum between fully fault based where only not at-fault claimants can receive benefits as common law damages (e.g. the current ACT CTP scheme) to a no-fault based model where generous defined benefits are available to all with very restricted common law available (e.g. the Victorian CTP scheme). A combination of both models, i.e. defined benefits with access to common law limited to (typically) more seriously injured claimants is known as a hybrid model (e.g. the new NSW model). There are overseas schemes which have no common law (e.g. New Zealand) but none exist in Australia.

Chart 20: Spectrum of insurance models



The four model designs proposed by the scheme designer vary across this spectrum. Models A and B are mostly fault based models, with some defined benefits available to all but the majority of not at-fault benefits are paid at common law. Models C and D are closer to the no-fault end of the spectrum with extensive defined benefits available to all and with restrictions for accessing common law damages.

2.7 Model designs

The analysis and results shown in this report reflect the following benefit design elements for the current ACT scheme and the four proposed model designs (Model A, Model B, Model C and Model D).

2.7.1 ACT Scheme design

The ACT CTP Scheme is primarily fault based, whereby the injured person must establish that their injuries were caused by the fault of another vehicle owner or driver before they can claim benefits. The benefit is only paid out to the not at-fault party, with the wholly at-fault party not being eligible to claim compensation under the scheme. If the injured party was partly at-fault, this is taken into account in the negotiation process between the injured party and the insurer. The injured party partly at-fault may be eligible for compensation, although at a reduced rate due to contributory negligence. Compensation cannot be claimed under the scheme if the injured party is involved in an accident which is found to be no one's fault ('blameless accident'), such as a collision with wildlife. Where fault can be established, the types of benefits not-at-fault injured parties can claim for include treatment and care costs, loss of earnings and general damages.

There is a limited benefit component in the current scheme which allows the injured party to recover early treatment and care expenses of up to a maximum limit of \$5,000 using a Motor Accident Notification Form (MANF). This is generally available to any person who has sustained injury as a result of a motor accident and is payable regardless of who is at fault.

Under the current scheme, most claim settlement amounts are determined primarily under modified common law provisions defined in the *Road Transport (Third Party Insurance) Act 2008* (CTP Act), and paid as a lump sum either following negotiation between the injured party and the insurer (representing the at-fault party), or in in court proceedings.

From 1 July 2014, those who are catastrophically injured in an accident can access treatment and care benefits through the ACT LTCS scheme, however these costs are not part of the standard CTP claim and thus do not fall under the ACT CTP Scheme.

Table 21: Current ACT scheme benefit design

Benefit type	Summary of Current scheme design
Overview	All benefits (excluding Motor Accident Notification Form's) are accessed through common law and are in the form of lump sums Contributory negligence (not prescribed) may apply to awards (but not to MANFs) if the claimant partly contributed to the cause of the accident.
Loss of earnings lump sum benefits (i.e. loss of earnings)	<ul style="list-style-type: none"> ▶ For not at-fault claimants, 100% of past and future loss of earnings or the deprivation or impairment of earning capacity ▶ There is a cap of three times Average Weekly Earnings.
Treatment (medical, rehabilitation and allied health) and care (domestic services)	<ul style="list-style-type: none"> ▶ All past and future costs are recoverable ▶ Costs of gratuitous care are compensable ▶ Public hospital costs (excluding ambulance costs¹) are covered by the scheme ▶ For at-fault claimants, limited to a maximum of \$5,000 incurred in the first 6 months after an accident (i.e. MANFs).
General damages	<ul style="list-style-type: none"> ▶ Available to not most at-fault claimants only ▶ No caps or thresholds for GDs.
Legal service fees	<ul style="list-style-type: none"> ▶ Party-party legal costs recoverable from insurers by legal practitioners ▶ Solicitor-client costs charged by the solicitor to the claimant for their legal services and paid out of settlement ▶ Party-party and solicitor-client fees are capped at \$10,000 (inclusive of GST) for claims which settle below \$50,000. No caps on legal fees for higher settlements.
Death benefits	<ul style="list-style-type: none"> ▶ Compensation to Relatives Act applies including funeral expenses for not-at-fault claimants ▶ Funeral expenses are not available to at-fault claimants.

1 Ambulance costs are funded by a levy payable at the time of registering a vehicle

2.7.2 Proposed four model designs

The four model designs proposed by the Scheme Designer are outlined in the report "Model Designs - Citizens' Jury for ACT CTP scheme" by Finity, dated 9 March 2018. The models (Model A, Model B, Model C and Model D) progressively transition away from the fault based nature of the current ACT scheme towards a no fault hybrid scheme structure as they all include some degree of benefit for all people injured in an accident regardless of fault. Similar to the current scheme, injured parties can claim benefits for treatment, care, loss of earnings, general damages and death. The proposed model designs also cover any plaintiff legal costs incurred by the injured party (both party-party and solicitor-client costs) as well as defendant and investigation costs.

When progressing from Model A to Model D, the level of defined benefits (available for all) becomes more extensive while common law entitlements (for not at-fault only) become more restrictive.

Model A is the closest in design to the current scheme, with the least defined benefits and modifications to common law. Model B has a similar design to Model A but with more extensive defined benefits. For both models the most significant modification to common law is the introduction of the Injury Scale Value (ISV) method for assessing amounts of general damages for less seriously injured claimants (defined as claimants with an ISV below 15, out of 100).

Table 22: Comparison of Model A and Model B designs

Benefit type	Model A	Model B
Defined benefits - available to all regardless of fault	<p>Treatment and Care:</p> <ul style="list-style-type: none"> ➤ Limited to 6 months ➤ Paid care only <p>Loss of earnings:</p> <ul style="list-style-type: none"> ➤ 95% of pre-injury earnings for first 3 months, 80% thereafter ➤ Low income adjustment - allows greater than 95%/80% for low earners ➤ Maximum weekly cap of \$2,250 applies ➤ Up to a maximum of 6 months from the date of accident <p>Quality of life:</p> <ul style="list-style-type: none"> ➤ Nil <p>Death:</p> <ul style="list-style-type: none"> ➤ Reasonable funeral costs (max \$15,000) <p>Legal fees:</p> <ul style="list-style-type: none"> ➤ Event based fees 	<p>Treatment and Care:</p> <ul style="list-style-type: none"> ➤ Limited to 12 months ➤ Paid care only <p>Loss of earnings:</p> <ul style="list-style-type: none"> ➤ 95% of pre-injury earnings for first 3 months, 80% thereafter ➤ Low income adjustment - allows greater than 95%/80% for low earners ➤ Maximum weekly cap of \$2,250 applies ➤ Up to a maximum of 12 months from date of accident <p>Quality of life:</p> <ul style="list-style-type: none"> ➤ Nil <p>Death:</p> <ul style="list-style-type: none"> ➤ Reasonable funeral costs (max \$15,000) plus lump sum of \$50,000 if there are dependants <p>Legal fees:</p> <ul style="list-style-type: none"> ➤ Event based fees
Common law - available to not at-fault claimants only who have progressed to a common law claim if they see their defined benefits as not having met their needs	<p>Treatment, Care and Loss of earnings:</p> <ul style="list-style-type: none"> ➤ Unlimited past & future costs paid, after taking into account defined benefits already received ➤ EL paid at 100% of past loss of earnings (LOE) and future loss of earnings capacity (LOEC), including superannuation ➤ Gratuitous care included ➤ Similar to current scheme <p>General Damages:</p> <ul style="list-style-type: none"> ➤ ISV¹ scale of benefits for claimants with an ISV less than 15, see Appendix A for scale ➤ Same as current common law provisions for claimants with an ISV greater than or equal to 15 <p>Death Benefits:</p> <ul style="list-style-type: none"> ➤ Funeral costs plus common law damages for dependants <p>Legal costs:</p> <ul style="list-style-type: none"> ➤ As per current scheme levels and existing regulation 	<p>Treatment, Care and Loss of earnings:</p> <ul style="list-style-type: none"> ➤ Unlimited past & future costs paid, after taking into account defined benefits already received ➤ EL paid at 100% of future LOEC, including superannuation, excluding the first 12 months of past LOE ➤ Gratuitous care included on the 6hrs/6mths rule ➤ Similar to current scheme <p>General Damages:</p> <ul style="list-style-type: none"> ➤ Same as in Model A, but lower benefits at each ISV (where less than 15), see Appendix A for scale <p>Death Benefits:</p> <ul style="list-style-type: none"> ➤ Funeral costs plus common law damages for dependants <p>Legal costs:</p> <ul style="list-style-type: none"> ➤ As per current scheme levels and existing regulation

¹ Note that the ISV scales used in Model A and Model B are determined on an AMA5 basis

Models C and D significantly extend the defined benefits available to 5 years and are more similar to the Victorian and the new NSW CTP schemes. Additionally, unlike in Models A and B, the defined benefits available include a quality of life lump sum based on a Whole Person Impairment (WPI)

scale which has a maximum benefit of \$350,000 (see Appendix A for scale). Subject to a threshold of WPI of 5% or over, all injured parties regardless of fault can access this benefit.

General damages under common law are specified in a scale based on WPI (Appendix A) instead of ISV, with a threshold of 10% WPI or over.

Model D is very similar to Model C in terms of design. The only significant difference is additional restrictions at common law for claimants with less than 10% WPI.

Table 23: Comparison of Model C and Model D designs

Benefit type	Model C	Model D
Defined benefits - available to all regardless of fault	<p>Treatment and Care:</p> <ul style="list-style-type: none"> ➤ Limited to 5 years ➤ Paid care only <p>Loss of earnings:</p> <ul style="list-style-type: none"> ➤ 95% of pre-injury earnings for first 3 months, 80% thereafter for up to 2 years, or up to 5 years if WPI 10% or greater from date of accident ➤ Low income adjustment - allows greater than 95%/80% for low earners ➤ Maximum weekly cap of \$2,250 applies <p>Quality of life:</p> <ul style="list-style-type: none"> ➤ Lump sum up to a maximum of \$350,000 using WPI¹ scale, accessible only for WPI greater than or equal to 5% <p>Death:</p> <ul style="list-style-type: none"> ➤ Reasonable funeral costs (max \$15,000) plus lump sum of up to \$250,000 if there are dependants <p>Legal fees:</p> <ul style="list-style-type: none"> ➤ Event based fees 	<p>Treatment and Care:</p> <ul style="list-style-type: none"> ➤ Limited to 5 years ➤ Paid care only <p>Loss of earnings:</p> <ul style="list-style-type: none"> ➤ 95% of pre-injury earnings for first 3 months, 80% thereafter for up to 5 years from date of accident ➤ Low income adjustment - allows greater than 95%/80% for low earners ➤ Maximum weekly cap of \$2,250 applies <p>Quality of life:</p> <ul style="list-style-type: none"> ➤ Same as for Model C <p>Death:</p> <ul style="list-style-type: none"> ➤ Reasonable funeral costs (max \$15,000) plus lump sum of up to \$350,000 if there are dependants <p>Legal fees:</p> <ul style="list-style-type: none"> ➤ Event based fees
Common law - available to not at-fault claimants only who have progressed to a common law claim if they see their defined benefits as not having met their needs	<p>Treatment, care and Loss of earnings:</p> <ul style="list-style-type: none"> ➤ Unlimited past & future costs paid, after taking into account defined benefits already received ➤ EL paid at 100% of future LOEC, including superannuation, excluding the first 12 months of past LOE ➤ Gratuitous care included (with limitations on the 6hrs/6mths rule) ➤ Similar to current scheme <p>General Damages:</p> <ul style="list-style-type: none"> ➤ Limited to claimants with a WPI of 10% or greater ➤ Up to a maximum of \$500,000 using a WPI¹ scale <p>Death Benefits:</p> <ul style="list-style-type: none"> ➤ Funeral costs plus common law damages for dependents <p>Legal costs:</p> <ul style="list-style-type: none"> ➤ As per current scheme levels and existing regulation 	<p>Treatment and Care:</p> <ul style="list-style-type: none"> ➤ Limited to claimants with a WPI of 10% or over ➤ Gratuitous care not paid <p>Loss of earnings:</p> <ul style="list-style-type: none"> ➤ Limited to claimants with a WPI of 10% or over ➤ Paid at 100% of future LOEC, including superannuation, excluding the first 12 months of past LOE <p>General Damages:</p> <ul style="list-style-type: none"> ➤ Same as in Model C <p>Death Benefits:</p> <ul style="list-style-type: none"> ➤ Funeral costs plus common law damages for dependents <p>Legal costs:</p> <ul style="list-style-type: none"> ➤ As per current scheme levels and existing regulation

¹ Note that the WPI scales used in Model C and Model D are calculated on an AMA5 basis.

The analysis and results shown in this report reflect the above benefit design elements for the four model designs.

3. Data, approach and key assumptions

This section describes the data, approach and key assumptions used to estimate the cost per policy and average premium for the current Scheme and model designs for the policies written from 1 July 2017 to 30 June 2018 (i.e. underwriting year 2017/18).

The costing results assume a mature scheme environment where the motorists and the general public are fully aware of their rights under the scheme, relationships between insurers and medical and allied health providers are well established and the general infrastructure of the ACT CTP Regulator and insurers is fully setup.

Prior to this period, for example in the first few years of a new model it is possible the volume of claims will be lower than assumed in our costings. This could mean that claim costs in the first few years of a new model maybe lower than our estimated results. The length of time it takes for a new model to become mature will determine how quickly the true cost of the model will materialise. A more detailed description of this effect is described in Section 4.3.1.

For the current scheme and model designs, we initially estimated the average cost per policy on a scheme basis, and then adjusted for the passenger vehicle relativity under each model to arrive at an average passenger vehicle premium.

3.1 Data

To prepare the estimated costings for the model designs compared to current scheme premium we used data from a range of sources including various state scheme regulators and road authorities, as well as the Australian Bureau of Statistics. The data has been summarised by source in the sections below.

3.1.1 ACT

- ▶ Personal injury register (PIR) data for ACT- as at June 2017
 - ▶ This is a database of the CTP claims in ACT from accident years 2009 onwards, with details including payments, injuries and other claim specific attributes
- ▶ Monthly vehicle registration reports as at June 2017
 - ▶ The vehicle data shows the current and historical levels of registered vehicles in ACT as a measure of exposure in our analysis
- ▶ Crash data compiled by the Transport Canberra and City Services (TCCS) as at December 2017
 - ▶ This provides information on the number of reported crashes in the ACT, the vehicles involved and the casualties arising from these crashes
- ▶ Ambulance data compiled by the ACT ambulance service
 - ▶ Number of persons injured as a result of accidents in ACT that required ambulance transport to hospital for various years
- ▶ Analysis of claims cost by head of damage, legal representation status, injury severity, claim duration done by the ACT CTP Regulator as well as the definitions used for the Abbreviated Injury Scale (AIS)
- ▶ Hospital data compiled by ACT Health
 - ▶ Number of presentations to ACT emergency departments as a result of a traffic accident

- ▶ IAG & Suncorp Comprehensive Motor Insurance crash and claims data for ACT as at June 2016
- ▶ Other analysis requested from individual insurers.

3.1.2 NSW

- ▶ NSW PIR and claims cost disclosure (CCD) data - as at August 2017
 - ▶ The PIR is a database of the CTP claims in NSW from accident years 1990 onwards, with details including payments, injuries and other claim specific attributes
 - ▶ The CCD database keeps record of the actual legal expenses paid to plaintiff lawyers representing claimants and the net amount of settlements received by claimants. The difference between the legal costs shown in the NSW PIR data and the CCD represents the solicitor-client plaintiff lawyer legal fees²
- ▶ NSW Road and Maritime Services (RMS)
 - ▶ Vehicle registration by class data for the state of NSW - as at June 2017
- ▶ NSW Centre for Road Safety (CRS)
 - ▶ Aggregate casualty data for the state of NSW - as at December 2015
- ▶ NSW workers compensation data for selected items (e.g. medical fee levels)

3.1.3 Victoria

- ▶ Transport Accident Commission (TAC) risk premium
 - ▶ Projected claim costs per vehicle by the TAC Scheme actuaries for the underwriting year 2015/16
- ▶ TAC claims data - Institute for Safety, Compensation and Recover Research (ISCRR) data
 - ▶ Transactional payment data as at December 2015 relating to claims paid under the TAC Scheme since 1992
- ▶ VicRoads data
 - ▶ Exposure and casualties data for the state of Victoria - as at June 2015

3.1.4 Queensland

- ▶ Queensland PIR data from the Motor Accident Insurance Commission (MAIC) - as at September 2017
 - ▶ The PIR is a database of the CTP claims in Queensland from accident years 1995 onwards, with details including payments, injuries and other claim specific attributes
- ▶ Vehicle registration numbers and casualties data from Department of Transport and Main Roads - as at June 2017

² Costs payable to the legal practitioner representing the claimant, by the claimant under an agreed private arrangement i.e. those costs in excess of party-party costs recorded in the PIR

3.1.5 Other

- ▶ Australian Bureau of Statistics (ABS)
 - ▶ The series of Average Weekly Ordinary Time Earnings (AWE) for full time adults for ACT is used to inflate historical payments in the PIR to 30 June 2017, while the AWE for Victoria is used for wage relativity purposes within the Loss of earnings model.
- ▶ Rate filings for NRMA effective July 2017, GIO effective February 2017, AAMI and APIA effective July 2017
 - ▶ These premium filings provide additional information on claims costs, frequency projections, insurer expenses and loadings, insurer profit margins, levies and premium relativities
 - ▶ They also form the basis of our long term inflation and discounting assumptions
- ▶ “Model Designs - Citizen’s Jury for ACT CTP Scheme”, dated 9 March 2018, prepared by Geoff Atkins of Finity Consulting
 - ▶ This document contains a description of the four model designs to be costed.
- ▶ Costing models, analysis and results previously prepared by EY for the development of the new NSW scheme.

3.2 Current ACT scheme premium

For the existing scheme we have not undertaken a ground up estimate of the current ACT CTP scheme claims costs and overheads. Instead we used the existing premiums charged by the insurers as the basis of current scheme costs. We split the average cost of claims component in insurers’ premium filings by type of benefit based on the historical payments in the ACT CTP scheme. Given the stability of the claims experience, this was a pragmatic approach to produce reasonable cost estimates by benefit type.

This approach consisted of the following steps:

- ▶ Extract the latest payments from the ACT PIR as at 30 June 2017 - a database of all historical payments under the scheme since 2008/09, as well as the latest claims header extract as at 30 June 2017 which shows summarised information for each claim since the claims was reported
- ▶ Inflate the historical payments in the payments file to current values as at 30 June 2017 in line with movements in the Average Weekly Earnings (“AWE”) index for all persons’ total earnings in ACT as published by the Australian Bureau of Statistics. This reduces the possibility that past fluctuations in the rate of wage inflation could distort the analysis
- ▶ Categorise all individual payments into each head of damage, i.e. loss of earnings, general damages, treatment & care and legal costs over the period using the payment descriptions provided with the PIR data
- ▶ Exclude costs that would have otherwise been transferred to LTCS had LTCS been in place at the time, as such costs are not a feature of the current CTP Scheme. The impact of this is a small reduction in overall claims cost by approximately 2%. (LTCS was recently introduced in 2014 and the low casualty frequency in the ACT means there are few expected participants.)
- ▶ Account for solicitor-client legal costs in the overall claims costs. The assumptions and approach used for these costs is explained in Section 3.2.2 below.

- ▶ In light of both mature years' experience (e.g. 2010) and recent years' experience (e.g. 2017), select a representative proportion of claim costs for each head of damage in the 2017/18 underwriting year.
- ▶ Apply these proportions to the average 2017/18 risk premium (i.e. claims costs) filed by insurers to split into estimated claims costs by head of damage
- ▶ Allow for average insurer expenses, levies and other scheme costs (as per the insurers' filings) to make up the current average CTP premium
- ▶ Apply the passenger vehicle class relativity factor (about 94%) to derive the current passenger vehicle (i.e. class 1) premium in the ACT.

3.2.1 LTCS Claims

From 1 July 2014, treatment and care costs for road users who suffer catastrophic injuries are managed by the ACT LTCS scheme. The costs in relation to those catastrophic injuries are not part of a CTP claim and thus are not covered by the Scheme.

The PIR data includes LTCS-equivalent claims and all associated payments prior to 1 July 2014 which are no longer relevant to the current scheme (nor any of the model designs). Hence in our costing analysis we have excluded claim costs for treatment and care which would otherwise have been transferred to LTCS prior to 2014. The impact of excluding these claims is a reduction in overall claims cost of approximately 2%.

3.2.2 Solicitor-client legal costs

Solicitor-client legal costs (as described in section 3.1) are payable by claimants in the ACT out of the common law settlement or judgement (i.e. they are not directly paid by insurers to claimants) and hence are not recorded in the ACT PIR. There is currently no mechanism for capturing these costs in the ACT, unlike in NSW where the CCD was introduced to record these and other claim details. Based on advice we have received which was confirmed by SRG participants, law firms in the ACT run a similar business model to NSW and charge similar total legal fees. Hence we have made the assumption that total legal fees (i.e. the sum of party-party and solicitor-client fees) as a proportion of total claims costs in both states are at a similar level. To estimate the solicitor-client component therefore, we have assumed that the difference between party-party fees in the ACT PIR and total legal fees in the NSW CCD represents solicitor-client fees in the ACT. This represents approximately 9% of claims costs, after allowing for the different mix of claims by settlement size in the ACT.

The sum of the party-party and our estimate of solicitor-client fees are used to estimate total legal fees in the current ACT scheme. These results are used to estimate the total legal fees for some metrics set out in section 4 including scheme efficiency and average legal fees per legally representative claims. We have also separately identified our estimated solicitor-client fees at the bottom of the detailed costing results in Appendix B for the current scheme and also each of the design models.

3.2.3 Insurer expenses, insurer profits and nominal defendant levy

Insurer expenses (including policy acquisition, claims handling and net reinsurance expenses) are an additional loading on top of the estimated claims cost per policy based on recent insurers' average filling assumptions. An industry profit margin of 9.5% of insurer premiums (excluding GST) has been adopted for the prospective underwriting period based on recent insurer premium rate filings.

A nominal defendant levy of approximately 5% of not at-fault claim costs (as per the current scheme) has also been applied to the insurer risk premiums (excluding GST) or about \$20 per policy for passengers.

3.3 Model Designs

Our approach to the costing is formed by a few distinct methodologies. For almost all defined benefits under each model we used the Victorian TAC scheme data as the starting basis for estimating claim costs. For common law under each model we used the current ACT scheme experience and premium rates as a basis, adjusted in line with specific elements under each model design. Finally, where a scale of benefits was outlined in the model design (e.g. general damages, quality of life, death benefit, etc.) an approach that separately considers the number of claims accessing the head of damage and the corresponding size of benefit per claim accessing the head of damage, referring to other scheme experience where relevant.

3.3.1 Approach to estimating cost per policy for defined benefits

Each of the model designs incorporate defined benefits for all claimants regardless of fault. This type of benefit structure has been operating for around 30 years in the TAC scheme in Victoria with very stable claims experience. This data forms a suitable basis for estimating the cost of defined benefits under the models after adjusting for specific features of the benefit designs (e.g. limited period of 6 months, 12 months, etc.). This methodology is also consistent with the approach EY used to cost the new NSW scheme, where defined benefits were introduced as part of a hybrid model structure.

The TAC Scheme claims cost estimates (i.e. breakeven premium per vehicle) were used to estimate the cost per policy for almost all defined benefits under each model including treatment, care and loss of earnings for both not at-fault and at-fault claimants. Several adjustments were made to the claims experience in order to convert it to an ACT CTP claims environment. This included adjustments to exclude claims costs for equivalent claims covered under the ACT LTCS scheme and other differences between each state such as average weekly earnings, private medical and allied health fee levels, number of casualties, etc. Finally, specific adjustments were made to each model's costs to align with the relevant benefit design.

The steps taken to adjust the TAC risk premium (i.e. claims cost) to an ACT basis tailored to each model design is as follows:

- ▶ Deduct the cost of claims which would fall under the LTCS scheme in the ACT, as in Victoria these are covered by the CTP scheme
- ▶ Allow for higher fee rates in the ACT for private medical and allied health services (based on a comparative analysis of fee rates and payments in each state)
- ▶ Allow for higher wage levels in the ACT compared to Victoria for loss of earnings benefits
- ▶ Allow for estimated differences in the distribution of claims frequency in the ACT compared to Victoria (i.e. number of casualties, claims and the proportion of at-fault and not-at-fault claimants in each state).

Table 4 provides a summary of costing approaches using the TAC breakeven premium and TAC claims data as the input. We have assumed that the TAC Scheme estimated breakeven premiums truly represent a central estimate of the TAC Scheme cost. Any under or over estimation of the TAC Scheme breakeven premium will lead to a corresponding under or over estimation of our costing results. This risk is partly mitigated because the TAC Scheme is well established with stable historical experience and the claims cost per policy has been estimated by TAC scheme actuaries who perform this analysis annually and are familiar with the features of the TAC scheme.

Table 24: Defined benefit costing approaches - TAC scheme basis

Defined Benefit type	Summary of costing approach - TAC scheme basis
Income replacement	<p>Claims costs are estimated from the TAC risk premium as follows:</p> <ul style="list-style-type: none"> ▶ We used the mix of casualties in the ACT to determine the split between at-fault and not at-fault claims and applied these proportions to adjust the total TAC risk premium ▶ 6 months, 1 years and 5 years of payments data were used to determine the claim costs for Models A, B, and C/D respectively <ul style="list-style-type: none"> ▶ An adjustment factor is applied in Model C after 2 years to account for the WPI threshold ▶ Adjustments were made to align the pre-injury average weekly earnings to the ACT basis ▶ A maximum weekly past and future loss of earnings benefit of \$2,250 was also assumed.
Treatment (private medical costs)	<p>Claim costs were derived from TAC risk premium with the following adjustments:</p> <ul style="list-style-type: none"> ▶ We used the mix of casualties in the ACT to determine the split between at-fault and not at-fault claims and applied these proportions to adjust the total TAC risk premium ▶ 6 months, 1 year and 5 years of payments data was used to determine the risk premium for Models A, B, and C/D respectively. ▶ We excluded equivalent claims covered under the ACT LTCS scheme from the TAC scheme claims cost ▶ We adjusted the claims cost to allow for higher private medical fees in ACT compared to Victoria: <ul style="list-style-type: none"> ▶ The TAC scheme has centralised fee schedules for treatment providers and has a centralised consistent treatment regime. ACT insurers and the ACT CTP Regulator will have to control these costs under the new model at the cost levels which we have assumed to ensure that treatment claims costs are contained within our cost allowance ▶ Upon discussion with the ACT CTP Regulator, it was found that medical fee levels in ACT for private medical and related services were similar to NSW, and so we adopted the same medical fee relativity for converting the TAC risk premium to an ACT basis ▶ Our analysis done previously for the new NSW scheme showed that the fee levels in NSW were higher than the TAC fee levels by about 45%, so we applied a loading of 45% over Victorian scheme costs to allow for higher medical fee rates in NSW, based on analysis of data for the NSW workers compensation scheme ▶ The actual treatment cost of claims may vary from our cost estimates depending on the variation of the content of the guidelines published by the ACT CTP Regulator ▶ No reduction of treatment costs was allowed for contributory negligence.
Treatment (public medical costs)	<ul style="list-style-type: none"> ▶ Public hospital costs were based on the NSW bulk billing fees increased by 10% to allow for the higher fees in public hospitals in ACT than NSW ▶ Ambulance costs were excluded as there is a separate levy included in the ACT vehicle registration fees which funds those costs
Care	<p>Care claim costs were derived from TAC risk premium with the following adjustments:</p> <ul style="list-style-type: none"> ▶ We used the mix of casualties in the ACT to determine the split between at-fault and not at-fault claims and applied these proportions to adjust the total TAC risk premium ▶ 6 months, 1 year and 5 years of payments data was used to determine the risk premium for Models A, B, and C/D respectively. ▶ We excluded equivalent claims covered under the ACT LTCS scheme from the TAC claims cost ▶ Based on analysis we have performed comparing current attendant care rates in Victoria and ACT, we assumed the cost of care is similar in both states and hence no cost adjustment is required

	<ul style="list-style-type: none"> ▶ No reduction of care costs was allowed for contributory negligence.
Legal costs	<p>Legal costs related to defined benefits are expected to be limited and on the basis of work performed</p> <ul style="list-style-type: none"> ▶ TAC legal costs were initially used as a reference point adjusted for differences in the potential level of litigation in each state. As the level of defined benefits increases under each model, legal costs are assumed to increase per defined benefit claim ▶ We have assumed an additional cost under each model to allow for proposed dispute resolution mechanisms, including the introduction of a panel ▶ Overall our assumption is consistent with lower legal cost for defined benefits in a hybrid scheme than under a fully common law scheme.

For models C & D, the quality of life (QOL) benefit design specifies a scale of benefits for claimants who have a Whole Person Impairment (WPI) of 5% or greater (amounts are outlined in Appendix A). We took a ground-up approach to estimating the cost per policy, by estimating the number of eligible claims and the expected amount per claim.

All models include a defined benefit for funeral costs under the death benefit type. Again we took a ground-up approach to estimating the expected cost per policy.

Table 25: Defined benefit costing approaches - specified scale basis

Defined benefit type	Summary of costing approach - specified scale basis
Quality of life (QOL)	<p>Defined benefits for Models C & D were costed by estimating the number of claims receiving benefits and multiplying that by the estimated average benefit received:</p> <ul style="list-style-type: none"> ▶ A claim number distribution by WPI under an AMA5 basis was estimated based on the claims experience of the Queensland CTP scheme which adopts an ISV scale for general damages at common law. The basis of the ISV scale in Queensland is heavily based on a WPI scale ▶ Specialist medical advice was sought to determine the proportion of claimants in the scheme who are likely to have a WPI of at least 5% or higher (i.e. the threshold for receiving this benefit) ▶ Claim amounts are based on a prescribed scale set by the scheme designer (shown in Appendix A). <ul style="list-style-type: none"> ▶ We assumed that not at-fault claimants with a WPI greater than or equal to 10% would make a common law claim for general damages as these benefits follow a more generous scale, hence we have not included these claimants in the cost of this benefit ▶ The estimated number of claims multiplied by the average benefit amount provides the basis for the cost per policy.
Death - funeral costs	<ul style="list-style-type: none"> ▶ Funeral expenses are assumed to be capped at \$15,000 per claim (as in the NSW CTP scheme) ▶ Cost per funeral multiplied by 10 fatalities in the ACT gives the cost per policy provides the basis for the cost per policy.

3.3.2 Approach to estimating cost per policy for common law

Common law coverage varies significantly under each of the proposed models and in comparison to the current scheme. Models A and B are most similar to the current scheme with full access to benefits for not at-fault claimants after allowing for defined benefits already received. With the exception of general damages (where scaled benefits for most claimants represents a significant change) the total cost per policy (i.e. defined benefits plus common law) for most heads of damage in Models A and B is assumed to be similar to the current scheme for not at-fault claimants.

Consequently, we have used current scheme claim costs as the basis for common law costs under these models.

For Models C and D there are more significant changes to common law costs, mainly driven by changing behaviours under these model designs. The numbers of claimants expected to make a common law claim in these models is significantly lower than in the current scheme and the amounts awarded for damages are expected to be lower than for the same claims in the current scheme. The most significant factors driving this behaviour are:

- ▶ Generous defined benefits available (up to 5 years)
- ▶ Threshold for accessing general damages (10% WPI)
- ▶ Common law awards are net of defined benefits already received
- ▶ On average the proportion of common law claims relating to more seriously injured claimants should be higher (as the less serious claims receive defined benefits rather than common law).

Hence for Models C & D, the common law costs per policy are based on the number expected to make a common law and the resulting settlement size expected. As total costs for common law are expected to reduce, the reduced settlement sizes directly result in lower legal costs for common law claims in these models.

Where relevant for each model design, the average claim size expected for heads of damage under common law is based on the current ACT CTP scheme with allowance for trends in the NSW CTP scheme and/or the Queensland CTP scheme experience following the introduction of ISV for general damages or other benefit changes that are similar to the benefit changes in the design models.

Payments in relation to MANF claims have been removed from current scheme costs in accordance with the scope of the model designs. (This does not have a significant impact as the average claims cost for such claims is very low).

The approach adopted for common law costing for each benefit type is summarised in the table below.

Table 26: Common law costing approaches – ACT scheme basis

Common Law Head of damage	Summary of costing approach – ACT scheme basis
Loss of earnings	<p>For Models A, B and C, common law costs are assumed to be the same as the current scheme at 100% of loss of earnings (LOE)/loss of earning capacity (LOEC) with no time limit. The following adjustments were also applied:</p> <ul style="list-style-type: none"> ▶ Where defined benefits are already received, a top-up for superannuation (9.5%) for that period is assumed to be added to common law ▶ In Models B & C, costs are adjusted to exclude any payments not received as defined benefits during the first 12 months (as per the model designs) ▶ In Models A & B we increased the estimated costs for loss of earnings at common law to account for a “substitution” effect arising from lower general damage awards compared to the current scheme. Based on experience in the Queensland CTP scheme following the introduction of ISV, increases were observed in the amounts of loss of earnings awarded. It is likely that this was driven by the overall lower general damages being awarded for most claims. We anticipate a similar behaviour could arise in the ACT under the models where ISV is implemented. <p>For Model D, loss of earnings awards are only available to those with a WPI of 10% or greater. Since the ACT scheme does not use the WPI scale, we used a sample of the largest 10-15% of claims in the current scheme (adjusted to include the proportion of earners only) to estimate an average claim size. To determine the numbers accessing loss of earnings at common law we considered NSW data where the 10% WPI threshold has proven relatively robust over many years. As the NSW scheme has some differences to the models proposed for the ACT, we made the following adjustments:</p> <ul style="list-style-type: none"> ▶ Uplift to allow for claims with WPI <u>equal</u> to 10% (the threshold is more generous than NSW) ▶ Adjustment to reflect the AMA 5 basis for assessing WPI in the proposed models, in contrast to the AMA 4 basis in NSW based on specialist medical advice ▶ Allow for assumed casualty frequency differences between the ACT and NSW.
Treatment (private medical costs)	<ul style="list-style-type: none"> ▶ In Models A, B and C, common law benefits are similar to the current scheme, and therefore we have used the current scheme’s risk premium (excluding public hospital costs) reduced by the expected cost of defined benefits already paid for private treatment costs ▶ We have assumed a small reduction in these costs to allow for the behavioural effects associated with the implementation of ISV for general damages similar to the Queensland CTP scheme when ISV was introduced ▶ In Model D there is a 10% WPI threshold for accessing treatment at common law. Consequently costs are expected to be lower than Model C and similar to lifetime costs post 5 years for treatment in the TAC scheme
Care	<ul style="list-style-type: none"> ▶ In Models A, B and C, common law benefits are similar to the current scheme, and therefore we have used the current scheme’s risk premium reduced by the expected cost of defined benefits already paid for care ▶ We have assumed a small reduction in these costs to allow for the behavioural effects associated with the implementation of ISV for general damages similar to the Queensland CTP scheme when ISV was introduced ▶ In Model D there is a 10% WPI threshold for accessing care at common law. Consequently costs are expected to be lower than Model C and similar to lifetime costs post 5 years for care in the TAC scheme
Death	<ul style="list-style-type: none"> ▶ In all models, common law death benefits are similar to the current scheme where compensation to relatives is paid. Hence we have used current scheme costs without adjustment
Legal costs	<ul style="list-style-type: none"> ▶ Common law legal costs are based on the cost as a proportion of settlements in the current scheme. Common law legal costs reduce from

	Models A through to D driven by lower numbers of legally represented claims at common law and lower average settlement sizes. This is outlined further in section 3.3.3
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General damages at common law under every model is significantly different to the current scheme. Hence we have used a ground-up approach to estimating the cost of this head of damage at common law - based on the scaled amounts prescribed by the scheme designer and the numbers expected to receive this head of damage at common law under each model.

Table 27: Common law costing approaches - specified scale basis

Common Law Head of damage	Summary of costing approach - specified scale basis
General damages	<p>For Models A and B, the design prescribes that ISV is used to determine general damages amounts as follows:</p> <ul style="list-style-type: none"> ▶ Where ISV is determined to be less than 15, a prescribed scale of amounts applies (see Appendix A) ▶ Where ISV is determined to be 15 or over, the amount awarded follows the common law process. The proportion of claims falling into each cohort above and below an ISV of 15 is expected to be similar to the Queensland scheme, where ISV has been in place for 15 years. We assumed general damages for the claims with an ISV 15 or higher (i.e. 10% to 15% of claims) is based on the average received by the top 10-15% of claimants in the current scheme <p>For Models C and D there is a threshold of 10% WPI for accessing general damages at common law. Costs are determined as follows:</p> <ul style="list-style-type: none"> ▶ Claim amounts are based on a prescribed scale by WPI % as shown in Appendix A ▶ Number of claimants accessing general damages is based on the number with a WPI of 10% or greater. As per EL in these models, we considered NSW scheme data to determine the average number of claims p.a. (adjusted for the number of vehicles) where WPI is greater than 10% WPI. The following adjustments were also required: <ul style="list-style-type: none"> ▶ Uplift to allow for claims with WPI equal to 10% (the NSW threshold is less generous) ▶ Adjustment to reflect the AMA5 basis for assessing WPI in the proposed models, in contrast to the AMA4 basis in NSW ▶ Allow for assumed casualty frequency differences between the ACT and NSW

3.3.3 Legal costs for common law

In the current scheme, party-party, estimated solicitor-client and defendant & investigation legal costs under common law amount to a total of about 33% of claims costs. This percentage varies by settlement size - for smaller claims legal costs represent a higher proportion of settlement size than they do for larger claims. Hence the settlement size for common law claims under the model designs should determine the expected legal costs at common law and that may vary by model.

Under Models A and B, there are several offsetting effects on legal costs for common law claims. Firstly, the average size of common law claims is expected to decrease due to the availability of defined benefits and the significant reduction in general damages available also acts as a disincentive for making a common law claim. This effect was observed in the Queensland scheme following the 2003 reforms which introduced ISV.

However, a counteracting effect is that the claims that are made at common law are more likely to be for more seriously injured claimants with future treatment and/or care needs and with a greater likelihood to have a loss of earning capacity. This would have the effect of increasing the overall average common law settlement size.

As more than half of the claims in the current ACT scheme have an average claims size of a relatively low amount (less than \$50,000) we have assumed that the net impact on common law settlement size is negligible. Hence common law legal costs associated with these claims is unchanged as a proportion of settlements under these models.

Under Model C we expect a slightly different impact as under Models A and B, average settlement sizes are expected to reduce due to significant defined benefits paid and tougher restrictions apply for accessing general damages at common law (10% WPI threshold). Consequently, the claims being made at common law are expected to be for the relatively more seriously injured claimants. Absolute legal costs for these claims are not expected to differ from current scheme levels. Hence, as common law settlement sizes reduce but legal costs remain the same, the result is that legal costs as a proportion of settlements would increase from current level by about 5% to around 38% of costs per policy for common law benefits.

Model D is more restrictive than Model C as only claimants with a WPI of 10% or greater have access to common law benefits. Based on an analysis of the top claims by settlement size in the ACT scheme, legal costs as a proportion of settlement size was found to be similar to the scheme average level of about 33%. Hence we have assumed this proportion is unchanged from the current scheme in Model D. Thus, the driver of the reduction in common law legal costs from the current scheme in Model D is wholly driven by the reduction in the number of legally represented claims at common law.

3.3.4 ACT costs relative to other schemes

Our costings rely on claims experience from other schemes, in particular the TAC scheme in Victoria and the NSW and Queensland schemes. In order to convert these costs to the ACT claims environment, it is necessary to adjust for differences in claim numbers and cost drivers including wage levels and provider costs.

3.3.4.1 Claim frequency and relative claims costs

Unfortunately, the ACT casualty data was insufficient to rely on for all our costing purposes and an alternative approach was required.

To determine the ultimate number of claims, relative claims costs under defined benefits which might arise under each of the model designs proposed for the ACT scheme and in particular the mix of at-fault and not at-fault claims, we have considered the number of casualties and their mix by fault status (i.e. at-fault and not at-fault) compared to other regions.

Historically for Victoria, there has been a strong correlation between motor accident casualties and CTP claims which is predominantly due to the no-fault defined benefit structure of the scheme which provides only limited access to common law for seriously injured not at-fault claimants. In the modelling of the new NSW scheme undertaken previously by EY, the strong correlation between casualties and claims was also considered as the scheme moved towards a defined benefit structure. It was assumed that there would be a correlation between casualties and claims under the proposed model designs since all models offer defined benefits.

Using analysis of data supplied by IAG and Suncorp and analysing casualty frequency trends by region in NSW the characteristics of ACT crashes (based on data received) were judged to be similar to the NSW region of Newcastle. NSW CrashLink and ACT TCCS data was used to analyse casualties and crash experience over time in the ACT for such factors as the proportion of at-fault and not at-fault casualties, proportion of single vehicles accidents, number of casualties per accident, average number of vehicles per accident and average number of casualties per vehicles.

There is also some qualitative rationale as well in that we would expect ACT and Newcastle to have lower road density than Sydney, but higher road density than NSW Country. We also expect ACT to have better road conditions than NSW Country. Ultimately, this would lead to the view that ACT's

casualty experience should also be similar to Newcastle. For these reasons, we used NSW Newcastle as a suitable basis for which to derive ACT's claim frequency, relative defined benefit claims costs and other assumptions under the proposed models.

Assuming a similarly high propensity to make a CTP claim as in Victoria following a road accident resulting in a casualty, we have adjusted the TAC claims costs to allow for the estimated number of claims in the ACT based on the Newcastle region as a proxy. The impact is about a 3% uplift in claim costs. This adjustment is used for all defined benefit costs which are based on the TAC claims experience.

There is considerable uncertainty around this assumption given that there is a lack of robust CTP casualty data available for ACT. Furthermore, the number of claims that will be reported under the model designs is also uncertain and will be determined by the behaviour of claimants and their advisors as well as the general awareness of entitlement to benefits under the new scheme. It is important to consider the results in the context of this uncertainty as the final average passenger vehicle premium is sensitive to the assumption we have adopted.

3.3.4.2 At-fault and not at-fault ratio

The ratio of at-fault claims to not at-fault claim numbers is different between the ACT and Victorian schemes. The ratio for the ACT is based on the analysis as described in section 3.3.4.1 above. As with the number of claims above, we have used Newcastle as a proxy for the expected number of at-fault claimants under the four design models. This assumes a proportion of about 40% at-fault claims across the total claim population under each design model for defined benefits.

3.3.4.3 Wage relativities

Loss of earnings benefits cover past and future earnings lost as a result of an injury in an accident, and so are dependent on wage levels. As wage levels vary by state, claims costs arising in the TAC scheme needed to be adjusted by the relative difference in wage levels between ACT and Victoria. This was done by comparing the ABS Average Weekly Earnings ("AWE") index for all persons' total earnings in ACT and Victoria. Based on recent experience, we assumed that wage levels in ACT were approximately 24% higher than Victoria.

3.3.4.4 Medical cost relativities

Based on previous analysis we have performed between the centralised fee schedules for treatment providers in the TAC scheme and prevailing fees charged by the NSW workers compensation scheme, which will be applied in the new NSW scheme, we concluded that medical fees for private hospitals and allied health services were 45% higher in NSW than in Victoria. We have been advised that medical fee rates are similar in the ACT and NSW, hence we have applied the same 45% uplift to all treatment costs arising under the TAC scheme.

3.3.5 Claim number distribution by WPI

Models C and D use WPI as a threshold for accessing defined benefits or common law awards. WPI under these models is measured based on the fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA 5). As the ACT scheme does not currently utilise WPI in accessing benefits, the claim numbers relating to benefits using these thresholds had to be estimated for the purposes of this costing.

For defined benefits, Models C and D specify a threshold of 5% to be eligible for the quality of life defined benefit. To estimate the proportion of claimants falling above and below this threshold we used NSW CTP claims data - unlike the ACT data we could split the data into above and below WPI of 10% and in addition there was a greater volume of data to provide stability to the numbers. Using a sample set of injury descriptions split by severity levels 1 - 6, we sought the advice of medical specialists to estimate the proportion of injuries under each severity which would be classified as a WPI greater than or equal to 5%.

Based on this analysis the proportion of claims likely to have a WPI assessed as being 5% or over was assumed at 55%. There is a large amount of uncertainty around this assumption as medical specialists advised us that at lower WPI's the precision of impairment evaluation is poor.

Under common law for general damages in Models C and D, a WPI threshold of 10% is specified in the model design. NSW was used to determine the proportion above this threshold, as the NSW PIR dataset indicates whether the claim is above this threshold for the purposes of determining general damages in the NSW scheme. As the definitions are different under the NSW scheme than for the model designs proposed, these proportions were adjusted to allow for an AMA5 basis and to include claimants with a WPI equal to 10% (these adjustments were based on specialist medical advice). Our final assumption was that 15% of claimants were likely to have a WPI of 10% or higher under the proposed models.

The distribution of claims across all WPI levels was based on the distribution of ISV in the Queensland scheme as a proxy, which has assumed to be representative of the shape of injury severity from the least to the most severe across all claimants. Despite the shortcomings of this approach, it has a negligible impact on the costings as the amounts are prescribed by scale and the relatively strong threshold of 10% WPI is expected to maintain a stable number of claimants at common law.

3.3.6 ISV - behavioural effects

A significant design feature of Models A and B is the introduction of the ISV instrument for assessing common law amounts for general damages. Based on experience in the Queensland scheme following reforms in 2003, costs for all other heads of damage experienced notable change in the following periods. We have analysed this "behavioural" effect in the Queensland data and have incorporated our findings into the assumptions for common law costs under Models A and B.

In 2003, the Queensland government introduced the Civil Liability Act 2003, which introduced the ISV scale for calculating general damages. Upon analysis of historical claims experience. The number of claims in the Queensland scheme reduced significantly from the date when the Civil Liability Act 2003 became effective resulting in a significant reduction in claim numbers between 2001 and 2006, much more than the reduction in the number of vehicle accident casualties. Claim numbers stabilised from 2006. Cost per policy also reduced by a similar amount over the same period.

Further analysis of claim trends and discussions with the Queensland CTP Regulator confirmed that the main reason for this decrease was the introduction of the ISV scale, with the decrease driven predominantly by a reduction in minor injury claims. The scale provided less generous benefits for these minor claims compared to what these claims would have received under the previous common law structure prior to 2003, thus acting as a disincentive to less severely injured claimants putting in a common law claim in the first place. In addition to the overall reduction in claim numbers, the ISV had other flow on impacts on the cost per policy of treatment, care and loss of earnings at common law. For the period between 2001 and 2006 when claims numbers reduced as noted above, treatment and care awards reduced. However, loss of earnings over the same period increased driven predominantly by a substitution effect between general damages and EL. In our costings we assumed that similar behaviour would be experienced when transitioning from a common law structure in the current ACT scheme to the ISV scale in Models A and B noting that the level of benefits for general damages in the design models for ACT are substantially higher than in Queensland.

Based on experience in Queensland, both claim numbers and cost per policy behavioural effects of ISV were explicitly accounted for in the costing of Model A and B. The reduction in claim numbers and cost per policy is not expected to be as significant as Queensland as the proposed ISV scales are much more generous than the scale introduced in Queensland (e.g. at low ISVs the amounts are three to four times the amounts in Queensland). Furthermore, the behavioural effect is expected to be greater in Model B than in Model A as the ISV scale in Model B is less generous compared to Model A.

3.3.7 Interstate claims

Interstate claims are the claims caused by an ACT at-fault vehicle where the accident occurs in another state. Under this scenario, the ACT insurer of the at-fault driver would be liable, however the benefits that would apply for the claimant would be of the state where the accident occurs. For example, if an ACT at-fault vehicle injures a person in NSW, then the claimant would have access to NSW benefits instead of ACT. Since the benefits of the other state apply, changes in benefit design in the ACT will have no impact on the cost of interstate claims. Therefore, it is imperative to exclude interstate claims from the costing of the various heads of damage and consider these claims as a separate line item so that they are independent of the changes under the proposed model designs.

Using data provided by insurers, we estimate there are approximately 75 interstate claims per year in the ACT with an average claim size of \$150,000, resulting in a cost per policy of approximately \$40 on an average scheme premium basis (around \$37 on a passenger vehicle basis) in the current scheme. The cost per policy of \$40 is removed from the other heads of damage in the current scheme risk premium using a pro rata approach and considered as a separate cost in the results. For the proposed models, this method will ultimately result in common law costs that are exclusive of interstate claims in the benefit designs where the common law costing relies on the current scheme cost.

A lower cost per policy of \$32 per passenger vehicle (equivalent to \$35 on a scheme average basis) was used as the cost in the four design models, to reflect the reduction in the cost per policy of interstate claims seen in NSW following the reforms in 2017 (the reason this change was made was ACT insurers had not reflected in the lower cost of NSW interstate claims in their current scheme premiums arising from the new NSW CTP scheme that commenced on 1 December 2017).

3.3.8 Nominal defendant claims

Insurer premiums in the ACT scheme incorporate a levy for nominal defendant claims of approximately 4% of average premiums (excluding levies) as at July 2017. This levy covers claim costs under the scheme where the at-fault driver is unidentified or unregistered. Under each of the models we have adjusted nominal defendant costs such that they are the same percentage of not at-fault claims costs under each model. (We have assumed there will not be any at-fault claims managed by the nominal defendant.) As the not at-fault claims costs reduce from Models A to D, the nominal defendant levy therefore also reduces.

An increase to the nominal defendant levy was processed in early 2018. This has not been incorporated in our costings which are based on the insurer premiums effective July 2017.

3.3.9 Passenger vehicle relativity

The estimated average cost per policy has been initially performed at an overall scheme basis and then adjusted for the passenger vehicle relativity under each model to arrive at an average passenger vehicle premium.

This adjustment is required to reflect the different mix of at-fault and not at-fault claimants arising from each vehicle class, as the design models provide progressively more benefits to at-fault parties.

Some examples of how the mix of at-fault and not at-fault claimants may change for each ACT vehicle class are:

- ▶ For Passenger vehicles, we have estimated for every 60 not at-fault claims there will be around 40 at-fault claims (where a passenger vehicle is at-fault). This reflects the inclusion of the at-fault driver in an accident, including single vehicle accidents
- ▶ For Motorcycles, we estimate that for every 10 not at-fault claims there are approximately 90 at-fault claims (where a motorcycle is at-fault). Again this reflects the inclusion of the at-fault driver in an accident, including single vehicle accidents. In addition, where a motorcycle rider

or pillion passenger is injured, they are likely to have more severe injuries than parties in other vehicles

- For vehicles used for commercial purposes like larger trucks, buses and taxis, the impact of including the at-fault driver is low. This is because they are more likely to be covered through workers compensation

Ultimately, it means that the premium savings will not be consistent by vehicle class, and this will also vary by model design.

The passenger vehicle relativity adjustments for ACT are based on the analysis and results prepared by EY in the development of the new NSW scheme, in particular the results for the Newcastle region. Additional adjustments are made to reflect the varying proportion of benefits attributed to at-fault parties under each model design.

3.3.10 Insurer expenses, insurer profits, levies and other assumptions

Claims handling expenses are estimated by multiplying the total claims costs by the percentage of claims costs which are comprised of these expenses. For the four design models, this percentage is assumed to be greater than for the current scheme, as there is more claims management work for defined benefits than common law claims, and increases from Model A to Model D to reflect the greater administrative costs of handling a larger number of defined benefit claims. The assumptions for insurer acquisition costs and reinsurance costs as a dollar per policy are assumed to be unchanged from the current scheme.

The insurer profit margins and GST levies have been estimated by multiplying the total claims cost by the proportion of claims costs which are comprised of these expenses, which was assumed to be unchanged from the current scheme under the four models.

3.3.11 Motorcycle subsidy

In respect of the model designs for a new scheme, the ACT government has an objective that CTP premiums are not to increase over current levels. However as highlighted in Section 3.3.8, the extension of coverage to at-fault drivers has a significant impact on the relative risk on the motorcycles vehicle class, which are likely to result in premium increases for motorcycles.

In order to maintain motorcycle premiums at current levels, we estimated the cost per policy under each model design that would need to be subsidised by all remaining vehicle classes (including passenger vehicles).

This estimated motorcycle subsidy per passenger vehicle under each model design is shown in Appendix B. The adjustments have been based on the relativity analysis and results prepared by EY in the development of the new NSW scheme, in particular the results for the Newcastle region (i.e. the same analysis supporting the passenger vehicle relativities discussed in Section 3.3.8). Additional adjustments are made to reflect the varying proportion of benefits attributed to at-fault parties under each model design.

The estimated motorcycle subsidy per passenger vehicle is lower for Models A and B, compared to Models C and D; due to the lower proportion of benefits extended to at-fault drivers.

Our estimate of the motorcycle subsidy is inherently uncertain as it relates to the experience of a small group of vehicles (approximately 12,000 motorcycles) and it is ultimately dependent on how insurers set premiums for motorcycles in a competitive market (subject to the premium determination guidelines set by the ACT Regulator).

3.3.12 Payment patterns made in each year post accident date

To derive the estimated payments by time period shown in Section 4.2.1 we have used TAC scheme data as the basis of defined benefits payment patterns and current ACT scheme data as the basis of common law payments.

4. Results and other scheme metrics

This section contains the results of our costing for the four model designs compared to current scheme premium. In addition, this section illustrates the results of various metrics derived from the costings for the four models in response to the jury's objectives. As discussed in previous sections, our costings are based on a mature scheme environment where the motorists and the general public are fully aware of their rights under the selected model, relationships between insurers and medical and allied health providers are well established and the general infrastructure of the ACT CTP Regulator and insurers is fully setup.

Our estimated cost for the four model designs is not the actual premium that would be charged to individual vehicle owners due to various factors including a potential honeymoon period, competitive pricing, awareness of benefits, regulations, guidelines, etc. Refer to Section 4.3 for a full discussion on the difference between the estimated cost and the actual premium paid under any selected model.

More detailed results of the costing for each model design are contained in Appendix B.

4.1 Estimated premium by modelled scenario

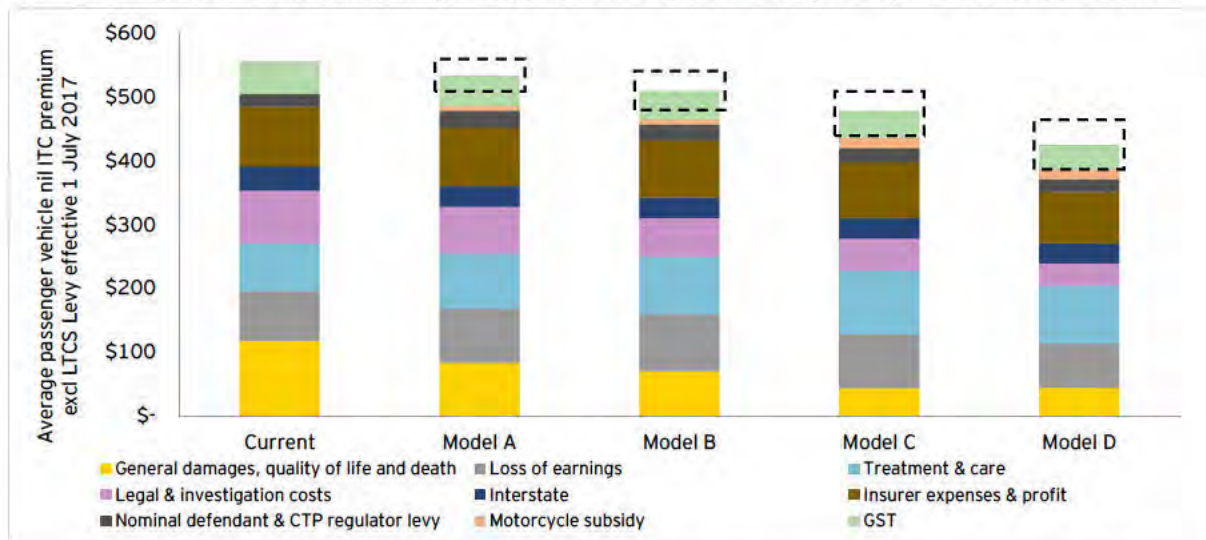
The following chart summarises the results of our estimated costs for the four model designs compared to the current scheme premium. The results show:

- ▶ Cost of claims broken up into four groups of benefits and costs which include defined benefits and common law awards plus legal costs for both not at-fault and at-fault claimants:
 - ▶ General damages, quality of life and death (including funeral expenses and compensation to dependents) at common law and defined benefits
 - ▶ Loss of earnings
 - ▶ Treatment and care which includes all medical, private and public hospital, allied health services (e.g. occupational therapy, physiotherapy, etc.), domestic and personal care. Note the public ambulance is excluded as these services are funded via a separate levy as part of vehicle registration fees
 - ▶ Legal and investigation costs which include insurer and plaintiff legal costs and insurer investigation costs. The benefits described above (general damages, loss of earnings, treatment, care, etc.) are shown inclusive of solicitor-client fees which would be deducted from settlements
- ▶ Interstate claims costs are shown separately. These are claims ACT insurers are liable to pay where an ACT-registered vehicle causes an accident while travelling in another state. These costs are unaffected by any reforms to the ACT CTP scheme as the benefits of the state in which the accident occurs apply
- ▶ Insurer acquisition expenses, insurer claims handling costs and insurer profit margin included in premium filings to the ACT CTP Regulator
- ▶ Nominal defendant levy which is the cost of claims for uninsured vehicles or for unsighted vehicles that caused an injury to a person
- ▶ Motorcycle subsidy. For motorcycles, the introduction of defined benefits for at-fault drivers results in a substantial increase in the cost of claims for motorcycle accidents. This arises because data in ACT and other states show that most motorcycle accidents are single vehicle accidents (i.e. the motorcycle rider is at-fault) and hence there are many more at-fault injured motorcyclists than not at-fault motorcyclists (up to 10 times more). In addition the average

claim size experience of motorcycle claims is about twice the amount for other claims. Consequently the premium that would need to be charged for motorcycles in each of the four model designs would need to increase significantly above current levels. To meet the government's objective of no increase in premiums, we have estimated the size of the subsidy passenger vehicles would need to pay to cap motorcycle premiums at current levels. We expect the premiums in some commercial classes (e.g. large trucks, buses and taxis) to fall by more than the percentage reduction in passenger vehicles under each model as drivers of such vehicles are more likely to be covered through workers compensation and hence the impact of including the at-fault driver is low

► Regulator levy and GST

Chart 28: Estimated CTP premium for passenger vehicles by model design compared to current scheme



The dotted line illustrates the uncertainty in the estimated costings - actual premiums could be higher or lower than the average estimated premiums as shown above. The range gets progressively wider going from Model A to Model D, with Model A estimates having the least uncertainty and Model D estimates having the most uncertainty. This is driven by the level of change under each model design compared to the current scheme.

More detailed results are set out in Appendix B including the split of claims costs between at-fault and not at-fault claimants and between defined benefits and common law claims costs. Note that the above premiums and costs exclude the LTCS levy.

Our key observations from the above chart in respect of passenger vehicles are:

- Average estimated premiums for all models represent a reduction from the current level of \$556.
 - Under Model A the estimated premium lies in the range of \$510-\$560 with an average reduction of about \$20.
 - Under Model B the estimated premium lies in the range of \$480-\$540, with an average reduction of about \$50.
 - Under Model C the estimated premium lies in the range \$440-\$510, with an average reduction of about \$75.
 - Finally under Model D the estimated premium lies in the range \$385-\$465, with an average reduction of about \$130.

- ▶ Across all models, the largest reduction in the estimated claims cost arises from a decrease in general damages and legal costs.
- ▶ The differences in estimated costs in each model reflect:
 - ▶ Progressively more at-fault benefits available under the designs going from Model A to Model D
 - ▶ Progressively more defined benefits available under the designs going from Model A to Model D, which partially replace common law under each model – particularly under Models C and D
 - ▶ Lower general damages under Models C and D compared to Models A and B, particularly for less severe injuries (see scale of amounts in Appendix A)
 - ▶ Lower common law benefits under Model D compared to all other models due to a threshold restricting access to these benefits for not at-fault claimants to the most seriously injured
- ▶ The reduction in estimated legal costs going from Model A to Model D reflects a reduction in the cost of claims paid at common law (replaced by defined benefits) and hence overall legal costs for the scheme reduce for both insurers and plaintiffs. Legal costs related to defined benefits are significantly lower than legal costs for common law awards
- ▶ The reduction in the cost of claims across the four models results in a reduction in the dollar cost of insurer profits and GST as these are a percentage of premiums
- ▶ Overall there is little change in insurer expenses (excluding insurer legal expenses as they are treated as a claims cost). For claims handling costs, there is more work for insurers managing defined benefit claims so this increases slightly for all models (despite the reduction in claims costs under all models). We have assumed there is no change in insurer acquisition expenses (see section 4.2.6 for further details)
- ▶ The cost of the nominal defendant levy reduces in line with the reduction in claims cost in each Model. For interstate claims under all models we have allowed for a reduction of \$5 compared to current scheme costs. This reduction represents the lower claims costs in the NSW scheme (where most interstate claims are expected to arise) which we assumed was not incorporated in insurers' current premiums (which were as at July 2017). In addition the subsidy for motorcycles adds about \$7 to Models A and B to about \$16 in Models C and D. There is also an estimated increase in the Regulator levy to \$10 in each model due to additional functions (such as an enhanced information role and some dispute resolution mechanism supports) and enhanced ICT requirements due to the introduction of defined benefits.

4.1.1 Detailed commentary on the drivers of change in claims costs under each model

The main drivers of the change in estimated costs for each model are set out in the following table (excluding interstate claims). The changes to the nominal defendant levy are reflective of the drivers in the table below and the overall reduction in claims costs. We have not referred to the reduction in legal costs in the table as they primarily reflect the changes in benefits paid at common law. The numbers in the following table refer to the mid-point in the range.

Table 29: Main drivers for changes in costs of claims in each of the four proposed model designs

Model	Main drivers of change in claims cost per policy
A	▶ The overall reduction in the estimated claims cost per policy (excluding interstate) from \$354 in the current scheme to \$330 in Model A is a difference of

	<p>\$24. General damages and legal costs (including estimated solicitor-client legal costs) are estimated to reduce by \$48 but this is offset by estimated increases to loss of earnings and treatment and care benefits. These increases are partly due to the inclusion of defined benefits for at-fault claimants (which amount to \$28)</p> <ul style="list-style-type: none"> ▶ The cost per policy of common law benefits for not at-fault claimants is estimated to reduce from \$354 in the current scheme to \$263 in Model A or a reduction of \$91 ▶ A reduction in the amount of general damages at common law is due to the introduction of an ISV scale for general damages for less seriously injured not at-fault claimants ▶ There is a reduction in the cost per policy of other head of damages at common law due to the availability of defined benefits for 6 months for not at-fault claimants and an expected reduction in the number of claims accessing common law.
B	<ul style="list-style-type: none"> ▶ The overall reduction in the estimated claims cost per policy (excluding interstate) from \$354 in the current scheme to \$307 in Model B is a reduction of \$47. General damages and legal costs (including estimated solicitor-client legal costs) are estimated to reduce by \$77 but this is offset by increases to loss of earnings and treatment and care benefits. These increases are partly due to the inclusion of defined benefits for at-fault claimants (which amount to \$34) ▶ The cost per policy of common law benefits for not at-fault claimants is estimated to reduce from \$354 in the current scheme to \$228 in Model B or a reduction of \$126 ▶ A reduction in the amount of general damages at common law is due to the introduction of an ISV scale for less seriously injured not at-fault claimants which is less generous than Model A ▶ There is a reduction in the cost per policy of other heads of damage at common law due to the availability of defined benefits for 12 months for not at-fault claimants and an expected reduction in the number of claims accessing common law (lower than in Model A).
C	<ul style="list-style-type: none"> ▶ The overall reduction in the estimated claims cost per policy (excluding interstate) from \$354 in the current scheme to \$278 in Model C is a reduction of \$76. General damages and legal costs (including estimated solicitor-client legal costs) are estimated to reduce by \$118 but this is offset by increases to loss of earnings and treatment and care. These increases are partly due to the inclusion of defined benefits for at-fault claimants including a quality of life statutory lump sum (at-fault benefits amount to \$67 in total) ▶ The cost per policy of common law benefits for not at-fault claimants is estimated to reduce from \$354 in the current scheme to \$141 in Model C or a reduction of \$213 ▶ A reduction in the amount of general damages at common law is due to the introduction of a 10% Whole Person Impairment threshold for access to general damages for not at-fault claimants and a scale for general damages which is less generous than in Models A and B (where it is unlimited) ▶ There is a reduction in the cost per policy of other heads of damage at common law due to the availability of defined benefits for up to 5 years for not at-fault

	claimants and an expected reduction in the number of claims accessing common law (lower than in Models A and B).
D	<ul style="list-style-type: none"> ▶ The overall reduction in the estimated claims cost per policy (excluding interstate) from \$354 in the current scheme to \$239 in Model D is a reduction of \$115. General damages and legal costs (including estimated solicitor-client legal costs) are estimated to reduce by \$137 but this is offset by increases to loss of earnings, treatment and care and a quality of life statutory lump sum. These increases are partly due to the inclusion of defined benefits for at-fault claimants including a quality of life statutory lump sum. (At-fault benefits amount to \$70 in total.) ▶ The cost per policy of common law benefits for not at-fault claimants is estimated to reduce from \$354 in the current scheme to \$96 in Model D or a reduction of \$258 ▶ The reduction in the amount of common law costs for not at-fault claimants is due to the introduction of a 10% Whole Person Impairment threshold for access to common law remedies and a scale for general damages which is the same as Model C. This threshold is estimated to significantly reduce the number of claims accessing common law compared to the other models. The reduction in common law costs for those claims accessing common law is also due to the availability of defined benefits for 5 years for not at-fault claimants.

4.2 Other scheme metrics

The metrics below have been estimated to assist the jury with their assessment of each model. The metrics address the first three priorities set by the jury. In addition we have included various metrics on claim numbers and other characteristics of the models.

4.2.1 Early access to treatment, care and loss of earnings

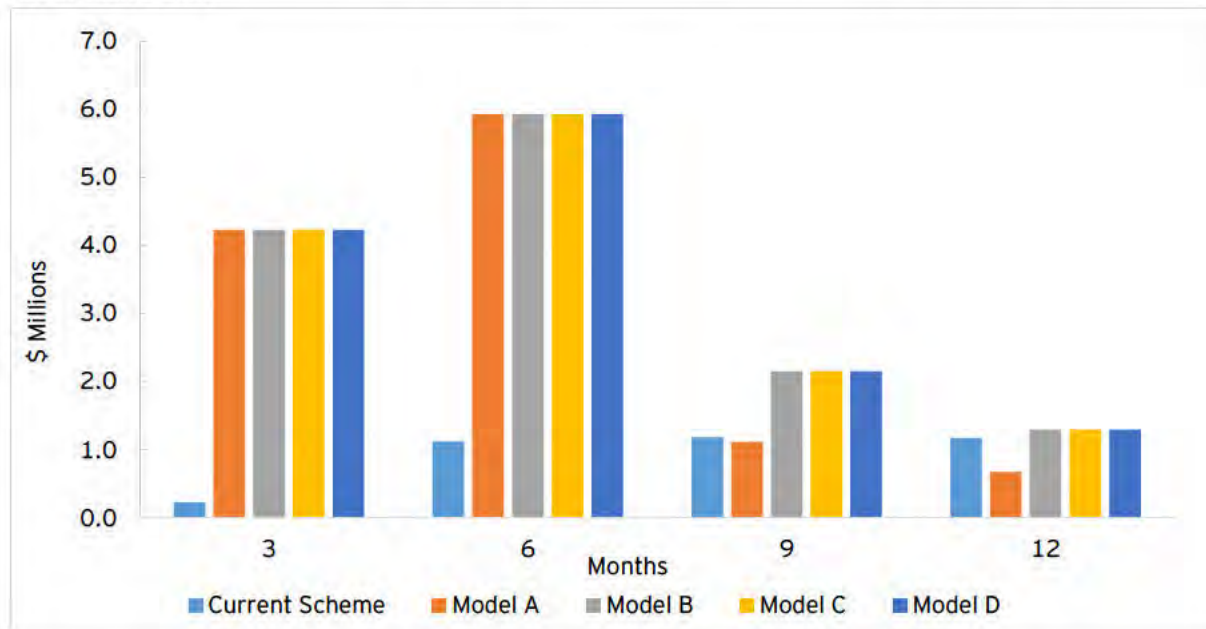
The jury's first priority in its report was "early access to medical treatment, economic support and rehabilitation".

The following chart sets out the estimated benefits paid by quarter for the first year after the claimant's accident for claims which occur in the same 3 month period. There is a significant delay between the medical service provided to a claimant and the payment of the fee by the insurer for that service. Our past analysis has estimated the delay at about three months. The delay includes:

- ▶ Time between the date of the service and the provider of the service sending an invoice to the insurer for the service
- ▶ Time between provider sending the invoice and the insurer receiving the invoice
- ▶ Period where the insurer assesses the invoice which may include questions to the provider and in some cases where errors in the invoice have been identified sending a correct invoice
- ▶ Delay in payment of the invoice by the insurer.

The figures for the current scheme include all payments made by insurers including interim or progressive claims payments for treatment, care and loss of earnings prior to the settlement of a claim.

Chart 30: Estimated claim payments³ by insurers by quarter for treatment, care and loss of earnings for not at-fault claims



The above chart clearly shows that each model allows for substantially earlier access to treatment, care and loss of earnings than in the current scheme especially for the first 6 months.

The benefits paid to claimants in the current scheme in the early quarters are underestimated in the above chart as many claimants access Medicare benefits which are then recovered by Medicare from the common law lump sum. In addition, some employers may pay claimants sick leave for limited periods. Despite this many claimants in the current scheme are left out-of-pocket or cannot access treatment that is not covered by Medicare until the common law claim is settled. In the current scheme, the average time to settlement is around 4 years, in other words, half of settlement payments are paid after 4 years.

4.2.2 Equitable cover for all people

The jury's second priority in its report was "equitable cover for all people injured in a motor vehicle accident".

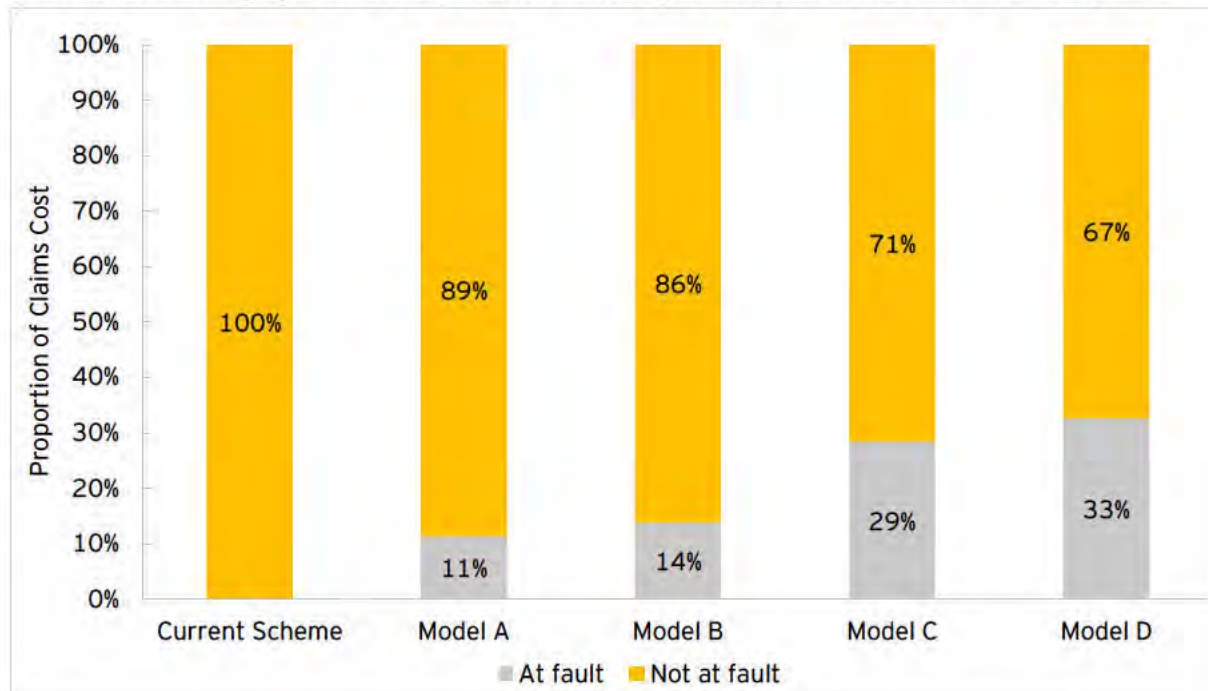
For each model we have set out two metrics compared to the current scheme:

- ▶ The estimated proportion of claims costs received by claimants for at-fault and not at-fault claimants (excluding legal and investigation costs)
- ▶ For not at-fault claimants only, the proportion of claims costs paid to those above and below the 10% WPI threshold and their average claim size.

In both metrics we have excluded all legal and investigation costs from claim payments (i.e. we also excluded estimated solicitor-client costs from claim payments).

³ Estimated claim payments shown represent the middle of a range of best estimates. Actual payments could be higher or lower than shown

Chart 31: Estimated proportion of claims costs received by claimants for at-fault and not at-fault claims



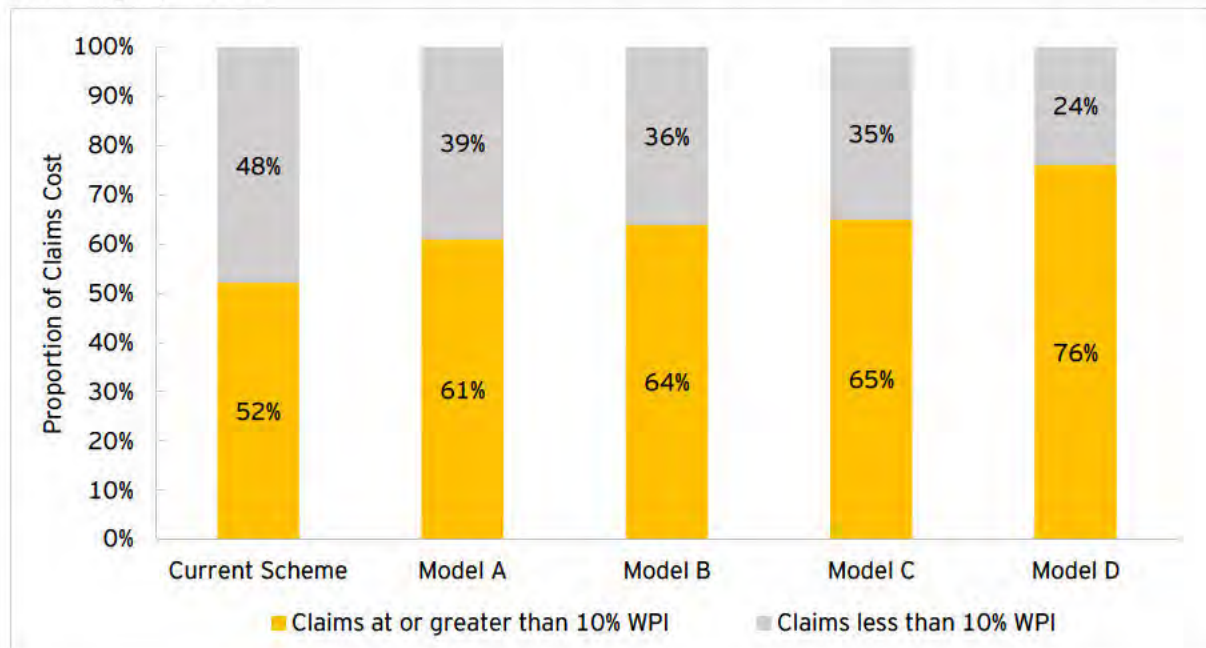
Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as they represent the benefits claimants receive

The above chart shows that the estimated proportion of claims costs (excluding legal and investigation costs) received by at-fault claimants increases from almost 0% in the current scheme (MANF benefits) to 11% in Model A where benefits are limited to six months, to 14% in Model B where benefits are limited to one year, to 29% in Model C where benefits are limited to two or five years and 33% in Model D where all benefits are limited to five years. Models C and D also make a quality of life statutory lump sum available to at-fault claimants and not at-fault claimants.

These proportions should be compared to the 40% of the potential claims population which we estimate could be at-fault claims made under each model in a mature scheme situation. The proportion does not reach 40% in Model D since not at-fault claims meeting the 10% WPI threshold have access to common law benefits unlike at-fault claimants whose benefits cease at five years.

The chart below for not at-fault claims shows the estimated proportion of the cost of claims split between claims with at least 10% WPI and those below 10% WPI.

Chart 32: Estimated proportion of claims costs for not at-fault claimants split by WPI above and below 10% (excluding legal costs)



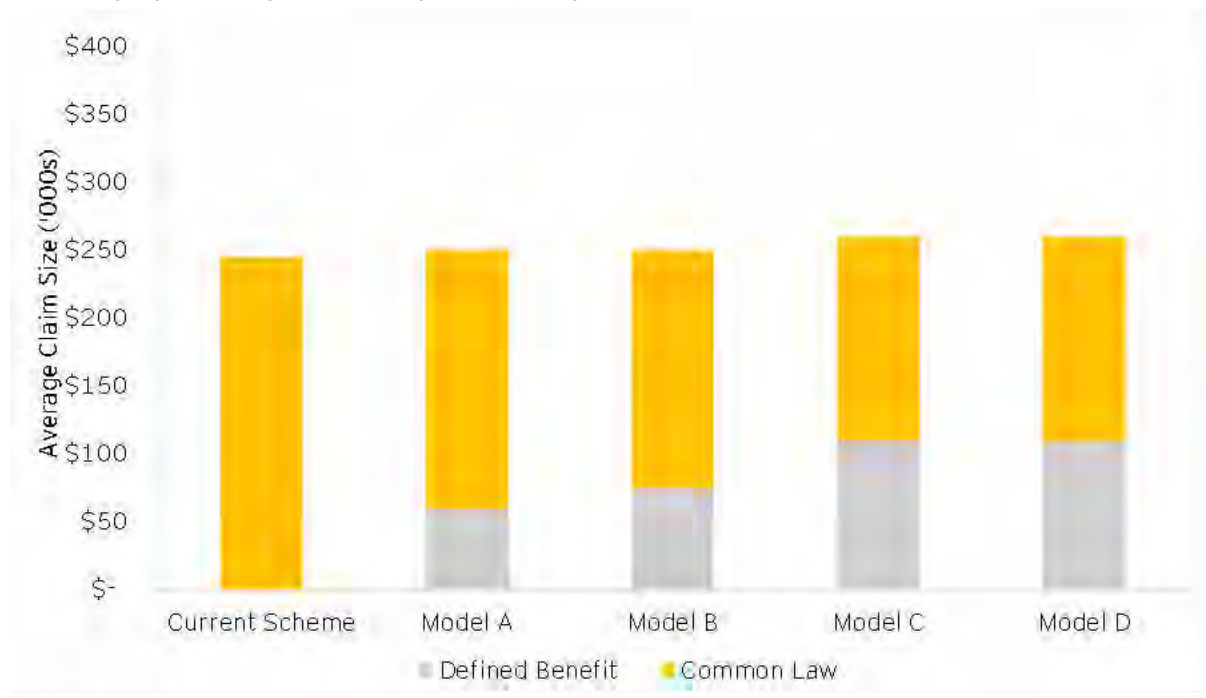
Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as they represent the benefits claimants receive

The estimated proportion of claims costs (excluding all legal costs) received by not at-fault claimants with a WPI of 10% or greater in the current scheme is 52%. This proportion gradually increases across the model designs to 61% in Model A, 64% in Model B, 65% in Model C and 76% in Model D. The increases reflect aspects of the differences in benefit design across the four design models including:

- ▶ Reduction in generosity of general damages at common law especially for claims below 10% WPI
- ▶ Reduction in the number of claims accessing common law in each model with the most impact under Model D where there is a 10% WPI threshold for all common law claims. Moving from Models A to C there are progressively less minor injured claimants expected to pursue common law remedies
- ▶ Increase in defined benefits to all claimants. Experience in other schemes shows that this typically leads to a greater proportion of claim payments being received by more seriously injured claimants than under a fully common law scheme. This is particularly the case for Models C and D where the defined benefits are payable for up to five years compared to at most one year in Models A and B.

The following two charts for not at-fault claims show the estimated average claim size for claims with a WPI of at least 10% received by claimants. There is significant uncertainty in these estimated average claim sizes as they rely on the assumed number of claims in each cohort which is difficult to estimate. Therefore, average claim sizes shown are indicative only; actual claims sizes could be significantly higher or lower than illustrated in the charts. The level of uncertainty is much more significant for claims less than WPI 10% than for those claims at or above this level of impairment due mostly to the much larger level of uncertainty in the estimated number of claims that will be reported for the first group of claims.

Chart 33: Estimated average claim size for not at-fault claimants with a WPI greater than or equal to 10% (excluding legal costs, general damages and quality of life benefits)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

A significant proportion of common law benefits relate to general damages, especially under the current scheme and Models A and B. Under Models C and D however, general damages and quality of life benefits represent a much smaller proportion. Hence, excluding general damages from common law and excluding quality of life from defined benefits provides a view of economic loss under each of the models compared to the current scheme (i.e. shows loss of earnings, treatment and care only).

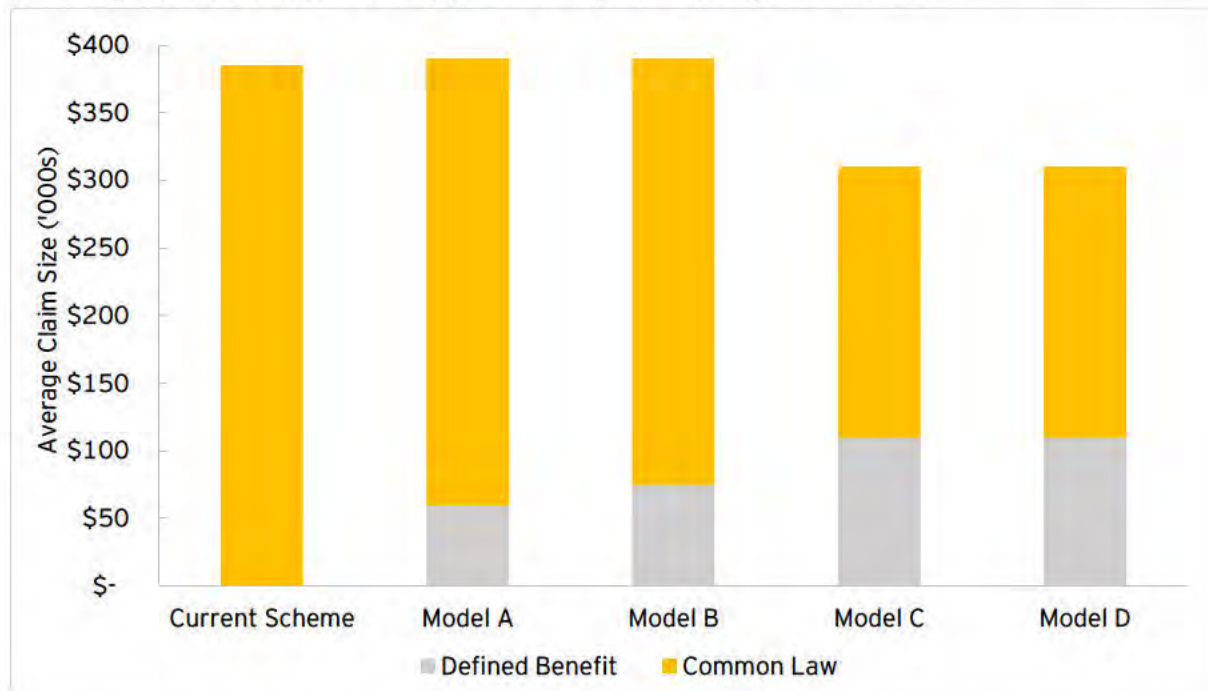
The above chart show that the average claim size for these benefits for claims with a WPI of at least 10% in the current scheme and under each of the model designs is around \$250,000, i.e. relatively unchanged from the current scheme. The proportion of defined benefits increases in moving from Model A (about 25%) to Model D (around 40%).

The estimated average claim size increases slightly under Models A and B compared to the current scheme as a result of some benefits being received as defined benefits (paid directly to claimants) rather than common law settlements (with solicitor-client legal fees deducted). A greater impact is seen under Models C and D, where more benefits are received directly by claimants as defined benefits (up to five years).

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

The chart below shows the estimated average claim size for these claimants including general damages and quality of life benefits.

Chart 34: Estimated average claim size for not at-fault claimants with a WPI greater than or equal to 10% (excluding legal costs only) - including general damages and quality of life benefits



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

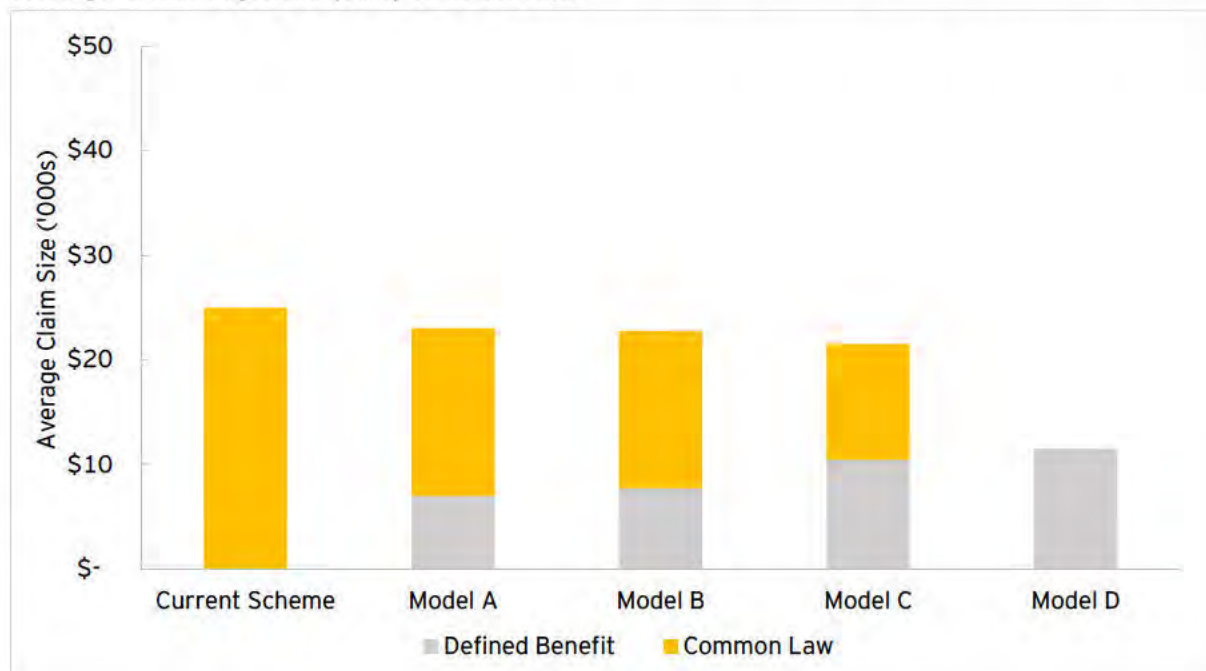
The difference in the figures between the above chart and the previous chart is the amount of general damages and quality of life benefits received by claimants after legal expenses (the figures also exclude estimated solicitor-client costs).

The above chart shows that the average claim size for all benefits for claims with a WPI of at least 10% in the current scheme and under Models A and B is around \$400,000, i.e. relatively unchanged from the current scheme. This arises because these claimants are expected to receive similar levels of general damages and other benefits under these models as they do in the current scheme.

In contrast, under Models C and D there is a prescribed scale for general damages (as shown in Appendix A) which is much lower than current levels; hence the estimated average claim size is lower than the current scheme under these models. The other benefit types are at similar levels as shown in the previous chart.

The corresponding figures for not at-fault claims less than 10% WPI are set out in the following two charts.

Chart 35: Estimated average claim size for not at-fault claimants with WPI less than 10% (excluding legal costs, general damages and quality of life benefits)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

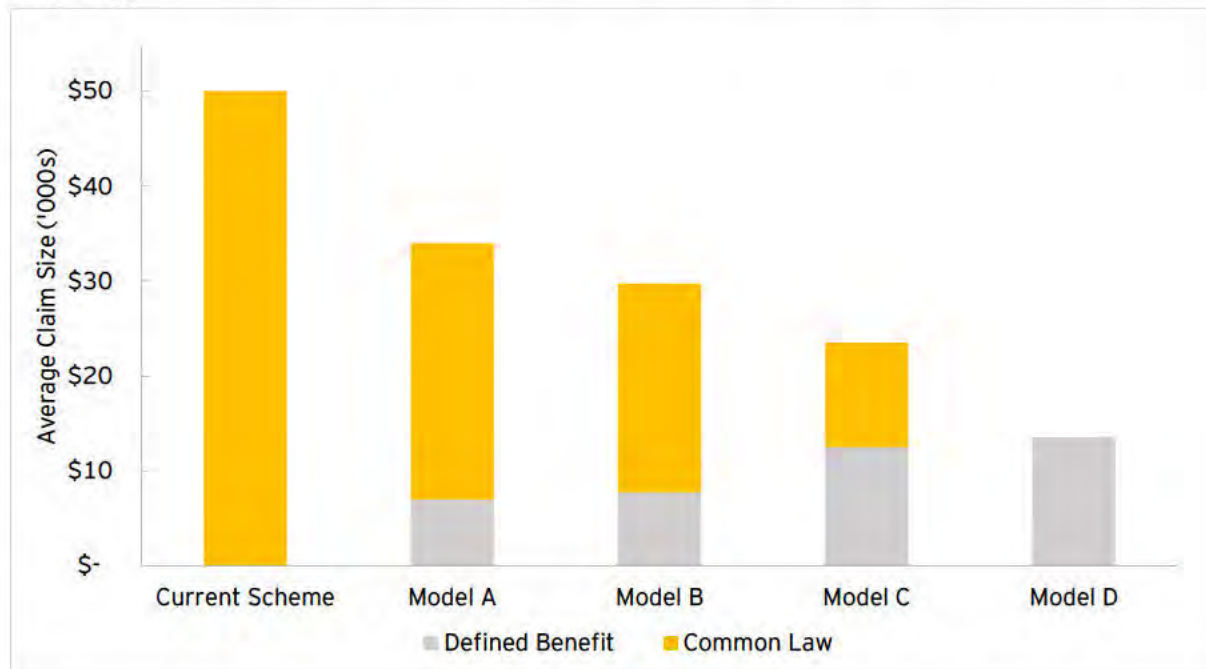
As discussed above, excluding general damages and quality of life benefits from the estimated average claim size for claims below 10% WPI provides a view of economic loss under each of the models compared to the current scheme (i.e. shows loss of earnings, treatment and care only).

The above chart shows that the average claim size for these benefits for claims below 10% WPI is around \$25,000 in the current scheme. This reduces slightly under Models A, B and C representing the lower number of claims expected to access common law due to the availability of defined benefits. Under Model D, there is no access to common law for these claimants (due to the threshold of 10% WPI) hence the average claim size is made up of defined benefits only. Under Model D these claimants have access to defined benefit loss of earnings for up to 5 years whereas under Model C this is limited to 2 years. Hence the average size of defined benefits is higher in Model D than in Model C.

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

The chart below shows the estimated average claim size for these claimants including general damages and quality of life benefits.

Chart 36: Estimated average claim size for not at-fault claimants with WPI less than 10% (excluding legal costs only)



Note: Average claim size above excludes all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive. Amounts shown are indicative only and represent the middle of a range of best estimates.

The difference in the figures between the above chart and the previous chart is the amount of general damages and quality of life benefits received by claimants after legal expense including estimated solicitor-client costs are excluded.

The average claim size for claims with WPI below 10% in the current scheme is around \$50,000. Under Models A and B the amounts of general damages available is significantly lower and this drives the estimated average claim size downwards.

Under Models C and D there is no general damages available at common law for claimants with WPI less than 10%. Defined benefits increase slightly compared to the previous chart, representing the quality of life benefit.

The estimated average size of defined benefits for at-fault claims will be similar to those for not at-fault claims as in the above chart.

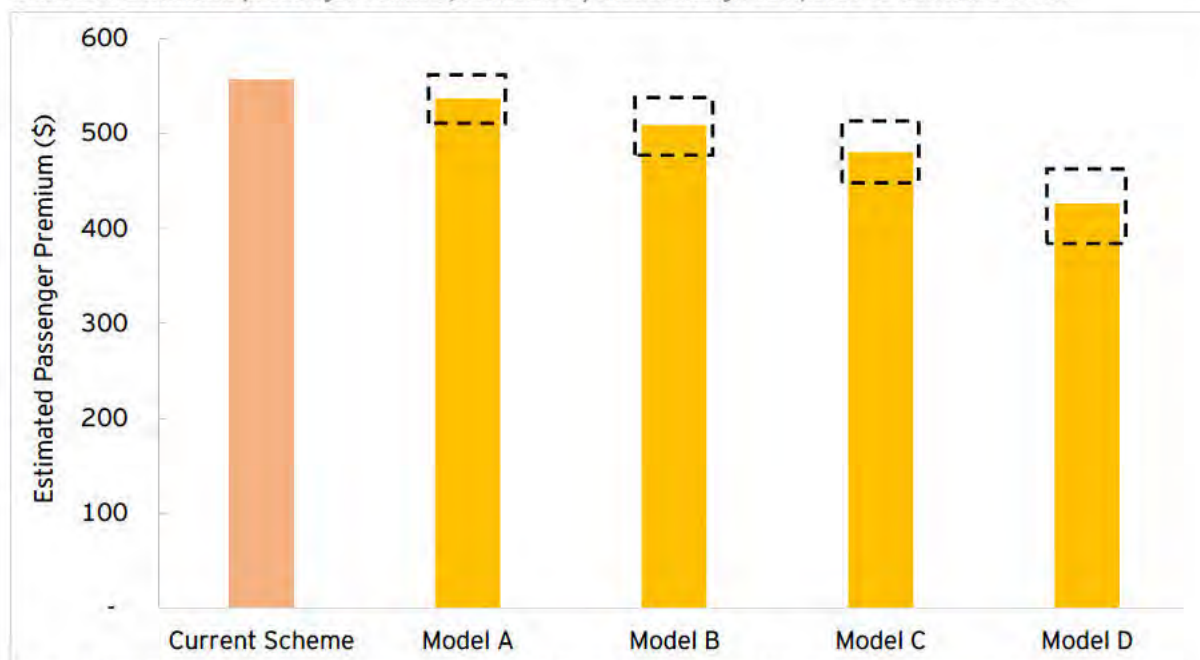
4.2.3 Value for money and efficient scheme

The jury's third priority in its report was "a value for money and efficient scheme".

The costing results provide information for the jury to assess value for money as represented by the average premium paid for passenger vehicles under each of the model designs compared to the current scheme.

Premiums (excluding the ACT LTCS scheme levy and costs) are set out below.

Chart 37: Estimated passenger vehicle premiums by model design compared to current scheme



The dotted line illustrates the uncertainty in the estimated costings - actual premiums could be higher or lower than the average estimated premiums as shown above. The range gets progressively wider going from Model A to Model D, with Model A estimates having the least uncertainty and Model D estimates having the most uncertainty. This is driven by the level of change under each model design compared to the current scheme. Refer to Section 5 for further details on risks and uncertainty and more details on the makeup of premiums in Appendix B.

Premiums are estimated to reduce from the current scheme average of \$556 to between \$510 to \$560 under Model A, \$480 to \$540 under Model B, \$440 to \$510 under Model C and \$385 to \$465 under Model D.

The second metric relevant to the jury's objective is the efficiency of the scheme. We have defined efficiency as the proportion of each premium dollar that is returned (or estimated to be returned) to injured people. This is calculated as follows:

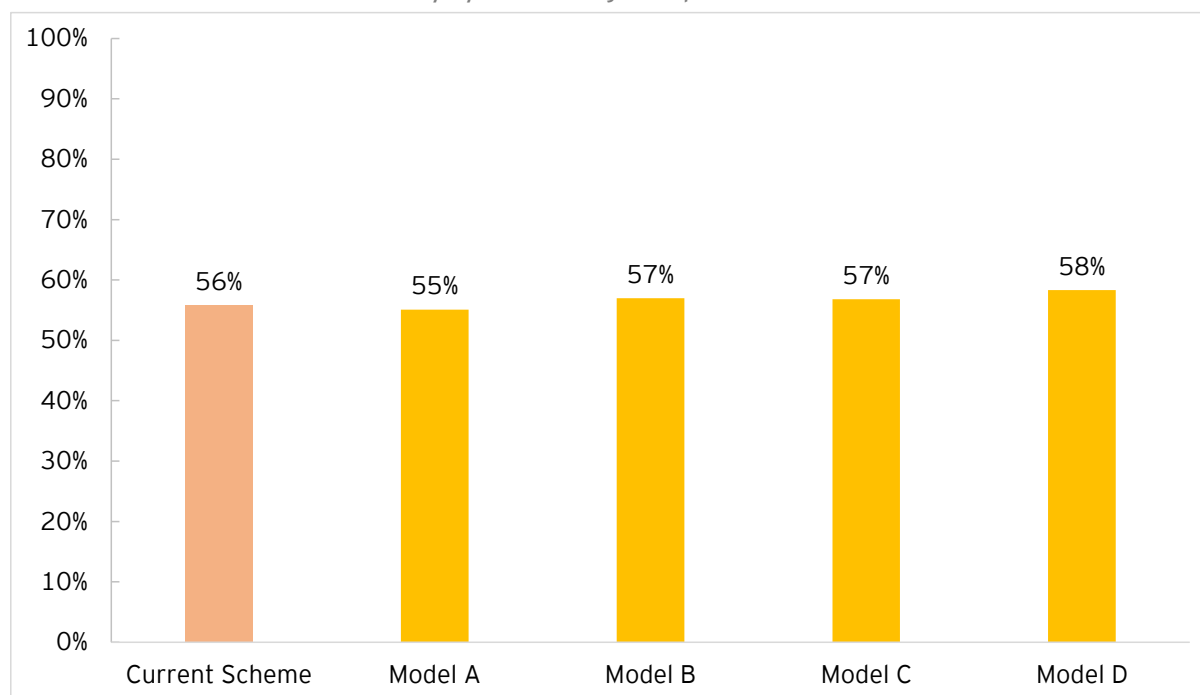
$$\text{Scheme efficiency} = \frac{\text{claim payments received by claimant } \{ 1(a) \}}{\text{Premium } \{ 1(a) + 1(b) + 2 + 3 + 4 \}}$$

Where:

1. Claims payments:
 - a. All claim costs excluding those in 1 (b). Claims costs including public hospital but not public ambulance services
 - b. Legal, investigation and medico legal costs including an estimate of solicitor-client legal costs
2. Insurer expenses
3. Scheme expenses (ACT CTP Regulator levies)
4. Insurer profits

The chart below illustrates the efficiency of the scheme under each model design compared to the current scheme.

Chart 38: Estimated scheme efficiency by model design compared to current scheme



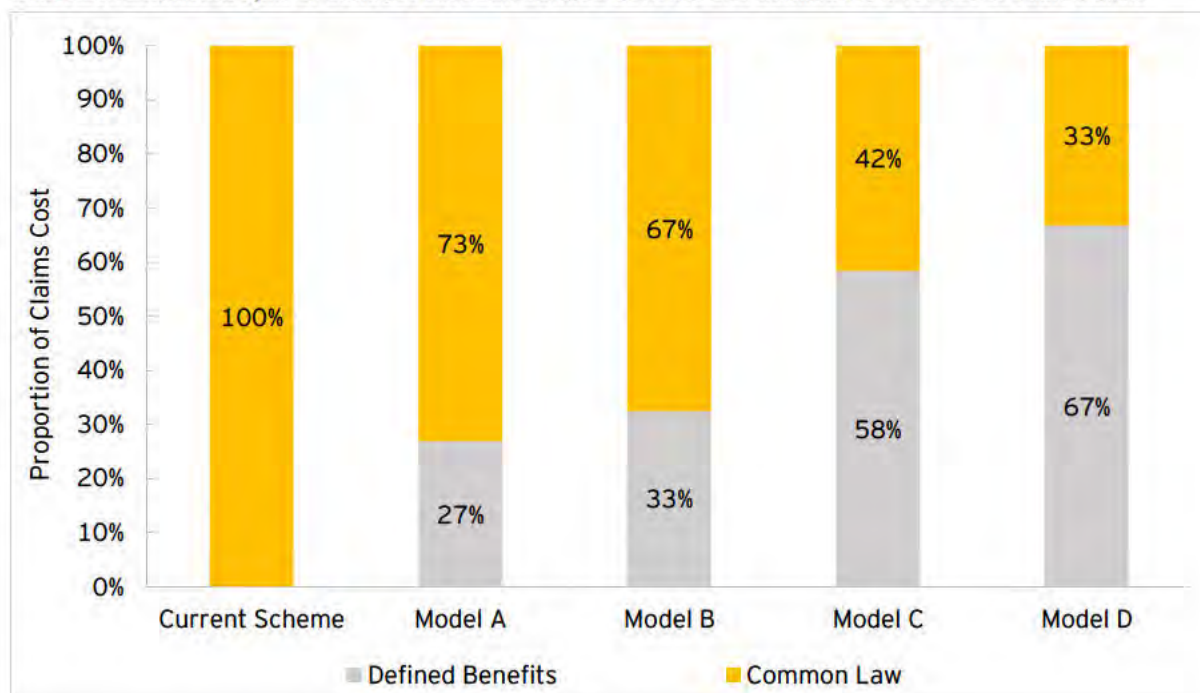
The chart shows the current estimated scheme efficiency of 56% is expected to gradually increase from Model A at 55% to Model D at 58%. In Model A the reason for the reduction in efficiency is due to insurer expenses and profit not reducing in line with the reduction in claims costs and the additional regulator levy (as these are held at a constant level across all models). For more details on insurer expenses and profits see Section 4.2.6

The main driver of the increase in scheme efficiency is the reduction in legal costs associated with increasing defined benefits and a reduction in common law numbers and benefits, offset by insurer expenses and profit not decreasing as much as the reduction in claims costs and the additional regulator levy. In addition the efficiency of intestate claims does not change in any of the models from the current scheme.

4.2.4 Split of defined benefits and common law

The distribution of benefits in each model varies between mostly defined benefits and mostly common law. Models A and B are most similar to the current scheme with most of the benefits paid at common law. Models C and D are more similar to schemes such as Victoria and the reformed NSW scheme with most benefits paid as defined benefits and with restrictions for accessing common law damages. The split of benefits received by claimants between common law and defined benefits is set out in the following chart excluding legal and investigation costs (and excluding estimated solicitor-client costs).

Chart 39: Estimated split of benefits between defined benefits and common law for not at-fault claims



Note: Claim costs above exclude all legal costs (including estimated solicitor-client fees) as it represents the benefits claimants receive

The above chart shows the proportion of defined benefits in each model for not at-fault claims increases from almost 0% in the current scheme (MANF benefits) to 27% under Model A and 33% under Model B. Under Models C and D the proportion increases significantly as defined benefits can be paid for up to five years and there is a quality of life defined benefit included in the design. Note that defined benefits make up 100% of at-fault claims.

4.2.5 Claim numbers

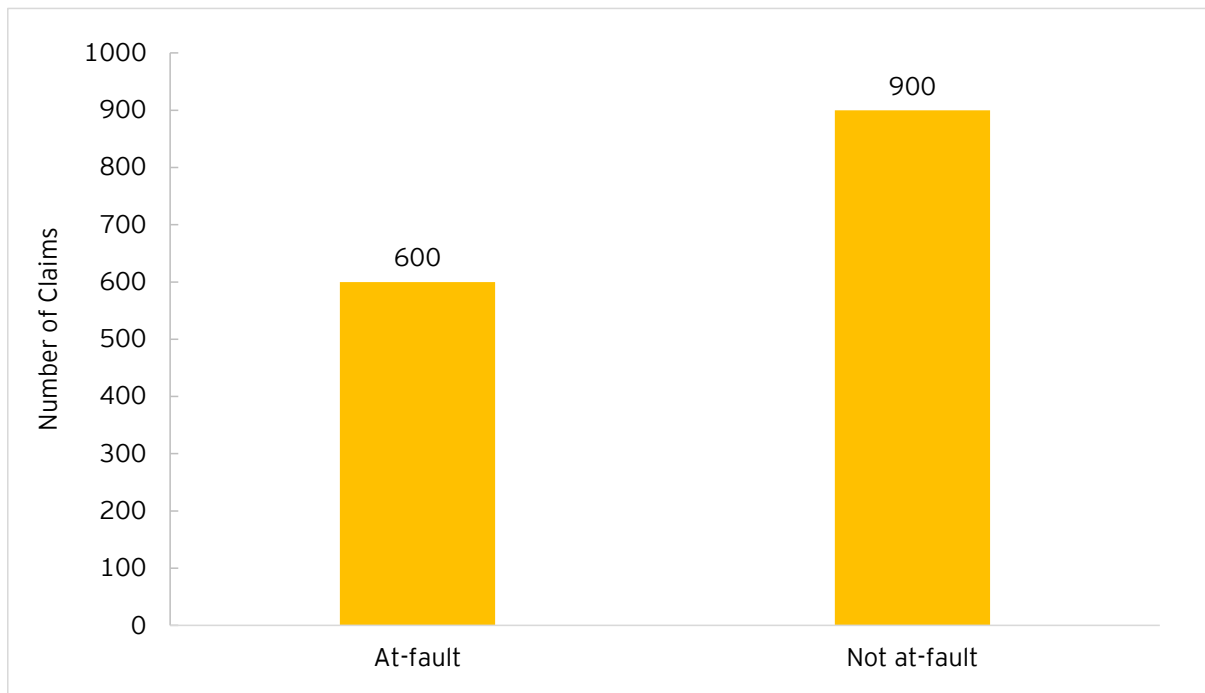
The number of claims accessing benefits under each model compared to the current scheme illustrates how cover is extended to more road users via defined benefits (more equitable cover) and the numbers accessing common law damages reduce across the models.

The following charts and tables set out the estimated claim numbers in relation to:

- ▶ The annual estimated potential claims population for at-fault and not at-fault claims per annum. We have separately identified the number of interstate claims
- ▶ The annual estimated number of not at-fault claims accessing common law with legal representation. For these claims we have also included estimates of the average size of legal and investigation costs per claim for party-party plaintiff legal costs, solicitor-client plaintiff legal costs and insurer legal and investigation costs
- ▶ The annual estimated number of claimants entitled to additional benefits once they meet the 5% and 10% WPI thresholds in Models C and D
- ▶ The annual estimated number of claims that are entitled to treatment, care and loss of earnings for defined benefits for not at-fault claims from one year onwards.

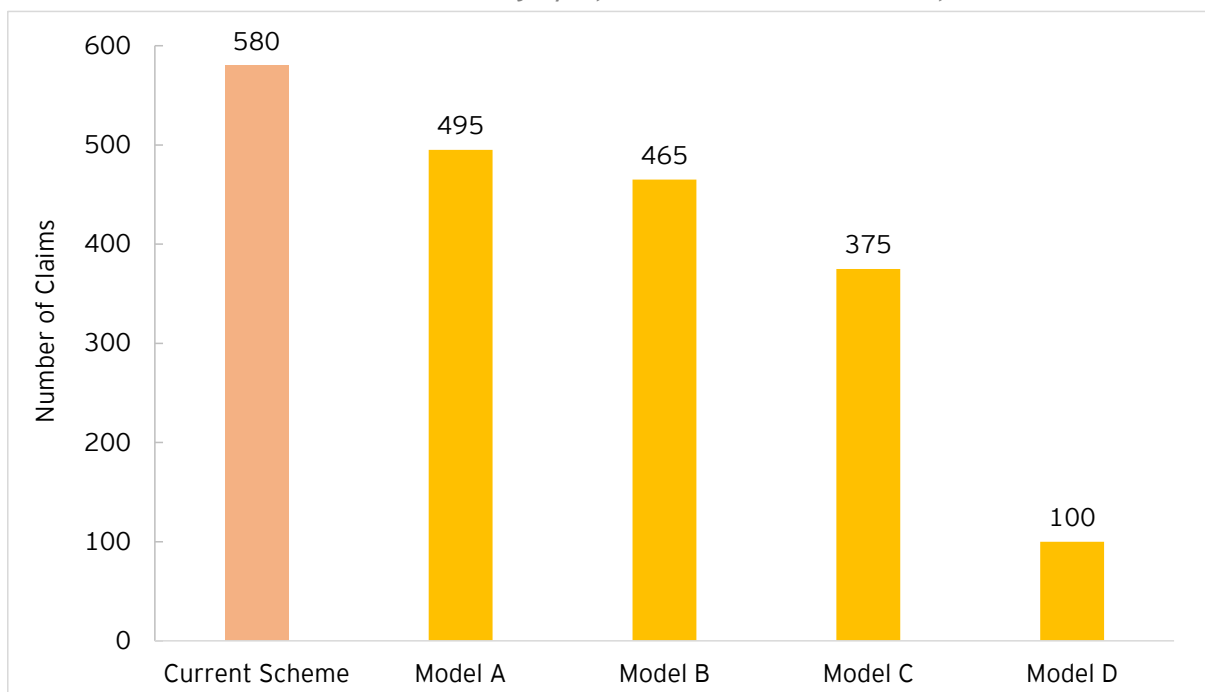
We have estimated a total potential claims population of 1,500 claims per annum split into 900 not at-fault (current scheme numbers) and 600 at-fault claims. Of the not at-fault claims we estimate about 75 are interstate claims. These numbers apply to each of the four model designs.

Chart 40: Estimated total potential population of defined benefit claims per annum (including interstate claims)



The estimated number of legally represented common law claims (excluding interstate claims) for each model design are set out in the following chart.

Chart 41: Estimated number of not at-fault legally represented common law claims per annum

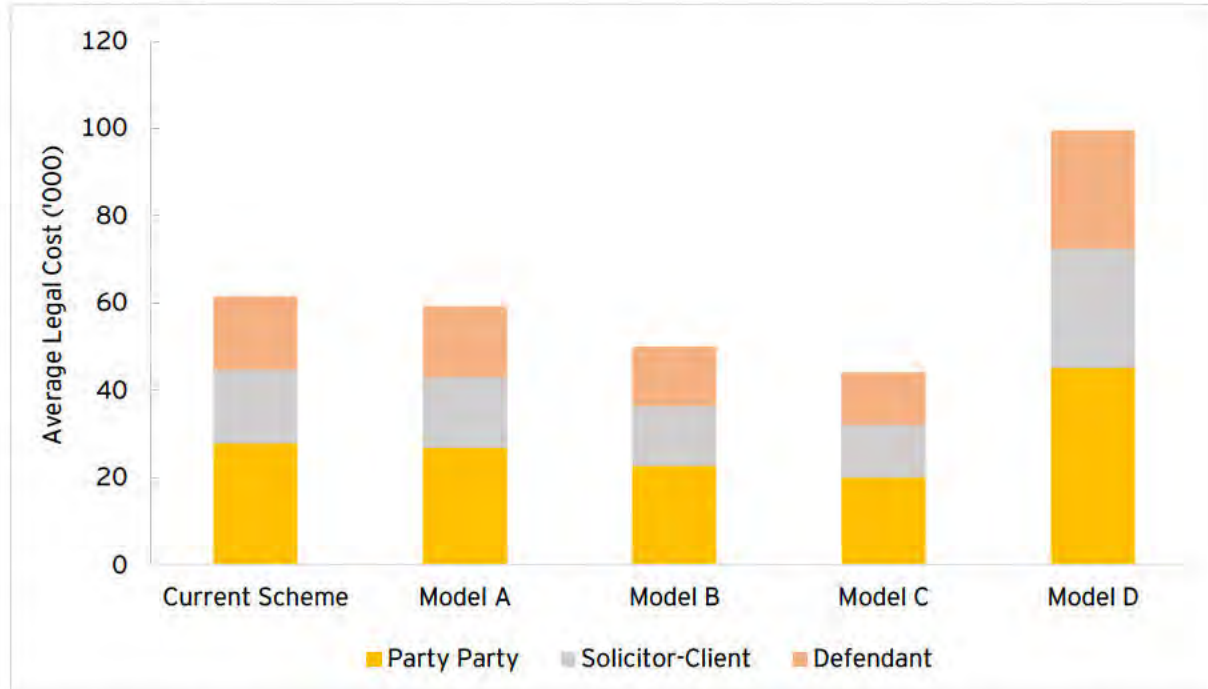


The estimated number of legally represented claims in the current scheme is about 580 per annum (excluding interstate claims) and we estimate these numbers will reduce to 495, 465, 375 and 100 in each of Models A to D. The reductions in Models A and B are due to the inclusion of an Injury Scale Value (ISV) scale for general damages awards at common law, while the reduced numbers for Model C are due to the 10% WPI threshold for access to general damages at common law. For Model

D the numbers are significantly lower than all other models due to the 10% WPI threshold for access to common law remedies.

For each not at-fault common law legally represented claim, the average legal costs under each model are shown in the chart below, split into party-party costs, estimated solicitor-client costs and defendant/investigation costs.

Chart 42: Estimated average legal costs per not at-fault legally represented common law claim (excluding interstate claims)



Note: Average legal costs shown above are indicative only and represent the middle of a range of best estimates. Actual legal costs under the scheme could be lower or higher than shown.

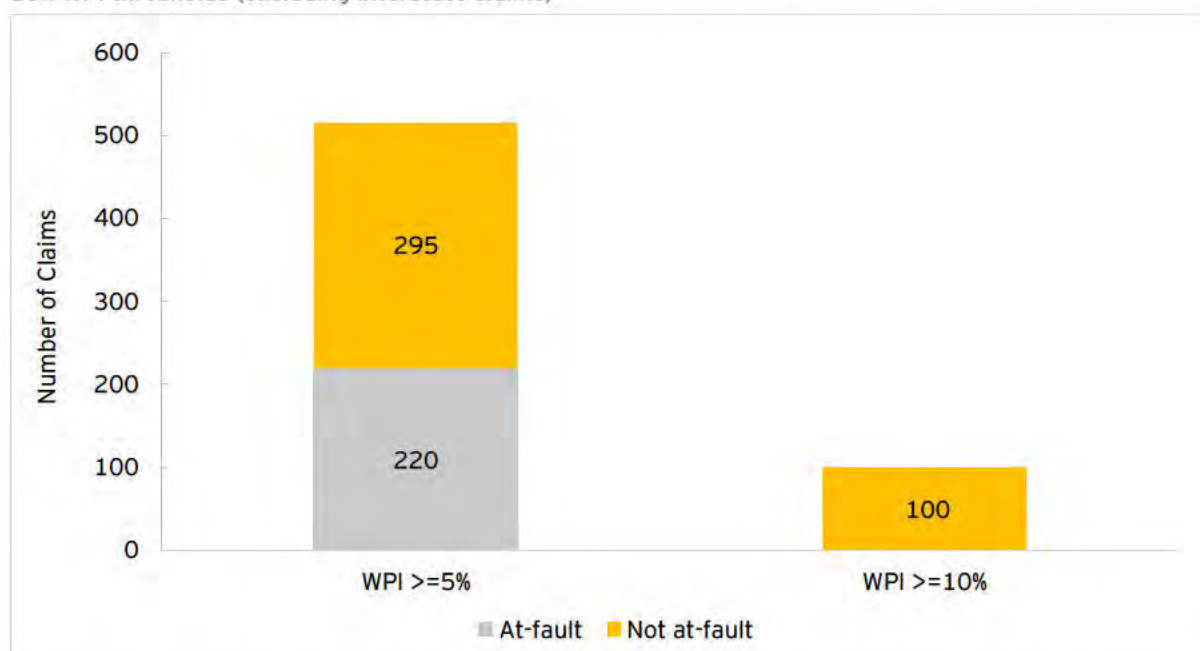
The main reasons for the reduction in average legal costs per legally represented claim at common law are:

- ▶ Reduction in numbers of overall common law claims (as shown in the previous chart) mainly due to the availability of defined benefits. The proportion of legally represented claims is expected to remain the same as the current scheme (about 70%) for Models A to C but in Model D all claims WPI 10% or higher are assumed to be legally represented
- ▶ Defined benefit payments already received will reduce the absolute amount of common law damages across the models.

Under Model D, average legal costs are high as the common law threshold of 10% WPI restricts common law to the most seriously injured claimants only. The estimated number of not at-fault claimants expected to fit this criteria is shown in the next chart.

Also illustrated in the next chart is the estimated number of both at-fault and not at-fault claims equal to or greater than 5% WPI. The 5% WPI threshold applies to the quality of life lump sum statutory benefit for Models C and D. These numbers exclude interstate claims.

Chart 43: Estimated annual number of claimants entitled to additional benefits once they meet the 5% and 10% WPI thresholds (excluding interstate claims)



For Models C and D claimants are entitled to additional benefits once they reach the 5% and 10% WPI thresholds. We estimate about 100 not at-fault claims out of the estimated potential population of not at-fault claims of 900 claims to be able to meet the 10% WPI threshold. For the 5% threshold we estimate about 220 at-fault and 295 not at-fault claims out of the estimated potential population of not at-fault claims 900 claims and at-fault numbers of 600 to meet the 5% threshold.

Note that the 10% WPI threshold does not apply to at-fault claimants as they do not have access to common law benefits (we estimate there would be about 65 at-fault claimants that are equal to or over 10% WPI).

We have estimated the number of not at-fault claims that are entitled to receive defined benefit treatment, care and loss of earnings from one year to five years after the accident date in the following three charts. Due to excesses applying for treatment and care and loss of earnings in the Victorian scheme (from which the ACT costings were based), we are unable to estimate the numbers receiving benefits before one year. The at-fault benefits are estimated to be about two thirds of the numbers in the following charts.

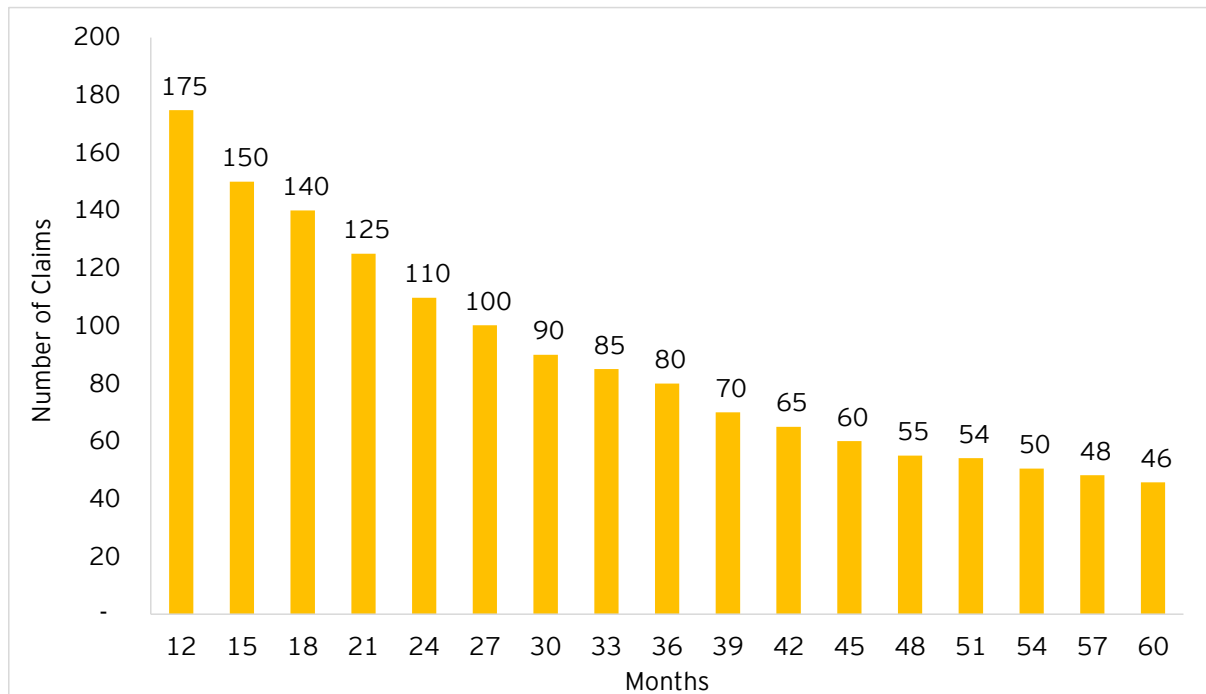
Note that the following three charts apply to Model D whilst only the treatment and care charts apply to Model C due to the benefit design. For Models A and B the charts are not applicable as defined benefits cease at six months for Model A and 12 months for Model B.

In all three charts below please note:

- ▶ It is claims receiving payments in the three months beginning at each period. For example, the 12 month figures relate to the number of claims receiving benefits in the three months from the 12 months to 15 months after the accident date.
- ▶ The same claims do not receive benefits each quarter. For example in the treatment chart below, for the 110 estimated claims receiving treatment in the 24 month figure, some may have received treatment benefits in the 21 month period and some may not have received benefits in the 21 month period. In other words, the number of unique claims receiving benefits after 60 months for treatment may be more than the estimated 46 claims.

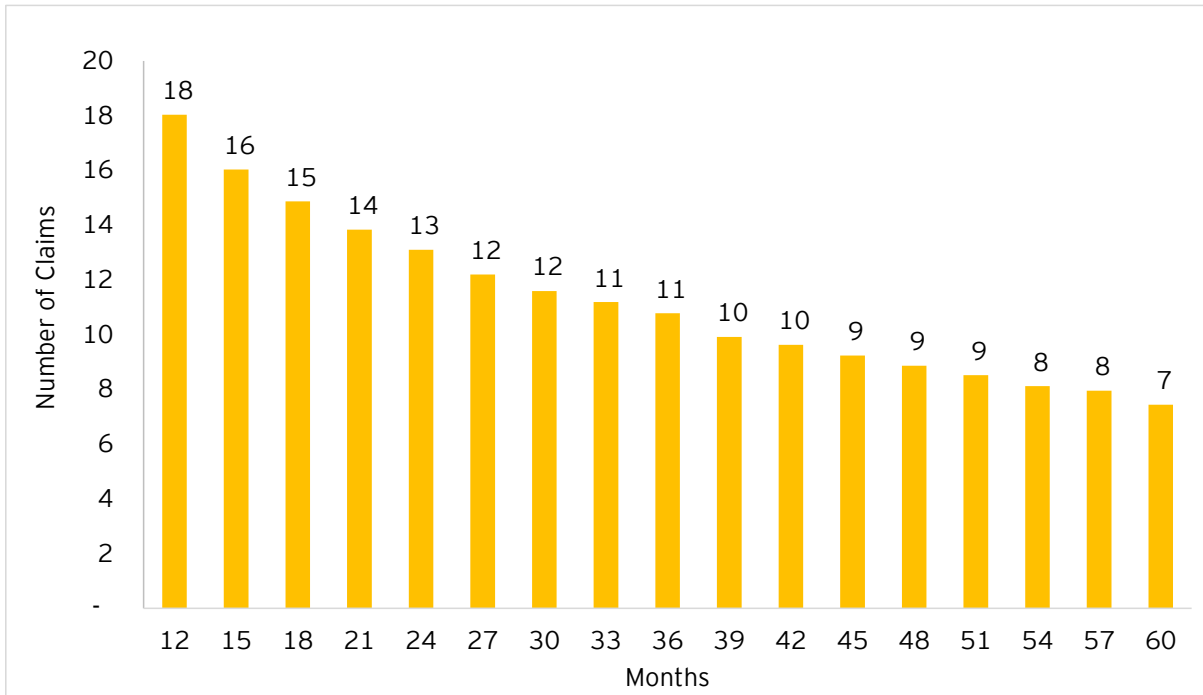
- ▶ The same claims do not receive economic loss, care and treatment in each period. For example in the loss of earnings chart for the 15 month period, the estimated 60 claims may or may not also receive treatment or care in that same period.
- ▶ You cannot add the numbers in each chart to estimate how many claims receive benefits in the same period as some claim will receive all three payments types in the same period and others will only receive one or two of the available payment types
- ▶ We have ignored any common law benefits paid to claimants in the charts below, i.e. they represent defined benefit payments only which claimants are entitled to.

Chart 44: Estimated annual number of not at-fault claimants receiving treatment payments from one year after the accident date



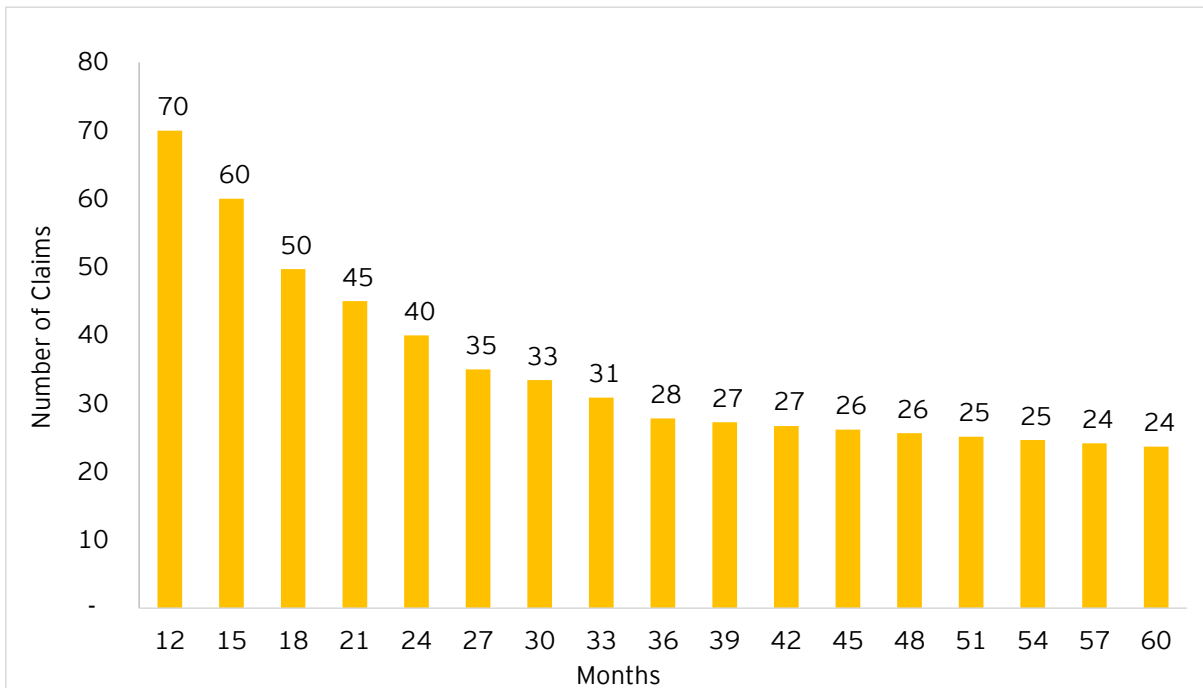
The estimated number of claims requiring treatment in each three month period out of the potential estimated 900 potential claims receiving defined benefits gradually reduces over time. Most of the claims requiring treatment from three years are those that meet the 10% WPI threshold. The average treatment benefit from three years is around \$1,300 per quarter (except for a small number of claims requiring surgery). Note that these amounts exclude treatment for LTCS claims.

Chart 45: Estimated annual number of not at-fault claimants receiving care payments from one year after the accident date



The estimated number of claims requiring care in each three month period out of the potential estimated 900 potential claims receiving defined benefits is small compared to those requiring treatment (i.e. varies from about one in six to one in ten claims receiving treatment) and they gradually reduce over time. Most of the claims requiring care from three years are those that meet the 10% WPI threshold. The average care benefit from three years is less than \$2,000 per quarter. Note that these amounts exclude treatment for LTCS claims.

Chart 46: Estimated annual number of claims with loss of earnings from one year



The estimated number of claims requiring loss of earnings in each three month period out of the potential estimated 900 potential claims receiving defined benefits is typically less than those

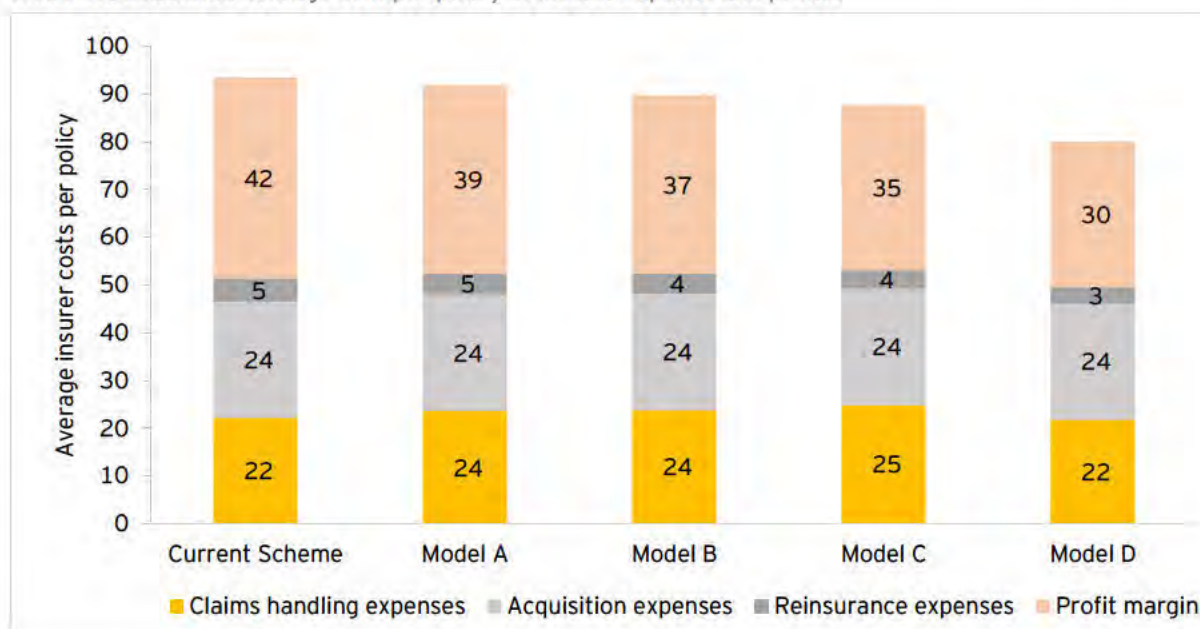
requiring treatment. As the numbers gradually reduce over time at longer durations, the number of claims receiving loss of earnings is about half the number receiving treatment. Most of the claims requiring loss of earnings from three years are those that meet the 10% WPI threshold. The average loss of earnings benefit from three years is around \$1,500 per quarter.

4.2.6 Insurer loadings

The average cost per policy of insurer expenses and profits under each model is derived from the current scheme as follows:

- ▶ Claims handling expenses - assumed to be higher as a proportion of claims costs than the current scheme (almost 6% of claim payments) as the availability of defined benefits increases the cost of handling claims for insurers. Hence the proportion of claims handling costs increases across from Model A to D in line with increasing defined benefits available
- ▶ Acquisition costs - assumed to remain at the same level as the current scheme (around \$24) as they are not likely to vary as the claim cost varies (a minor exception being commission costs; assumed to have a negligible impact)
- ▶ Reinsurance costs - assumed to remain at the same proportion of claim costs in the current scheme (around 1%)
- ▶ Profit margin - assumed to remain at the same proportion of claim costs in the current scheme (about 9%).

Chart 47: Estimated average cost per policy of insurer expense and profits



The level of insurer expenses does not change much between the current scheme and the four proposed model designs despite the reduction in claims costs whereas as the level of insurer profits reduces from \$42 in the current scheme in each model being only \$30 in Model D.

4.3 Other premium rate considerations

When a new CTP scheme is introduced, especially in a privately underwritten scheme, consideration needs to be given to two important issues that impact premium levels in the first few years of the new scheme. The ACT government will need to consider how to address these issues when drafting legislation. These issues are briefly described below.

4.3.1 Honeymoon effect

There are numerous examples in Australia and overseas countries of reforms to benefits of personal injury schemes resulting in better than expected claims experience for a number of years after the new benefits commence. The better than expected claims experience can also result in higher profits for insurers where they are underwritten by commercial insurers. We also recognise that the reverse can emerge with higher claims experience than expected. The actual outcome depends on the nature of the benefit reforms, the risks in the benefit design and the effectiveness of the implementation of a new Scheme. In particular, the extent to which scheme culture changes due to the legislation and the changes in the behaviour of claimants and service providers including insurers, lawyers, judges, and medical and allied health providers will impact the extent of the reduction in costs of a new personal injury scheme. **The** number of examples where the claims experience was better than expected significantly outweigh those where the experience was worse.

In many of these examples, there has been a significant reduction in claim numbers as well as a reduction in claims costs. Specific examples include:

- ▶ When the NSW CTP privatised Scheme commenced in 1989, average premiums were around \$350 per vehicle. Much better than expected claims experience in the first few years resulted in significantly higher profits for insurers than expected. Subsequently average premium levels reduced to around \$200
- ▶ The NSW CTP Scheme reforms in 1999 led to a more significant reduction in claim numbers than could be explained by the modest reduction in road casualties. Full claims reduced by over 40%. The cost of claims also reduced significantly more than expected, resulting in insurer profit margins in the first four years of the Scheme being nearly 30%
- ▶ In 1987, the major reforms to the NSW workers compensation scheme resulted in the claims cost reducing by substantially more than expected, resulting in the cost of the scheme being less than half expected. The major changes to the scheme were abolishing common law and redemptions of defined benefits. Subsequently the government made further legislative reforms which increased scheme benefits
- ▶ The 2012, NSW workers compensation reforms resulted in a significantly higher reduction in the number of claims and cost than expected. Subsequently the government made further legislative reforms which increased scheme benefits
- ▶ In all states, the state personal injury legislation reforms that occurred in 2002/2003 post the HIH collapse limited, restricted or modified common law in one form or another. For every state, the reduction in numbers of claims and the reduction in claims cost was more than expected
- ▶ In Canada, many state motor vehicle personal injury schemes have had benefit reforms in the last 25 years. Prior to the reforms, the schemes were essentially full common law schemes. In the five years that preceded the reforms, claims costs escalated by over 35% in a number of these schemes. In a number of these schemes the increase in claims costs was in part due to a significant increase in claim numbers pre-reform. After reform, the number of claims reduced in these schemes with the reduction varying by scheme. Not all schemes showed a longer term reduction in claims costs as a result of reforms.

We have estimated the cost of the new scheme in all of the design models assuming it is a mature scheme. However, it is, in our view, possible that the cost of the new scheme may end up being lower than expected especially in the first few years since:

- ▶ Claimants and their advisers (e.g. lawyers, medical practitioners) can take some time to be fully aware of their entitlements under the scheme leading to fewer reported claims in the early years and a lower cost of claims as illustrated above

- ▶ For at-fault claimants, we believe it will take some years for these claimants to be aware of their full entitlement to benefits while recognising that their level of awareness will be dependent on the extent to which the government, insurers and other stakeholders create the awareness of at-fault claimant's entitlements.

In this report we have referred to this impact as the “honeymoon” impact which comprises:

- ▶ Lower claim numbers and claims cost than we have included in the mature Scheme costing estimate
- ▶ If the experience of the new Scheme is more favourable than we expect then it will take a few years before the full cost of the Scheme can be properly assessed during which time premiums will be higher than required

We also recognise that it is possible for the costs in the new Scheme to be higher than we have estimated. However, it our view that this risk is lower than the claims cost being lower than we have estimated. How to address this issue will need to be considered when drafting the new legislation.

4.3.2 Unearned premium reserve

Unearned premium reserve is the portion of premiums written that relates to the unexpired portion of the policy term. In a new scheme, where the claims cost and premiums reduce to reflect a new benefit design, insurers will make additional profits on premiums already written prior to the implementation date of the new scheme, unless an adjustment is made to future premiums.

At the time a new scheme commences, insurers will be holding unearned premiums on policies which have been priced on the current scheme benefit design basis, yet insurers will be providing lower cost benefits. For example if Model D is selected for the new scheme design for benefits commencing on, say, 1 January 2019, then a 12-month policy written in July 2018 will provide coverage for claims occurring from July 2018 until June 2019. However, the cost of claims from 1 January 2019 onwards will be much lower than the current scheme by about \$120 (see Section 4.1 and Appendix B for details). Hence the premium charged in July 2018 reflecting the current scheme in absence of reforms is not representative of the claims costs which are expected to be paid out in the second half of the year (i.e. premium is higher than expected claims costs) creating an unearned premium surplus.

The unearned premium surplus is the extent to which the unearned premiums on the (higher) old scheme cost basis for the remaining policy term exceed the lower new scheme cost basis. If no adjustment is made then insurers will make additional profits from the unearned premium. For example, in the case of Model D the unearned surplus may be about \$60 per policy or in excess of \$15m for all policies.

There are a number of options that can be considered to ensure insurers do not earn the additional profit associated with the unearned premium reserve. Some options include:

- ▶ Require insurers to reduce premiums six months before the new claimant benefits apply by the corresponding amount of the unearned premium surplus
- ▶ Require insurers to reduce their premiums from the implementation date of the new scheme by the corresponding amount of the unearned premium surplus for a period which could vary from 12 months or more
- ▶ Require insurers to refund each policyholders the excess premium they paid
- ▶ The ACT CTP Regulator could claw back the unearned premium surplus from each insurer and use it for other purposes (e.g. reduce future CTP Regulator levies, use the funds for road safety, etc.)

There are advantages and disadvantages of each option. There are financial, fairness, timing and practical implementation issues (including IT changes) to be considered in deciding the best option for ACT and it is beyond the scope of this report to consider each option in detail.

5. Risks and uncertainty

5.1 Key assumptions for costing the four model designs

In our professional capacity we are required to highlight and discuss the risks and uncertainty associated with our results.

In undertaking our costing of the four model designs we have made a number of key assumptions about which there is significant uncertainty and risk. These key assumptions are discussed in Section 3.

5.2 Uncertainty

5.2.1 General uncertainty

There is significant uncertainty associated with actuarial estimates. Estimates of future claims experience (claims numbers and payments) are always inherently uncertain because they depend on the outcome of future events which cannot be forecast precisely. Examples of claims experience that are particularly challenging to forecast include changes to social, economic and legal environments. Therefore, actual claims experience may emerge at levels higher or lower than the actuarial estimates.

This report contains results relating to the current ACT CTP Scheme and the four model designs proposed for consideration. Given that there is no actual claims experience for the four model designs, the results relating to them have been estimated based on relevant experience in the current ACT CTP scheme, the Victorian CTP scheme, the Queensland CTP scheme and the NSW CTP scheme. However, as there is no actual claims experience for the four model designs naturally the uncertainty associated with results relating to them is greater than for the current scheme results.

In recent years, interest rates have been very volatile and during the last few years, interest rates have fallen substantially although they have recently increased. The reduction in interest rates has reduced the investment income insurers earn on their premiums which is used to pay claims. Consequently insurers have increased premiums to offset the fall in interest rates. It is not possible to predict whether interest rates will increase or fall in the future. We have not considered the impact future changes in interest rates will have on the estimated premiums for the current Scheme or the four proposed model designs. This risk will impact both the current and the proposed four model designs in the same direction and by similar proportions. Similar comments apply to assumed wage and price inflation within our models.

5.2.2 Uncertainty - current scheme premiums

As we adopted ACT insurers' estimates of the current scheme costs in their filed premiums up to December 2017 with the ACT CTP Regulator, we have not undertaken a ground up estimate of the cost of the current ACT scheme. Nor have we undertaken an assessment of the adequacy or otherwise of ACT insurers' filed premiums.

Current ACT CTP premium rates as assessed by each insurer are subject to significant uncertainty as described in Section 5.2.1 above.

5.2.3 Uncertainty - costing of the four model designs

There is significant additional uncertainty and limitation associated with our four model design costing estimates, much more than for the estimates of the cost of the current scheme. Specific areas of uncertainty and limitations in the costing estimates of the four proposed model designs are discussed in Sections 3 and 4 as relevant. Other areas of uncertainty include:

- ▶ The drafting of legislation including regulations and guidelines is yet to commence; as a result, the costing estimates are uncertain. Any differences in the assumed details of the content or

interpretation of the Act, regulations and guidelines on which the costings in this report are based will result in changes to the estimates of the cost per policy and ultimately the premiums vehicle owners pay.

- ▶ The costing estimates have been developed by reference to the claims experience from the current ACT, Victorian, Queensland and NSW CTP schemes as well as the costing estimates of the new NSW CTP scheme which commenced operation on 1 December 2017. Our costing estimates are based on the assumption that the claims cost in the four model designs, with the exception of specific variations we have made, will reflect the claims experience observed in the reference schemes after allowing for different benefit design, demographic and operational differences. It is not possible to predict whether the claims experience of the four model designs will reflect the claims experience of the relevant reference scheme including the adjustments made.
- ▶ The costing estimates and metrics are based on an assumption that the estimated total legal costs (i.e. party-party costs plus solicitor-client costs) are at the same level as in the NSW CTP scheme for similar claims sizes in each scheme. This is a material source of uncertainty in the costing estimates and metrics for the current scheme and also the four model designs as the level of solicitor-client costs in the current ACT scheme is unknown.
- ▶ A further reason for uncertainty in our costing estimates for the four model designs is that there is no actual claims experience of the model to rely upon other than comparable experience of other schemes in Australia.
- ▶ Each of the four model designs will represent a significant change for all stakeholders that interact with the scheme. It is not possible to accurately estimate the impact of behavioural changes that may result from these changes. This difficulty is further increased as the four model designs will impact stakeholders differently and therefore their responses to the new design will differ.
- ▶ In the current Scheme, insurers operate competitively within the guidelines set by the ACT CTP Regulator. Under any of the four model designs, the powers the ACT CTP Regulator will have to regulate premiums has not yet been determined. In particular, what, if any, allowance insurers will be required to comply with to address the possibility of a lower cost in the early years of the scheme and to avoid insurers making excess profits from the surplus in current scheme premiums arising from the unearned premium reserve. This is a source of additional uncertainty around the premium levels that will be charged by insurers in the early years of the jury's selected model.
- ▶ The estimates of average premiums rely on the costing estimate of the average premiums as well as the estimation of how each vehicle class will be affected by the benefits under each of the four model designs. As a result, the estimates of average premium by class are more sensitive to underlying assumptions resulting in the uncertainty in their estimates being much higher than the average premium uncertainty from the costing.

6. Reliance and limitations

In our professional capacity and EY operating policy requirements, we are required to state the reliance and limitations of our report.

In undertaking this costing analysis, reliance has been placed upon the data provided to us by the ACT CTP Regulator, the Victorian Transport Accident Commission, the State Insurance Regulatory Authority, Motor Accident Insurance Commission, Roads and Maritime Services and VicRoads. With regards to the ACT CTP Regulator data, we are specifically relying on the accuracy by which insurers have provided their data and classified appropriate payment types and injury severity coding and that this allocation has been accurate over time.

We have also made judgements and estimates where data was not available. In general, reliance was placed on but not limited to the information provided. Except where indicated, the information has been used without independent verification. However, it was reviewed where possible for reasonableness and consistency.

We have performed the work assigned and have prepared this document in conformity with its intended utilisation by persons technically familiar with the areas addressed and for the stated purposes only. Judgements based on the data, methods and assumptions contained in the report document should be made only after studying the report in its entirety, as conclusions reached by a review of a section or sections on an isolated basis may be incorrect. EY staff are available to explain or amplify any matter presented herein.

Although we have prepared estimates in conformity with what we believe to be the likely future experience, the experience could vary considerably from the estimates. Deviations from our estimates are normal and are to be expected.

We have described certain reliance and limitations of our analysis throughout the Report particularly in Sections 1, 3, 4 and 5.

In accordance with normal professional practice, neither EY, nor any member or employee thereof undertakes responsibility in any way whatsoever to any person other than the ACT government in respect of this report.

We disclaim all liability to any other party for all costs, loss, damage and liability that any third party may suffer or incur arising from or relating to or in any way connected with the contents of our advice, the provision of our advice to the other party or the reliance upon our advice by the other party. We are providing specific advice only for this engagement and for no other purpose and we disclaim any responsibility for the use of our advice for a different purpose or in a different context.

Neither the whole of this, or any part thereof, or any reference thereto may be published in any document, statement or circular nor in any communication with other third parties without prior EY written approval of the form and context in which it will appear.

We require that if the Report is distributed to third parties, it must be distributed in its entirety

Appendix A - ISV & WPI Scales

Appendix A - ISV & WPI Scales

ISV/WPI	Model A (ISV)	Model B (ISV)	Model C & D (WPI)	
	General Damages	General Damages	Quality of Life	General Damages
0	5,000	-	-	-
1	7,500	2,500	1,400	2,000
2	10,000	5,000	2,800	4,000
3	12,500	7,500	4,200	6,000
4	15,000	10,000	5,600	8,000
5	18,000	13,000	7,000	10,000
6	21,000	16,000	9,100	13,000
7	24,000	19,000	11,200	16,000
8	27,000	22,000	13,300	19,000
9	30,000	25,000	15,400	22,000
10	39,000	32,000	17,500	25,000
11	48,000	39,000	19,950	35,000
12	57,000	46,000	22,400	38,500
13	66,000	53,000	24,850	42,000
14	75,000	60,000	27,300	45,500
15			29,750	49,000
16			32,200	52,500
17			34,650	56,000
18			37,100	59,500
19			39,550	63,000
20			42,000	63,500
21			44,800	64,000
22			47,600	68,000
23			50,400	72,000
24			53,200	76,000
25			56,000	80,000
26			58,800	84,000
27			61,600	88,000
28			64,400	92,000
29			67,200	96,000
30			70,000	100,000
31			72,800	104,000
32			75,600	108,000
33			78,400	112,000
34			81,200	116,000
35			84,000	120,000
36			86,800	124,000
37			89,600	128,000
38			92,400	132,000
39			95,200	136,000
40			98,000	140,000
41			100,800	144,000
42			103,600	148,000
43			106,400	152,000
44			109,200	156,000
45			112,000	160,000
46			114,800	164,000
47			117,600	168,000
48			120,400	172,000
49			123,200	176,000
50			126,000	180,000
51			130,480	186,400
52			134,960	192,800

ISV/WPI	Model A (ISV)	Model B (ISV)	Model C & D (WPI)	
	General Damages	General Damages	Quality of Life	General Damages
53			139,440	199,200
54			143,920	205,600
55			148,400	212,000
56			152,880	218,400
57			157,360	224,800
58			161,840	231,200
59			166,320	237,600
60			170,800	244,000
61			175,280	250,400
62			179,760	256,800
63			184,240	263,200
64			188,720	269,600
65			193,200	276,000
66			197,680	282,400
67			202,160	288,800
68			206,640	295,200
69			211,120	301,600
70			215,600	308,000
71			220,080	314,400
72			224,560	320,800
73			229,040	327,200
74			233,520	333,600
75			238,000	340,000
76			242,480	346,400
77			246,960	352,800
78			251,440	359,200
79			255,920	365,600
80			260,400	372,000
81			264,880	378,400
82			269,360	384,800
83			273,840	391,200
84			278,320	397,600
85			282,800	404,000
86			287,280	410,400
87			291,760	416,800
88			296,240	423,200
89			300,720	429,600
90			305,200	436,000
91			309,680	442,400
92			314,160	448,800
93			318,640	455,200
94			323,120	461,600
95			327,600	468,000
96			332,080	474,400
97			336,560	480,800
98			341,040	487,200
99			345,520	493,600
100			350,000	500,000

Appendix B - Detailed results including full premium breakdown by Model

Appendix B - Model Comparison

Summary of Models A, B, C and D - Average passenger vehicle nil ITC premium effective 1 July 2017 (\$) (2017/18 Underwriting year)

NUMBERS REPRESENT THE MIDDLE OF A RANGE OF ESTIMATES. ACTUAL COSTS FOR EACH HEAD OF DAMAGE COULD BE HIGHER OR LOWER THAN SHOWN.

Benefit Type	Current ACT premium	Model A		Model B		Model C		Model D	
		Estimated Premium	Difference to current	Estimated Premium	Difference to current	Estimated Premium	Difference to current	Estimated Premium	Difference to current
General Damages / Quality of Life	116	82	-34	68	-48	39	-77	39	-77
Loss of Earnings	79	85	6	90	11	85	6	69	-10
Treatment - Private medical costs	44	52	8	54	10	61	17	56	12
Treatment - Public hospital costs	12	19	7	19	7	19	7	19	7
Care	19	16	-3	17	-2	20	1	16	-3
Death	1	1	0	2	1	4	3	5	4
Legal Costs - Defendant & Investigation	31	27	-4	21	-10	16	-15	10	-21
Legal Costs - Plaintiff costs (Party-Party)	52	46	-6	39	-13	34	-18	25	-27
Interstate claims	37	32	-5	32	-5	32	-5	32	-5
Total claims cost - range	391	336 to 384	-56 to -7	312 to 372	-79 to -20	275 to 345	-116 to -47	232 to 310	-159 to -81
Claims handling expenses	22	24	1	24	2	25	3	22	-0
Acquisition expenses	24	24	0	24	0	24	0	24	0
Reinsurance	5	5	-0	4	-1	4	-1	3	-1
Profit margin	42	39	-3	37	-5	35	-7	30	-12
Nominal Defendant Levies (excl LTCS)	20	17	-3	16	-4	12	-8	10	-10
Motorcycle subsidy impact	0	7	7	7	7	16	16	16	16
GST	50	48	-3	45	-5	43	-8	38	-13
CTP Regulator Levy	1	10	9	10	9	10	9	10	9
Average passenger vehicle premium excl LTCS Levy - range	556	510 to 560	-46 to 4	480 to 540	-76 to -16	440 to 510	-116 to -46	385 to 465	-171 to -91

* totals may not add due to rounding

Legal Costs - estimated Solicitor-Client Plaintiff costs	32	26	-6	20	-12	14	-18	9	-23
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** the estimated Solicitor-Client Plaintiff costs have been included within the other heads of damages in the table above

Appendix B - Model A

Average passenger vehicle nil ITC premium effective 1 July 2017 (\$) (2017/18 Underwriting year)

NUMBERS REPRESENT THE MIDDLE OF A RANGE OF ESTIMATES. ACTUAL COSTS FOR EACH HEAD OF DAMAGE COULD BE HIGHER OR LOWER THAN SHOWN.

Average passenger vehicle nil ITC premium							
Benefit Type	Defined benefits		Common Law	% Change from Current Scheme (NAF only)	Proposed Model Total Premium	Current ACT Total Premium	Difference from current
	AF	NAF	NAF				
General Damages / Quality of Life	0	0	82	-30%	82	116	-34
Loss of Earnings	5	6	74	2%	85	79	6
Treatment - Private medical costs	14	18	20	-13%	52	44	8
Treatment - Public hospital costs	8	11	0	-6%	19	12	7
Care	0	0	16	-15%	16	19	-3
Death	0	0	1	6%	1	1	0
Legal Costs - Defendant & Investigation	0	1	26	-14%	27	31	-4
Legal Costs - Plaintiff costs (Party-Party)	2	2	42	-16%	46	52	-6
Interstate claims	0	0	32	-15%	32	37	-5
Total claims cost - range	27 to 31	35 to 41	273 to 313	<b style="color: red;">-21% to -10%	336 to 384	391	<b style="color: red;">-56 to -7
Claims handling expenses					24	22	1
Acquisition expenses					24	24	0
Reinsurance					5	5	-0
Profit margin					39	42	-3
Nominal Defendant Levies (excl LTCS)					17	20	-3
Motorcycle subsidy impact					7	0	7
GST					48	50	-3
CTP Regulator Levy					10	1	9
Average passenger vehicle premium excl LTCS Levy - range					510 to 560	556	<b style="color: red;">-46 to 4
Legal Costs - estimated Solicitor-Client Plaintiff costs			26	-18%	26	32	-6

Appendix B - Model B

Average passenger vehicle nil ITC premium effective 1 July 2017 (\$) (2017/18 Underwriting year)

NUMBERS REPRESENT THE MIDDLE OF A RANGE OF ESTIMATES. ACTUAL COSTS FOR EACH HEAD OF DAMAGE COULD BE HIGHER OR LOWER THAN SHOWN.

Average passenger vehicle nil ITC premium							
Benefit Type	Defined benefits		Common Law	% Change from Current Scheme (NAF only)	Proposed Model Total Premium	Current ACT Total Premium	Difference from current
	AF	NAF	NAF				
General Damages / Quality of Life	0	0	68	-42%	68	116	-48
Loss of Earnings	7	9	74	6%	90	79	11
Treatment - Private medical costs	16	22	16	-13%	54	44	10
Treatment - Public hospital costs	8	11	0	-6%	19	12	7
Care	0	1	16	-10%	17	19	-2
Death	1	0	1	6%	2	1	1
Legal Costs - Defendant & Investigation	0	1	20	-33%	21	31	-10
Legal Costs - Plaintiff costs (Party-Party)	2	3	34	-29%	39	52	-13
Interstate claims	0	0	32	-15%	32	37	-5
Total claims cost - range	31 to 37	43 to 51	238 to 284	<b style="color: red;">-28% to -14%	312 to 372	391	<b style="color: red;">-79 to -20
Claims handling expenses					24	22	2
Acquisition expenses					24	24	0
Reinsurance					4	5	-1
Profit margin					37	42	-5
Nominal Defendant Levies (excl LTCS)					16	20	-4
Motorcycle subsidy impact					7	0	7
GST					45	50	-5
CTP Regulator Levy					10	1	9
Average passenger vehicle premium excl LTCS Levy - range					480 to 540	556	<b style="color: red;">-76 to -16
Legal Costs - estimated Solicitor-Client Plaintiff costs			20	-37%	20	32	-12

Appendix B - Model C

Average passenger vehicle nil ITC premium effective 1 July 2017 (\$) (2017/18 Underwriting year)

NUMBERS REPRESENT THE MIDDLE OF A RANGE OF ESTIMATES. ACTUAL COSTS FOR EACH HEAD OF DAMAGE COULD BE HIGHER OR LOWER THAN SHOWN.

Average passenger vehicle nil ITC premium							
Benefit Type	Defined benefits		Common Law	% Change from Current Scheme (NAF only)	Proposed Model Total Premium	Current ACT Total Premium	Difference from current
	AF	NAF	NAF				
General Damages / Quality of Life	16	5	18	-80%	39	116	-77
Loss of Earnings	13	18	54	-8%	85	79	6
Treatment - Private medical costs	20	26	15	-6%	61	44	17
Treatment - Public hospital costs	8	11	0	-6%	19	12	7
Care	2	3	15	-5%	20	19	1
Death	3	0	1	6%	4	1	3
Legal Costs - Defendant & Investigation	1	1	14	-52%	16	31	-15
Legal Costs - Plaintiff costs (Party-Party)	5	5	24	-45%	34	52	-18
Interstate claims	0	0	32	-15%	32	37	-5
Total claims cost - range	60 to 76	61 to 77	154 to 192	-45% to -31%	275 to 345	391	-116 to -47
Claims handling expenses					25	22	3
Acquisition expenses					24	24	0
Reinsurance					4	5	-1
Profit margin					35	42	-7
Nominal Defendant Levies (excl LTCS)					12	20	-8
Motorcycle subsidy impact					16	0	16
GST					43	50	-8
CTP Regulator Levy					10	1	9
Average passenger vehicle premium excl LTCS Levy - range					440 to 510	556	-116 to -46
Legal Costs - estimated Solicitor-Client Plaintiff costs			14	-56%	14	32	-18

Appendix B - Model D

Average passenger vehicle nil ITC premium effective 1 July 2017 (\$) (2017/18 Underwriting year)

NUMBERS REPRESENT THE MIDDLE OF A RANGE OF ESTIMATES. ACTUAL COSTS FOR EACH HEAD OF DAMAGE COULD BE HIGHER OR LOWER THAN SHOWN.

Average passenger vehicle nil ITC premium							
Benefit Type	Defined benefits		Common Law	% Change from Current Scheme (NAF only)	Proposed Model Total Premium	Current ACT Total Premium	Difference from current
	AF	NAF	NAF				
General Damages / Quality of Life	16	5	18	-80%	39	116	-77
Loss of Earnings	15	20	34	-31%	69	79	-10
Treatment - Private medical costs	20	26	10	-17%	56	44	12
Treatment - Public hospital costs	8	11	0	-6%	19	12	7
Care	2	3	11	-26%	16	19	-3
Death	4	0	1	6%	5	1	4
Legal Costs - Defendant & Investigation	1	1	8	-71%	10	31	-21
Legal Costs - Plaintiff costs (Party-Party)	5	6	14	-62%	25	52	-27
Interstate claims	0	0	32	-15%	32	37	-5
Total claims cost - range	61 to 81	62 to 82	110 to 146	-56% to -42%	232 to 310	391	-159 to -81
Claims handling expenses					22	22	-0
Acquisition expenses					24	24	0
Reinsurance					3	5	-1
Profit margin					30	42	-12
Nominal Defendant Levies (excl LTCS)					10	20	-10
Motorcycle subsidy impact					16	0	16
GST					38	50	-13
CTP Regulator Levy					10	1	9
Average passenger vehicle premium excl LTCS Levy - range					385 to 465	556	-171 to -91
Legal Costs - estimated Solicitor-Client Plaintiff costs			9	-72%	9	32	-23

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**ISSUE: COMPULSORY THIRD-PARTY (CTP) INSURANCE SCHEME –
DELIBERATIVE DEMOCRACY**

Talking points:

- The ACT Government’s first Citizens’ Jury on Compulsory Third Party (CTP) insurance has chosen a preferred new scheme that will deliver improved coverage and better protect Canberrans.
- The model chosen by the jury delivers the following improvements:
 - everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault. This means approximately 40% of injured people who currently can’t make a CTP claim will be covered, about 600 more Canberrans per year;
 - everyone will have earlier access to benefits after an accident. There will continue to be exclusions for serious criminal offences, in line with other Australian jurisdictions;
 - quality of life benefits, which provide compensation for non-financial loss, will be available for all people who meet injury thresholds; and
 - anyone whose injury was caused by someone else’s negligence and who is more seriously injured will still be able to access additional common law benefits.
- The model is a hybrid no-fault common law scheme. These types of schemes are in place in other jurisdictions, including New South Wales and Victoria. These schemes and the jury’s preferred scheme differ somewhat in their coverage and benefit levels.
- The new CTP scheme introduces the use of the injury assessment measure Whole Person Impairment (WPI). WPI thresholds will apply to access to common law and quality of life benefits.

Cleared as complete and accurate:	11/10/2018	
Cleared by:	Sue Vroombout	Executive Director
Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 53216
Lead Directorate:	Chief Minister, Treasury and Economic Development	Ext: 70207

- This injury assessment measure is not used in the ACT's current CTP scheme. However, it is used in other injury compensation schemes operating in the ACT (e.g. Comcare).
- The ACT Government has committed to pursuing the scheme chosen by the jury and has tabled exposure draft legislation to implement the scheme in the Assembly.

Key Information

Current ACT CTP scheme:

- About 290,000 motor vehicles are registered in the ACT each year and there are around 900 claims each year under our current CTP scheme. The current ACT CTP scheme does not cover everyone injured in a motor vehicle accident, and it can take up to two years or longer to get a full payout after an accident. Relative to other jurisdictions, the ACT currently has among the most expensive premiums in the country.

Deliberative democracy process:

- The ACT Government ran a deliberative democracy process on CTP to find out what Canberrans wanted from their scheme. The Government set some parameters on what the jury could consider, including that the scheme must remain compulsory, community rated and the premium cannot increase. The jury completed its deliberations and chose a preferred option for an improved CTP scheme in March this year.

Public Consultation:

- A public consultation process took place from 22 August 2017 to 29 September 2017, these submissions were presented to the jury and the jury received copies of all the feedback to inform their understanding of CTP and their deliberations in determining the objectives for an improved CTP scheme.
- The Government received around 1,435 pieces of feedback, including 725 survey responses, 328 people told us their CTP priorities, 263 online quiz responses and 119 comments and submissions. Copies of the submissions received can be viewed on Your Say website.

Jury Selection:

- The Government brought in expert consultants in deliberative democracy to run the citizens' jury process and they were responsible for recruiting the jury to ensure it happened at arms' length from government.
- Invitations to participate in the CTP citizens' jury were mailed to 6,000 randomly selected households using Australia Post's database. A further 1,500 individuals were

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Cleared by: Sue Vroombout Executive Director Ext: 53216
Information Officer name: Sue Vroombout Ext: 53216
Contact Officer name: Lisa Holmes Ext: 70207
Lead Directorate: Chief Minister, Treasury and Economic Development

randomly selected from the Vote Compass database to receive online invitations. A total of 117 responses were received.

- A group of around 50 jurors were chosen from those who responded, with the selection and stratification managed by the jury facilitators, democracyCo. This process ensured the jury was made up a mix of people according to criteria such as age, gender and location that broadly corresponds with the demographics of the ACT population.

Restrictions on who can sit on the jury:

- It was important that the jury's deliberations were balanced and not unfairly influenced in any direction by people with a particular stake in the CTP scheme. For this reason, people who receive an income from the CTP system, such as a personal injury lawyer, a CTP insurance company employee or a person who works for government in personal injury compensation, or anyone in their households, were not eligible to be on the jury.
- These professions were represented within the Stakeholder Reference Group, which includes representatives of the ACT Law Society, the ACT Bar Association and insurance companies. The legal and insurance members of the SRG had the opportunity to discuss their perspectives with the jury.
- People who were currently in the process of having a CTP claim considered and their household members were also be unable to participate on the jury.
- People who have had experiences with the CTP scheme – including people who have pursued claims under the current system and those who were ineligible to do so because of its current design – had the opportunity to give evidence before the jury as witnesses. This ensured their views and perspectives were taken into account by the jury as an important part of the deliberations.

Jury's Objectives:

- The jury decided the chosen model best meets the objectives they set when they first commenced work in October 2017, including:
 - early access to medical treatment, economic support and rehabilitation services;
 - equitable cover for all people injured in a motor vehicle accident; and
 - greater efficiency and value for money.

Items the jury requested further consideration be given to:

- In developing the exposure draft of the Bill we have given further consideration to the support and information options that may be available. The government agrees

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Cleared by:	Sue Vroombout	Executive Director
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Contact Officer name:	Lisa Holmes	Ext: 53216
Lead Directorate:	Chief Minister, Treasury and	Ext: 70207
	Economic Development	

with the jury that the provision of information about the scheme will be integral to its success.

- The scheme designer didn't address road safety measures because road safety initiatives are already provided for through a levy paid with registration. The money goes into a special trust, and the use of that money has its own governance arrangements. The CTP regulator plays a part in in these arrangements. Safety on our roads is a priority for everyone in our community and government will continue working to improve road safety.

Evaluation of the Pilot:

- As the CTP citizens' jury process is the ACT's deliberative democracy pilot project, the Government will evaluate the process after the Bill is debated, when this project is finalised.

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Cleared by:	Sue Vroombout	Executive Director
Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 70207
Lead Directorate:	Chief Minister, Treasury and Economic Development	

**ISSUE: COMPULSORY THIRD-PARTY (CTP) INSURANCE SCHEME –
EXPOSURE DRAFT OF THE *MOTOR ACCIDENT INJURIES BILL 2018***

Talking points:

- The ACT Government has committed to pursuing the scheme chosen by the jury.
- The Government tabled an exposure draft of the *Motor Accident Injuries Bill 2018* in the Assembly in September, and referred the bill to committee for further scrutiny and consultation.
 - The new bill is a significant change from the existing legislation. That is why we are providing multiple opportunities for key stakeholders to provide input and feedback as the legislation is developed.
 - Canberrans have the opportunity to examine the full legislation and provide their feedback on it during the committee inquiry on the draft bill.
- The Government considers the timing for the committee process provides sufficient opportunity for scrutiny, given the ongoing discussion that has, and is, occurring on this topic.
 - The Government has already undertaken a considerable consultation process on CTP since August 2017 with the Citizens' Jury process that included surveys, submissions and comments that were considered by the jury.
 - On 1 August 2018 Treasury provided a consultation document on the technical legislative drafting to implement the chosen model to insurers, the ACT Law Society and the ACT Bar Association.

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Cleared by: Sue Vroombout	Executive Director	Ext: 53216
Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 70207
Lead Directorate:	Chief Minister, Treasury and Economic Development	

- *Exclusion of people who engage in serious criminal behaviour or put others at risk from CTP coverage:*
 - People who engage in serious criminal behaviour or put others at risk with drink and drug driving offences will be partly or totally excluded from accessing benefits under the new CTP scheme. This is consistent with the approach taken in other parts of Australia and ensures there are strong disincentives for dangerous, criminal behaviour on our roads. It is also in the line with the model chosen by the citizen's jury that specified that there would be some exclusions for illegal behaviours.
- The committee inquiry provides a further opportunity for consultation with the community on the detail of the new scheme. Input from the committee will inform the final *Motor Accident Injuries Bill 2018* that is set to be introduced to the Legislative Assembly by the end of 2018.
- It is expected the new scheme will commence in Canberra in the second half of 2019.

Key Information

The Regulator's Powers:

- Unlike some of the insurance products discussed to date at the Royal Commission, the new scheme is a statutory scheme with an accompanying Motor Accident Injuries Commission.
- The Commission's functions have changed in the exposure draft of the bill compared to the existing CTP Regulator, to better reflect the role of the Commission under the new scheme. Not only will the Commission have a stronger education role in providing better information about the scheme to people who are making claims, it will also have an expanded regulatory and monitoring role.

Comparison with other jurisdictions' hybrid schemes:

- In VIC, the threshold for access to common law is significantly higher at 30 per cent WPI (AMA4) for combined physical and mental injuries (with access allowed for others on a discretionary basis). This is balanced with ongoing access to treatment for as long as it's needed, regardless of injury severity.
 - In comparison to VIC, the threshold to access common law in the chosen model for the ACT is lower at 10 per cent WPI (AMA5 modified), but defined benefits are only available for up to 5 years for those who do not meet this threshold.

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Cleared by: Sue Vroombout	Executive Director	Ext: 53216
Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 70207
Lead Directorate:	Chief Minister, Treasury and Economic Development	

- In NSW, a person must have more than a “minor injury” to access common law benefits for treatment, care and income. The trade-off is less generous defined benefits, with these cutting off at six months for anyone with minor injuries and those at fault. Access to quality of life (non-financial loss) benefits is limited to those who have at least 11% WPI (AMA4) and who are injured through someone else’s negligence.
 - In comparison to NSW, the defined benefits in the chosen model for the ACT are more generous (up to five years), and include a quality of life payment for those at or over 5% WPI (AMA5 modified).
- The NSW and VIC CTP schemes both use Guides to the Evaluation of Permanent Impairment by the American Medical Association 4th edition (AMA4). The chosen model for the ACT CTP scheme use the next version, AMA5, modified by the National Guidelines. Assessment of an injury under AMA5 may result in a higher whole person impairment rating than the same injury might under AMA4, but it depends on the type of injury.

Actuarial modelling of the proposed scheme:

- The estimated passenger vehicle premium of the chosen scheme is between \$385 to \$465, an average reduction of \$130.
- The Ernst and Young estimates have been developed by reference to multiple data sets from the ACT, NSW, Victoria and Queensland.
- The estimated number of claims in the chosen scheme is 1,500, compared to 900 in the current scheme (excluding interstate claims). This reflects the inclusion of an additional 600 people who are currently not covered because they were at fault or no-one was at fault (blameless accident).
 - Under the jury’s chosen scheme, the estimated at-fault benefit component amount of the CTP premium is \$70 per policy.
- The estimated number of people injured through someone else’s negligence and still accessing treatment payments after 5 years in the chosen model is 46 out of the total 900 not-at-fault claimants. It is estimated that 7 of these claimants will have an injury less than 10% WPI and therefore will not be eligible to make a common law claim for additional benefits under the chosen model.
- The estimated number of people injured through someone else’s negligence and still accessing income benefits after 5 years in the chosen model is 24 out of the total 900 not-at-fault claimants. It is estimated that 4 of these claimants will have an injury less than 10% WPI and therefore will not be eligible to make a common law claim for additional benefits under the chosen model.

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Lead Directorate:	Chief Minister, Treasury and Economic Development	

- Of those who are injured through someone else’s negligence:
 - The estimated average claim size where the injury is less than 10% WPI will reduce from \$50,000 in the current scheme to \$14,000 in the chosen scheme.
 - The estimated average claim size where the injury is 10% WPI or more will reduce from \$385,000 in the current scheme to \$310,000 in the chosen scheme, which is largely due to caps on the quality of life benefits payable.
- Of those additional at-fault and blameless people covered under the chosen scheme:
 - The estimated average claim size will increase from nil in the current scheme (excluding any reimbursement of medical expenses up to \$5,000) to \$14,000 in the chosen scheme, where the injury is less than 10% WPI.
 - The estimated average claim size where the injury is 10% WPI or more will rise from nil (excluding any reimbursement of medical expenses up to \$5,000) to \$110,000.
- The estimated number of legally represented common law claims per annum (excluding interstate claims) in the chosen scheme is 100 compared to 580 under the current scheme.

Unearned Premium:

- An unearned premium surplus is the portion of premiums written that relates to the unexpired portion of the policy term. In a new scheme, where the claims costs and premiums reduce to reflect a new benefit design, insurers will make additional profits on premiums already written prior to the implementation date of the new scheme, unless an adjustment is made to future premiums.
- The amount of any unearned premium surplus will depend on the actual premiums charged by insurers, the commencement date of the new scheme relative to the timing of when premium filings are undertaken and approved, and what registration renewal periods motorists select.
- The Ernst and Young (EY) costing estimates report provides an estimate of what the unearned surplus may be under the jury’s chosen scheme. If no adjustment is made it *“may be about \$60 per policy or in excess of \$15m for all policies”*.
 - The EY report estimates use data as at 1 July 2017 and are based on an estimated reduction in passenger premiums of \$120.
 - During the implementation of the chosen scheme, the cost estimates for premiums for the chosen scheme will be further developed once the finer details are resolved.
- As a principle, the government considers that insurers should not keep any unearned premiums as a result of the transition to the jury’s chosen CTP scheme. The government will consider options to manage this as part of the implementation of the new CTP scheme.

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Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 70207
Lead Directorate:	Chief Minister, Treasury and Economic Development	

- For example, in NSW a scheme has been established to allow policy holders to claim back the component of their premium outstanding after reforms took effect.

CTP Regulator Levy:

- The CTP Regulator Levy is a separate levy payable with each CTP policy. It is collected by the Government as part of the registration process and passed on in full to the ACT CTP Regulator, which is a separate Territory authority. The levy funds the Regulator's operations.
- The Ernst and Young (EY) costing estimates report included in the costing estimates for each model an amount of \$10 per annum per registration for the CTP Regulator Levy.
- The priorities set by the jury for an improved CTP scheme and the jury's chosen scheme expand the role of the CTP Regulator. The additional functions of the Regulator include an enhanced information role and some dispute resolution mechanism supports. The levy will also fund enhanced ICT requirements due to the introduction of defined benefits under the chosen scheme.

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Cleared by: Sue Vroombout	Executive Director	Ext: 53216
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**ISSUE: BACKPOCKET BRIEF – COMPULSORY THIRD-PARTY (CTP)
INSURANCE SCHEME – DELIBERATIVE DEMOCRACY****Key Information**

Issues raised by stakeholders in relation to process:

- *“Dr Dwight Dowda’s failure to disclose interests”* when he provided advice on the assessment of permanent impairment.
 - The scheme designer had already introduced the concept of ISV or WPI as an injury assessment measure before Dr Dowda was asked to provide advice to the SRG.
 - Dr Dowda’s paper was not provided to the Citizens’ Jury on CTP.
 - Ultimately it was the jury that selected their preferred model from the four models.
- The scheme designer providing options with various premiums, some less than the existing premium.
 - A jury priority for an improved CTP was *“a value for money and efficient system”*. Providing options with various premiums allowed the jury to dedicate what scheme represented value for money.
- The scheme designer not providing an option higher than the existing average premium.
 - The parameter set by Government was that premiums cannot increase. Therefore, the current average premium was the maximum amount that could be set for an option.
- The procurement process for the contracting of democracyCo.
 - The strategy design procurement process was a select tender process, with a Request for Quote (RFQ) forwarded to a number of organisations.
- The delivery procurement was undertaken as a single select process in light of the RFQ process undertaken for the strategy.
- The procurement process for the contracting of Finity.
 - A select tender process for actuarial services for the Citizens’ Jury process took place and Ernst and Young appointed. Given all the firms responding to

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Cleared by: Executive Director Ext: 53216
Information Officer name: Sue Vroombout Ext: 53216
Contact Officer name: Lisa Holmes Ext: 70207
Lead Directorate: Chief Minister, Treasury and
Economic Development

the tender offered scheme design services, the scheme designer (Finity) was selected from the offers contained in the actuarial tender responses.

- Finity are the current CTP scheme actuaries and review premium filings from insurers. This contract was awarded via a separate select tender process that was undertaken prior to the citizens' jury process. It is a different Finity office and staff who provide these services.
- The Government stated from the outset of this reform process that it did not have a specific reform model in mind, and would pursue the recommendations made by the citizens' jury. The scheme designer (Finity) prepared four different model options which met the objectives set by the citizens' jury, which ranged in degree from close to the status quo, to large-scale reform. The jury selected from these models after an extensive process of deliberation.

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Cleared by:	Executive Director	Ext: 53216
Information Officer name:	Sue Vroombout	Ext: 53216
Contact Officer name:	Lisa Holmes	Ext: 70207
Lead Directorate:	Chief Minister, Treasury and Economic Development	

ACT Chief Ministry and Treasury Directorate

Compulsory Third Party Insurance Scheme Reform Focus Groups

Overall perceptions

- ◆ Participants strongly support the idea of community consultation on this issue
- ◆ A citizens' jury, as a form of consultation, raised a number of questions and concerns, however, particularly around its representativeness and its appropriateness as a mechanism for deciding complex policy issues
- ◆ If they can be reassured that a citizen's jury would be technically equipped to deal with the issue and fully representative of the community, most participants appeared to welcome the concept of a citizens' jury and would see this as evidence that the Government is working collaboratively with the public
- ◆ Any reference to 'community values' needs to be explicit in how these have been identified and determined –people require credible evidence that 'community values' have been rigorously measured and impartially communicated
- ◆ Although participants welcomed the idea of the Government basing its policy on wider community consultation, participants reacted negatively to the suggestion that the ACT Government has 'no fixed view' about the scheme. This suggests a government that is hands-off and irresponsible. There was an expectation that the Government will have researched the alternatives prior to the citizens' jury process
- ◆ It is important that the citizens' jury is not tasked with something that is too 'open-ended' – participants wanted and expected the Government to place firm guidelines around the activities of the jury, and to set the objectives for their work. These guidelines/objectives should be developed on the basis of expert advice, research, comparative analysis of what other jurisdictions are doing, and broader community consultation. Participants believed that it is not up to the jury to decide the objectives of the scheme, but rather to work with the SRG to identify the best scheme from various options. The second stage of the two-stage process therefore made more sense to participants than the first stage.
- ◆ The idea of an expert SRG was strongly approved as a 'check and balance' on the work of a jury made up of regular citizens
- ◆ Many had a moderate to strong interest in following the jury proceedings (through email, website, local news, print media)
 - Focus group peaked interest in topic
- ◆ Other issues participants would like to follow include: stamp duty; cyclists on roads; light rail; transport
 - One participant would have liked to have had input on fireworks ban

Quiz results

- ◆ None of the respondents participating in the groups felt they had a good understanding of CTP insurance prior to the groups. For all of them, CTP insurance was ‘a box that must be ticked’ and little more. There was confusion about whether it was possible to choose between different insurance companies (some knew this, some did not), CTP’s relationship to comprehensive insurance, as well as what CTP insurance covers. It became evident in the course of the discussion that there was a common misconception that it is the ACT Government that is responsible for the insurance scheme (rather than private insurance providers).
- ◆ On average, participants scored 55% in the Quiz
- ◆ Participant scores ranged from 3/10 correct (two people) to 10/10 (one person)
- ◆ The questions that were more likely to be answered incorrectly were:
 - Q6: 4/13 (31%) were correct (impact of legal expenses in an at fault system)
 - Q9: 4/13 (31%) were correct (although there was a reasonable understanding that CTP only covers injury and excludes property damage, there was a poor understanding that insurance is not ‘automatic’ and requires fault to be established)
 - Q2: 6/13 (46%) were correct
 - Q8: 6/13 (46%) were correct
- ◆ All participants were highly engaged during the answer session for the Quiz and found it to be very useful in educating them about the topic.
- ◆ Many respondents were extremely surprised about their ‘poor’ result, saying they did not realise they knew so little about the topic.
- ◆ After participating in the focus group and completing the quiz, several respondents said they were newly intrigued about the topic and were planning to do more research about it.
- ◆ The main factors causing surprise, and in some cases concern, were:
 - The impact of legal fees on premiums in the ACT
 - The concept of the ‘blameless accident’
 - The fact that other jurisdictions have different schemes (there was a perception that there was and should be a national standard)
 - The ‘no fault’ early payment of \$5,000 towards medical expenses and the Lifetime Care and Support Scheme
- ◆ Although respondents were generally unsurprised that premiums in the ACT are among the highest in the country, this was seen to be because ‘most things are more expensive in the ACT’ or because of lower economies of scale given the small size of the population. Respondents were very surprised to learn that there were structural elements to the ACT scheme that were contributing to high premiums. This was the single largest information gain for respondents.
- ◆ The quiz had the effect of convincing participants that CTP insurance is a complicated issue with many dimensions to consider. For a few respondents, this perceived complexity meant that the feasibility/appropriateness of a citizen’s jury was questioned.

Figure 1: Quiz results for focus group participants

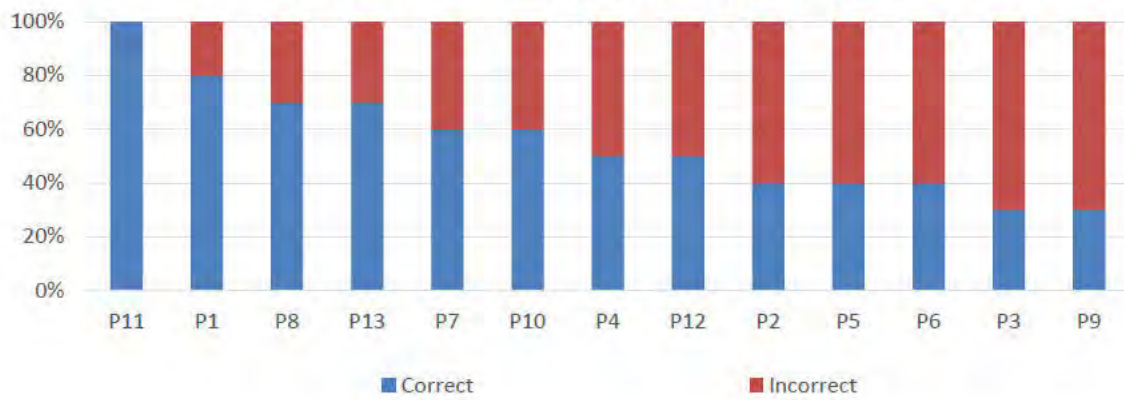
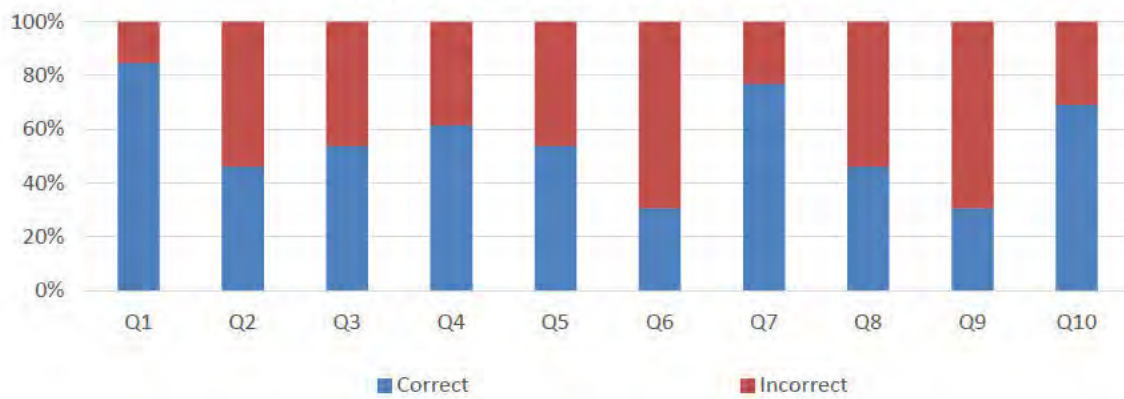


Figure 2: Quiz results for each question



Key messages – Part 1

Paragraph 1

- ◆ Most found the number of vehicles in the ACT surprising
- ◆ A small minority were not aware that CTP was compulsory

Paragraph 2

- ◆ Second sentence challenged participant assumptions about CTP
- ◆ Most thought that the scenario of hitting a kangaroo was covered by CTP, particularly for passengers who are ‘innocent victims’ and not at fault
 - There was also mention that the ACT Government is responsible for kangaroos and therefore there is some fault
 - The concept of a ‘blameless accident’ was not familiar to participants and seemed counter-intuitive to respondents.
- ◆ Most considered that all parties except the driver should at least be covered by CTP
- ◆ There was concern that a similar situation regarding cyclists was not mentioned in the statement
- ◆ One person was not as surprised as he mentioned that is why comprehensive insurance exists
- ◆ The word *blameless* is unclear

Paragraph 3

- ◆ Participants were unclear about what the ***gaps and inefficiencies*** were
 - Some participants found it troubling to learn that there were recognised gaps
 - This statement raises more questions than it provides answers
 - There was some discomfort with mentioning *gaps and inefficiencies* without identifying what these are
 - Concern that insurance companies use significant resourcing (lobbying) to determine CTP structure
 - Concern that politicians could be swayed by insurance companies (and their lawyers)
- ◆ Concern about what will be done and **effect on premiums**

Paragraph 4

- ◆ Once again, this raised the question about who is covered (*our scheme does not cover everyone*)
- ◆ The most striking part of this statement for participants was the clause about premiums being the most expensive in the country. This was the part of the statement that participants were most eager to discuss. Although participants were unsurprised that ACT premiums were among the highest, there was disbelief that ACT was the **most expensive**. No participants initially

connected the cost of the premiums to the scheme design; instead, other possible reasons were suggested, such as the low economies of scale in a small population and the general perceived high cost of living in the ACT.

- Concern that we currently pay the most but *gaps and inefficiencies* suggest that we are the least covered in the ACT
- Side note: Many participants in FG1 were not aware that CTP Schemes differed across states and territories. Some questioned the rationale for this.
- ◆ Respondents were confused by the phrase **...it can take time to deliver care and support**, questioning whether it refers to physical/medical support and/or financial support
 - Implied that there are people waiting for treatment, which challenged existing assumptions / knowledge about how medical treatment, particularly emergency treatment, is managed in the ACT
 - Mention that care and support for victims should be the first priority
 - One person suggested that it is just a statement of fact that it takes time for claims to come through (this was backed by another participant), but most did not take this meaning from it
 - Challenged assumption that all victims would get some form of initial payment before official claims processes
- ◆ Concern that mixing physical/medical care and compensation in the one statement is confusing

Key messages – Part 2

Paragraph 1

- ◆ **No fixed view:** Mention that the ACT Government should have a view
 - Participants deeply disliked the phrase ‘the government has no fixed view on what the best scheme looks like’. The phrase suggested that the government had done no research and had ‘no clue’ or plan; this was unsettling.
 - Participants felt the Government should have done their research around what is covered, what should be done and what other CTP models are used in other states/territories
 - Participants felt that the Government should make statistics relating to CTP schemes across all states/territories (e.g. total claims/payouts, premiums) available so that policy makers, experts and the general public can compare the current CTP Scheme to others
- ◆ **Citizens’ jury:**
 - Although reaction to the concept of public consultation on this issue was strongly positive for both groups, the phrase ‘citizens jury’ was disliked by several members of the second focus group because it suggested the idea of a small group of people wielding the power to make binding and arbitrary decisions on behalf of others. In the second focus group, it was intriguing how this opinion, once expressed by two or three members of the group, had the effect of persuading several others that the process was, in fact, undemocratic
 - Especially after the complexity of the issue became evident to participants, some participants questioned whether it was appropriate for ‘regular people like me’ to be making policy decisions about such a complex issue. This was particularly the case in the second

group, where even after being told that the process would be facilitated and informed with expert technical advice, several participants persisted in stating that it was inappropriate for a citizens' jury to be making these judgements and choices. The first group were more uniformly positive about the idea.

- There was a mention that the Government is in place to ensure no silly mistakes are made
- ◆ **Road users:** Confusion over who is covered in this term, suggesting it could be defined

Paragraph 2

- ◆ Generally, opinion on the statement is positive and belief is that it has good connotations, as long as the ACT Government does as they say
- ◆ *ACT Government's commitment to strengthen community views:* Mention that experience with the ACT Government suggests otherwise as opinion that ACT Government will make decisions regardless of community opinions (*a lot of fluff by the ACT Government*)
- ◆ *Diverse range of views:*
 - Mention that there are always many points of view

Paragraph 3/4

- ◆ The first statement suggests that the ACT Government has already selected the 50 people for the jury; this aggravated suspicions that the selected process might be biased
- ◆ The greatest concern about a citizens' jury was representativeness. This concern had three dimensions:
 - First, respondents questioned how the jury would be **selected**, what selection process would be followed and how rigorous this would be. There was concern over this as no information in relation to **jury selection processes was provided**.
 - Concern over who the jurors are, where they were selected from, why they were selected and how they were selected
 - Second, respondents were concerned about the **size** of the jury. Repeated contrasts between a 50-person jury and the overall size of the ACT population were made. There was scepticism about how 50 people could be fully representative of the entire ACT population
 - Third, even where a rigorous selection process was undertaken, respondents queried whether the people selected could ever **represent** 'people like me' – there were concerns that people with single vehicles or high incomes would be taking decisions on behalf of others who struggled to pay their car registrations
 - Want to know background of jurors to determine if they would be pushing any particular agendas
 - Respondents were concerned that all 'interests' would be fully represented on a citizens' jury. This was perceived to be very difficult to manage and unlikely to be accomplished perfectly. 'Interests' refer to, in part, demographic characteristics (e.g. household income), and, in part, behaviour (e.g. road usage). Some felt behaviours / road usage patterns (e.g. small businesses owning fleets) were more important than demographic characteristics as potential selection criteria for inclusion in the jury

- Question over whether jury should include other points of view, including victims, cyclists, pensioners
 - Want involvement in the process, otherwise may be at odds with the final decision
- ◆ **Help develop objectives for a scheme:**
 - The jury deciding the objectives felt counter-intuitive and inappropriate to participants. It also reinforced the message that the Government was rudderless on this issue (see above). A more logical process, according to several participants, was that the objectives would be decided by the Government based on expert advice and wider public consultation, and then would be put to the jury, who in turn would work on recommendations for a scheme that met these objectives.
 - ◆ **Reflects the needs and values of Canberrans:**
 - Question over who determines these and what they are
 - Term *needs and values* very broad and intangible
 - ◆ Concern over **decision-making rigour**
 - Will there be a scientific backing to decision-making processes?
 - Concern that statistics can be manipulated
 - Will the jury be guided/led by another party?
 - Concern that some people are so removed from the topic that they sway the decisions unfairly (e.g. high income people would decide on a scheme with higher premiums in a way that failed to take into account the interests and needs of lower income earners who are disproportionately impacted by premiums)
 - Challenge over knowledge and understanding by jurors to make an informed decision
 - Should not include people from industry bodies (or wealthy representatives) as they would sway the decision-making process (e.g. low wage earners)
 - Concern over payment for jurors (e.g. Tradies would get paid less on the jury than their days' work, and therefore would rush through the decision-making process; and yet some form of compensation is fair)

Paragraph 5

- ◆ Design and structure of current CTP Scheme and jury brief should be very clear before the jury **recommends objectives**
 - Concern that ACT Government does not know what the objectives are or how to fill the gaps
- ◆ Concern over **expertise in Stakeholder Reference Group (SRG)**
 - There should be sufficient rigour in selecting members of SRG
 - There was a query about what was meant by 'consumer' representation on the SRG
- ◆ **Community's values:** vague and intangible term
 - Concern over difficulty to align community values
 - Want more transparency over what this means and how it would be gauged

Paragraph 6

◆ **Up to four models:**

- This could mean that only one model is developed
- There should be a maximum number of models to make the jury's decision-making process easier, but there should be more than one option put forward as well

◆ **SRG:**

- Good to have potentially conflicting views in SRG to involve different points of views (e.g. insurers, healthcare providers)
- Confusion over jury and SRG: Should include victims and other representatives who can bring reality and experience to discussion
- How do **consumers** fit into this? Undefined term had vague interpretation.

Paragraph 7/8

◆ Again, want **transparency** over the process

- Jury decision-making process is not clear
 - Is it a simple majority vote or a narrow-down system?
- Again, issue around unelected representatives making decisions
- Concern that jury is determining what information is communicated to the community
- Participants wanted total transparency of jury proceedings: What was agreed? What was put to the Government? What percentage of the jury selected the preferred model?
- Will the jury's vote be made public?

◆ Again, ambiguity over the term **community's values**

- It is difficult to design something that meets everyone's values
- Hopefully these are not defined by which Government is in power
- Hopefully the Government is not pushing a particular agenda
- Want the Government to pursue a model that meets all objectives (community values)
- Feel left out as general community will not have a say

◆ FG2: When mentioned that the process will be supported by a range of resources (community views, witnesses, documentation, experts), this alleviated some concerns. However, a new concern arose that the process would be too complex for the jury members, as they would have too much information to take in.

- The issues came back to selection and representation processes, clarity over what the jury will do and the design/structure of the CTP Scheme (Who is covered? What will they get? How will they get it? How much is legislated versus insurance components?)
- Still concern that jury might be an overly simplistic process to tackle a complicated issue

- ◆ Almost all participants wanted to have feedback/input into the process
 - Before any request for input and regardless of the whether the scheme is changed, participants felt there was a strong need for a community education campaign about CTP
 - There was a request for mixed channels in providing feedback/input (e.g. online portal for engaged parties, wider community random sample survey by mail or phone, focus groups or town hall meetings)
 - Concern that any questions for the general community need to be carefully worded to ensure people are not misled
 - Also, concern that some channels (e.g. FaceBook, website) can be manipulated or biased as certain people have access to and use these
 - Mixed concern over anonymity of feedback – some felt the process should be anonymous as there could be repercussions, some were unconcerned about being identified
- ◆ There should be a thorough education process at the beginning of this review and to determine what the actual problem is and why this review is taking place

Appendix A: Key messages – Part 1

Paragraph 1:

About 280,000 motor vehicles are registered in the ACT each year. If you own a motor vehicle, you are required by law to buy compulsory third-party (CTP) insurance every year as part of the vehicle registration process.

Paragraph 2:

CTP insurance covers people (including pedestrians, passengers, pillion riders, and cyclists) injured in an accident with a motor vehicle where they can prove someone else was at fault. If you are in an accident that is your fault, or is a blameless accident, like hitting a kangaroo, you cannot claim under the CTP scheme.

Paragraph 3:

The government's view is that improvements to the current CTP Insurance scheme should be considered because there are gaps and inefficiencies in the current scheme.

Paragraph 4:

Right now our scheme does not cover everyone injured in a motor vehicle accident, it can take time to deliver care and support for people who need it and has among the most expensive premiums in the country.

Appendix B: Key messages – Part 2

Paragraph 1:

The government has no fixed view on what the best scheme looks like. That is why we have chosen to trial a citizens' jury so we can consider this issue with the community and other key stakeholders and develop a scheme that best meets the needs of all road users.

Paragraph 2:

This is part of the ACT Government's commitment to strengthen community engagement processes so that we take into account the diverse range of views when developing policies and programs.

Paragraph 3:

This is how the jury process will work

A jury of around 50 people, representative of the Canberra community will come together over four days to understand the issues, the trade-offs and help develop objectives for a scheme which reflects the needs and values of Canberrans.

Paragraph 4:

The jury process has been very specifically designed for the needs of this topic. It is a complex issue and the jury will meet in two stages.

Paragraph 5:

The first task of the jury will be to recommend objectives of the CTP scheme to best balance the interests of all road users in line with the community's values. The government has agreed those objectives will be put to a Stakeholder Reference Group.

Paragraph 6:

The Stakeholder Reference Group represents the interests of the key stakeholders in this area, including the insurers, legal profession, healthcare providers and consumers and experts in scheme design. The Reference Group will take the objectives and develop up to four models which meet those objectives.

Paragraph 7:

The jury will then meet again and decide which of the models best meets those objectives and what are the important aspects of the scheme that need to be communicated to the community.

Paragraph 8:

The government has committed to pursuing the model which the jury prefers on the basis that it meets the community's values.

Appendix C: Quiz questions and answers

Confused about Compulsory Third Party (CTP) insurance? Do you know what you are covered for under the ACT's CTP scheme and, how it relates to other insurance and how it differs from other states and territories? Take our quick quiz to test your knowledge and to find out more.

The quiz only takes a few minutes to complete and is made up of true or false questions.

	Answer
1 In the ACT you can register your car without having CTP insurance.	False – It is compulsory to have CTP insurance to register a vehicle in Australia. In the ACT, CTP insurance is included when you register your vehicle. When you register your car, the registration fee is paid to the ACT Government, and the CTP fee is passed onto whichever insurance company you select.
2 Rebecca has a 20-year-old hatchback and isn't worried about it being damaged or stolen, but she doesn't want to pay for damage to other cars or property if she causes a crash. All she needs is CTP insurance.	False – CTP only covers injuries you cause to other people, including passengers. It does not cover damage to other cars and property, and does not cover damage to your car. If you only have CTP cover, you will have to pay for the damage you cause to other cars and your own car. The only way for Rebecca to be covered for property damage she causes is to contact an insurance company and buy third party property insurance or comprehensive car insurance.
3 John hits a kangaroo while driving on the Tuggeranong Parkway. He is driving at the speed limit and no other cars or property are damaged. His CTP insurance covers him for injuries he and his passengers suffer and covers damage to his car.	False – CTP only covers injuries you cause to other people and it only covers injury when a 'third party' (i.e. another person) is at fault for the accident. When there is no 'third party' – in what is known as a 'blameless accident' – there is nobody that can be found to be at fault. In John's case, nobody is at fault because he was driving legally and was not responsible for the kangaroo jumping in front of his car. As such, John and any other passengers in the car are not covered for any personal injuries sustained in the accident. In addition, the damage to John's car is not covered by his CTP insurance (but may be covered if he has other insurance).
4 CTP insurance costs more in the ACT than in most other states and territories.	True – We have an at-fault system in the ACT, which means you need to prove another person is at fault in order to receive compensation. If nobody involved in a crash admits they are at fault, the injured person will need to bring a court proceeding against the other driver to rule that they are at fault. This means insurers need to include legal costs as well as medical expenses when deciding how much to charge for CTP. Also, other jurisdictions only allow payouts for pain and suffering to go to persons who have severe injuries, which keeps costs down. The ACT is the only jurisdiction that does not have this limitation. Most other jurisdictions also place maximum limits on payouts such as for loss of income and for pain and suffering, which also helps make premiums cheaper. Again, this is not the case in the ACT.
5 Michael is injured in a car crash. He is eligible for an early payment of up to \$5,000 towards his medical expenses, even if it's unclear who is at fault for the crash.	True – Under the ACT's CTP scheme, in most circumstances, the injured driver will be paid up to an initial \$5,000 of their medical expenses incurred within six months of the accident, regardless of who is at fault. To be eligible for this payment, an injured person must give their CTP insurer a Motor Accident Notification Form (MANF), which can be found at www.act.gov.au/ctp , and a police report within 30 working days of the crash.

	Answer
6 Of all the money paid out by CTP insurers for motor vehicle accidents in 2014-15, the greatest proportion went to pain and suffering. The next highest proportion went to medical expenses for injured persons.	False – Legal expenses made up the second largest proportion of the costs paid out by insurers in 2014-15. Because the ACT has an at-fault system, an injured person will need to bring a court proceeding against the other driver to rule that they were at fault, which often leads to long and expensive legal cases.
7 Karen gets a lift to work in Robert’s car. If Robert causes a crash, Karen’s medical bills will be paid for by Robert’s CTP insurance company.	True – Robert’s CTP policy covers the injuries he causes to passengers in both cars. But Robert himself is not covered because he is at fault. Unless Robert buys comprehensive insurance or third party property insurance, he also has to pay for the damage to both cars out of his own pocket, because property damage is not covered by CTP insurance.
8 Jenny is badly injured in a crash caused by another driver who is distracted while trying to send a text message. But the other driver denies he is at fault. If Jenny wants to make a claim to cover her medical expenses and damage to her car, and to get compensation for pain and suffering, all she has to do is tell her CTP insurer she wants to claim.	False – Because the ACT has an at-fault CTP system, Jenny has to prove that the other driver is at fault by bringing a court proceeding against them. In contrast, Victoria has a ‘no-fault’ system, meaning Jenny and the other driver are both automatically covered for injury and property damage, regardless of who is at fault.
9 Sarah loses control of her car and swerves into a shop, causing thousands of dollars worth of property damage and injuring a pedestrian. Sarah’s CTP policy automatically covers the pedestrian’s medical bills and the shop owner’s property damage.	False – If Sarah says she was not negligent, the pedestrian and shop owner will have to get a court to rule that Sarah was at fault. Sarah’s CTP insurance only covers injury to other people, so she will have to repair the shop at her own expense.
10 A two-car crash leaves both drivers with catastrophic brain injuries. One of the drivers was at fault and, therefore, not covered by CTP, so his care has to be funded through Medicare and by his family.	False – Both drivers can access the Lifetime Care and Support Scheme, which was introduced by the ACT Government in 2014. This scheme covers the most catastrophic motor vehicle injuries irrespective of fault. Under the Scheme, the ACT Government funds treatment and care for accepted participants for their lifetime.

Welcome to the CTP Citizens' Jury!

In a short time (October 14) you'll be joining about 50 other jurors at the Canberra Institute of Technology to start deliberating on an improved Compulsory Third Party (CTP) insurance scheme, and to choose the insurance model that best reflects the priorities of Canberrans.

The information in this pack is for Part 1 where you will consider the question:

“What should be the objectives of an improved CTP scheme be to best balance the interests of all road users?”

We welcome your energy, enthusiasm and commitment to participating in the jury process. It is a conversation and deliberation process on a topic of significant importance to Canberrans.

It's the job of the democracyCo team to ensure you are provided with the information you need to do your job, and to provide a safe, efficient and supportive environment for you. This will enable you to give your attention to the question and work towards your recommendations.

Your outcomes will be presented to the Stakeholder Reference Group that will use the brief you develop to then design CTP models for your consideration.

Enclosed in this pack is the following information which is required pre-reading:

- An overview of the process
- Background reading and key documents on the CTP scheme (provided by the ACT Government)
- Information on support from experts, and roles of other participants
- Administrative and privacy information documents for your participation including some forms you need to complete and return.

In addition, you may already have started your own research through the website www.yoursay.act.gov.au/ctp or just via Google!

We know that many of you are excited about getting started exploring the issue, and deliberating, debating and talking to your fellow jurors as well as hearing from experts on the topic. We are also setting up a private online discussion forum. More on that later.

Contact details for further questions are provided in the enclosed documents. Looking forward to meeting you and getting to work together.

Kind regards

Emily Jenke

CoCEO / Lead Facilitator
DemocracyCo

KEY DATES

Citizens' Jury sessions

Part 1 – October 2017

Saturday, Oct. 14 & Sunday, Oct. 15, 2017

Saturday, Oct. 28 & Sunday, Oct. 29, 2017

The Jury will hear evidence and deliberate about the question:

“What should be the objectives of an improved CTP scheme to best balance the interests of all road users?”

Between October and March draft CTP models will be developed by experts based on the Jury's objectives.

Part 2 – March 2018

Saturday Mar. 24 & Sunday, Mar. 25, 2018

The Jury will consider the models to decide:

“What CTP model best meets the objectives as defined by the Jury in Part 1?”

and *“What's important to communicate to the community about the model?”*

***You must attend on all six days – 9:00am to 4:30pm, and sign-in each day.
Registration will be open from 08:30am on each day.***

Venue:

CIT Function Centre, K block, Canberra Institute of Technology (CIT) Reid,
37 Constitution Ave, ACT

Contact:

If you have any further questions please contact:

Vivienne Lambert at vivienne@democracyco.com.au or 0417 084 475 in the first instance.

Alternative contacts;

Emily Jenke – emily@democracyco.com.au

Emma Lawson – emma@democracyco.com.au

Jury Roadmap – your task

<p>Day 1 14th Oct</p>	<p>Getting across the task</p>	<p><u>What's happening?</u> The Jury is launched and the Jury get a briefing from government (Chief Minister or delegate) Jury is understanding CTP: the current scheme, issues, scheme design considerations. They will also start considering what they expect from a CTP scheme.</p>
<p>Day 2 15th Oct</p>	<p>Evidence & deliberation: Insights and Objectives</p>	<p><u>What's happening?</u> Jurors participate in a session with 10-15 stakeholders to understand different perspectives, experiences and views on scheme designs. Jury begin deliberation by exploring important objectives for an improved scheme and have the opportunity to learn about how different jurisdictions approach CTP.</p>
<p>Day 3 28th Oct</p>	<p>Deliberation: Trade-offs and tensions, writing</p>	<p><u>What's happening?</u> Jurors deeply investigate the trade-offs and complexities (ie matrix of eligibility, benefits, process and cost). They may seek the advice of subject matter expert witnesses to support their deliberations. They undertake consensus activities and begin writing their report.</p>
<p>Day 4 29th Oct</p>	<p>Deliberation: Priorities, consensus and final advice</p>	<p><u>What's happening?</u> The Jury will consider the important priorities of the model, and refine their advice using deliberative techniques. They will work on consensus elements and finalise their written report. They will then present their work to the SRG.</p>
<p>Next steps...</p>		<p><u>Development of Model Options</u> The SRG and model actuary will work in the coming weeks and months to establish 2-4 model options that align with the advice of the Jury for the Jury to consider at their March sitting.</p>

Administration

Citizens' Jury on reforming the CTP insurance scheme

Thank you very much for the commitment you have made to this Jury project. Your time and effort is appreciated by the Chief Minister and democracyCo, and will be of value to all Canberrans.

As you know, you have signed-up to attend all six days of the Jury deliberations. However, the honorarium will be paid in two parts in consideration of expenses you may incur over the duration of the Jury.

At the completion of your participation in Part 1 over all four days an honorarium of \$300 will be paid to your bank account.

A further payment of \$150 will be made after your participation in Part 2 over both days in March next year.

Please complete the form below and bring it with you on Day 1, Saturday October 14. There will be a secure box at the registration table for you to leave the completed form.

For any further information, please contact Vivienne Lambert 0417 084 475 or vivienne@democracyco.com.au

Payment will be by Direct Bank Transfer in the week after the final session. Please check your details as incorrect information may cause delays. The account name, BSB and account number can be obtained from your bank statement.

Name	
Telephone	
Account name	
BSB	
Account number	

Overview of the Process

Compulsory Third Party Insurance

Deliberative Engagement

2017



Why use a deliberative process?

Deliberative processes in engagement have been used for many years in Australia to enable deep consideration of issues and to develop shared solutions or outcomes that have lasting effect.

Deliberative processes often require participants coming together for a period of time, being given credible and reliable information on the topic under review, discussing (deliberating) the subject at length and arriving at a shared view on the way forward. It can be used to assist government policy development (eg. health, climate change, social inclusion) and to unpick complex issues which need information and time to fully evaluate (eg. nuclear power, GM foods or childhood obesity).

Deliberative processes are best used to make shared decisions, and lend themselves to developing considered advice. However, there are a significant number of other benefits to involving citizens in decision making;

1. **Making sustainable policy based on sound evidence** – a feature of deliberative processes is that the reports/ recommendations resulting from these processes are strongly evidence based. Deliberative processes are not opinion polls, they involve the extensive sharing of information and deep consideration of evidence.
2. **Building trust in government**– the giving of trust by the government to the community through a deliberative process helps build trust. In addition, there is research to show that the community are more likely to trust policy developed by ‘people like them’ than they are governments.
3. **Creating a positive public discourse and managing risk** – deliberative processes generate public discussion (beyond the deliberative room) on the issue being considered.
4. **Inventive ideas and solutions** – deliberative groups aren’t restrained by bureaucracy or politics in their advice. They also bring together individuals with diverse knowledge and experience. The result is always creative and innovative.
5. **Deeply understanding community needs** – but, their needs once they know the facts, information and have had the chance to consider the trade-offs. This can be very different to what they think their needs are without having had the time to consider these elements.
6. **Activating civic participation** – beyond the 4 year election cycle.

Deliberative processes ‘bring a public into existence’ as expressed by Professor Mark Moore from Harvard University during his recent visit to South Australia. “Publics”, he believes, aren’t simply “there waiting for us to talk to them” – the government (through the public service) can help a public into existence by creating the environment in which the public can make informed judgements about things that ultimately affect their lives.

Hence the importance of using a deliberative process for the consideration of the Compulsory Third Party (CTP) scheme. The community don’t have an activated voice on this issue. Indeed, it is clear from a survey recently undertaken by the government there is particularly low knowledge levels about CTP in the community.

A deliberative process will raise the voices of the community and allow a statistically representative sample of the community to explore in depth all the issues and trade-offs associated with different schemes.

The Task

At democracyCo we design bespoke processes based on the issues being considered, the needs of relevant communities and stakeholders, timeline constraints and budgets.

Our common design drivers are as follows;

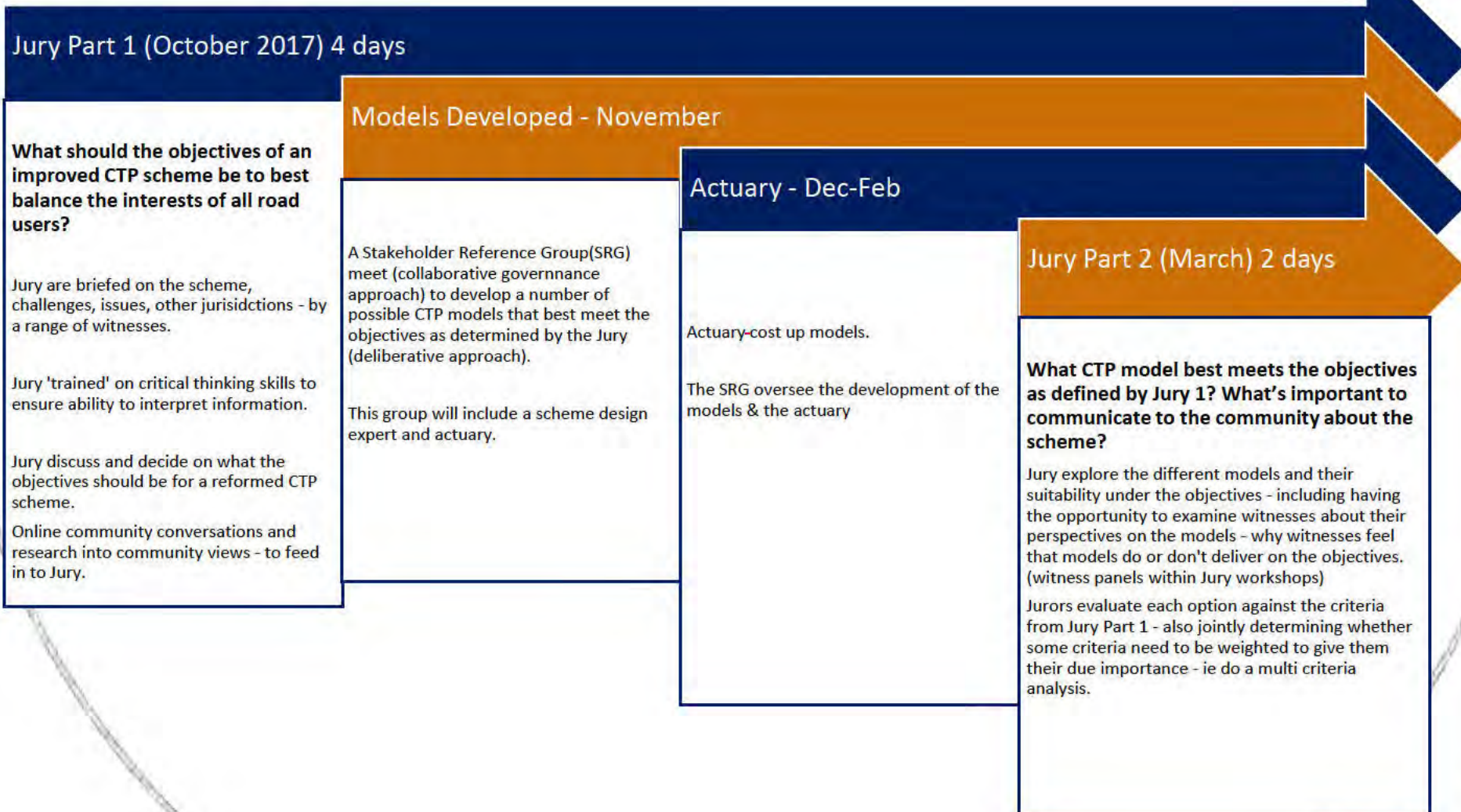
- The government's objectives for the process
- The nature of the community and stakeholders needing to be engaged
- Timelines for the project
- Budget

In addition, we are guided by general principles that are central to deliberative processes. These are;

- **Transparency** –we design our processes to be as open and transparent about all elements of the process design and delivery as possible.
- **Collaboration** – that policy making will be better and more sustainable if it's done collaboratively, meaningfully involving key stakeholders and government agencies in the citizen jury process.
- **Respect** – members of the public (our community) are smart and that collective groups of jurors are as able (if not more able) to develop good policy responses to complex issues as anybody else; when they have the information, evidence and facts to assess the issues and solutions.
- **Independence** – participants need to be allowed to seek their own information / advice and come to their own conclusions without coercion or undue influence. This is the only way that their recommendations will be trusted.
- **Meaning** – deliberative processes are different to usual 'engagement' approaches in that the authorising body makes it clear at the beginning of the process how it will use the outcomes from the process. This is called the 'authority'.
- **Community interest** – we put the community at the centre of our processes and design engagement strategies that centre on community interest ... and even make them fun!

We (democracyCo) are entirely focused on good process, we don't have a view or a position on the issues or problems being discussed. The strategy we designed for the exploration of the CTP scheme has built these principles into the design.

Process Design Overview



Process design – the detail

Deliberative Group methodology

There will be a two-part Citizens' Jury of 50 randomly selected Canberrans.

The role of Jury Part 1 will be to develop, explore and consider their values in the context of what outcomes they want from the CTP scheme. This will address issues such as eligibility, benefits and disputes. Most importantly the Jury will explore and reconcile the trade-offs involved in what they want from the scheme.

The Jury will also weight and prioritise their objectives.

To frame this discussion, the jury has the following remit;

"What should be the objectives of an improved CTP scheme be to best balance the interests of all road users?"

The outcomes of this Jury will be used as a community 'brief' for the development of CTP models.

A Stakeholder Reference Group (SRG) which will include an actuary and a scheme design expert will develop a number (up to four) models that meet the objectives developed by the Jury.

What is a Citizens' Jury

Decision-making about complex problems is often dominated by experts and special interest groups, with processes that don't encourage the participation of the general public.

Citizen Juries are one way to address this, by incorporating the views of the community into decision-making. They provide an opportunity to learn how the community think about an issue when presented with detailed information about the issue.

Citizen Juries have been so named because of their apparent similarity to a legal jury, where a group of citizens reflecting a cross section of the public participates and comes to a decision. However, in many ways they are distinctly different to a legal jury. They do not pitch different sides against one another, and nor do they seek to find a guilty or not guilty finding; instead they rely on reaching a broad consensus among jury members around a series of recommendations after consideration of diverse views.

In another difference to a jury in a court of law, citizen juries can incorporate into their deliberations values, ethics, societal norms and trade-offs. This helps to enrich their decision making, and arrive at sensible, logical outcomes.

One interesting feature of Citizens' Juries is that they typically result in considered and moderate recommendations that successfully blend competing claims and help reconcile antagonistic groups.

Special characteristics of the Citizens Jury process

Random Selection of Jury Pool: The members of the jury pool are randomly selected through scientific polling techniques.

Representative: Jurors are carefully selected to be representative of the public at large. No other process takes such care to accurately reflect the community.

Informed: Witnesses provide information to the jury on the key aspects of the issue. Witnesses present a range of perspectives and opinions. The jury engages the witnesses in a dialogue to guarantee that all questions are answered.

Impartial: Witness testimony is carefully balanced to ensure fair treatment to all sides of the issue.

Deliberative: The jury deliberates in a variety of formats and is given a sufficient amount of time to ensure that all of the jurors' opinions are considered. (<https://jefferson-center.org/wp-content/uploads/2012/10/Citizen-Jury-Handbook.pdf>)

Detailed information about the SRG can be found in the following sections.

These models will then be provided back to the Jury for Jury Part 2. In this stage, the Jury will analyse the extent to which the models meet their objectives. The Jury will rank the models based on the extent to which they meet their original objectives. The Jury will not be able to revisit the original objectives developed in part one of the Jury process.

The question being asked of the Jury at this point will be:

What CTP model best meets the objectives as defined by Jury 1?

Jury Part 2 will also be asked for their advice about how the preferred model is best communicated to the broader community:

What's important to communicate to the community about the model?

It is important to note that the Government has put parameters on the Jury's work. The Government has described these as follows:

- a) **The CTP scheme must remain compulsory for all motorists.**
The jury will not be able to recommend an optional scheme.
- b) **The scheme must continue to be privately underwritten and the overall scheme design cannot raise the cost of premiums.**
The CTP scheme in the ACT is underwritten by private insurers, and that will not change through this process. Insurers set the premiums taking into account a number of risk factors, including their potential liabilities which are influenced by the way the scheme is designed. While other factors may lead to a change in premiums over time, improvements to the CTP scheme coming out of the process cannot result in an increase in premiums.
- c) **The CTP scheme in the ACT must remain community-rated.**
In some states, people pay different amounts for their CTP depending on risk factors such as age. For example, NSW allows for risk rating of premiums, with insurers able to charge higher premiums for motorists they consider to be high-risk, such as young drivers up to 25 years old. In the ACT, motorists pay the same CTP insurance premium, which is a community-rated premium that applies to each vehicle class. The Government believes this is a central aspect of the CTP scheme and this will be maintained through the citizens' jury process.
- d) **The types of vehicles for which CTP must be purchased and the way premiums are calculated between vehicle types cannot change as part of this process.**
The types of vehicles that are included in the CTP scheme and the way different premiums are calculated for different types of vehicles are complex and technical issues. These issues are not the focus of this citizens' jury.
- e) **The scheme must be workable and fit within other legal and regulatory frameworks.**
The Government has committed to pursuing the model recommended by the citizens' jury at the end of this process. Therefore, the recommended model will need to meet legal requirements – such as human rights and privacy – and be workable in practice.
- f) **The deliberations will not examine the established Lifetime Care and Support Scheme.**
The treatment and care of people who are catastrophically injured in a motor vehicle accident is managed under the *Lifetime Care and Support Scheme* which is funded by a separate levy. Changes to this scheme are not within the scope of the deliberations.

Authority

At their heart Citizens' Juries are about building trust between the community and government or the authorising organisation. This is a reciprocal process - it is vital that governments trust and respect the community's capacity and ability to deliberate and provide the government with a considered position.

The Authority is the commitment the government makes in advance about what it will do with the Jury's position, and is instrumental in demonstrating the governments' trust in the community.

It also illustrates to the community how different Citizens' Jury processes are from other engagement processes.

The giving of trust by the government through the authority highlights the importance of the process to the government and the community and jurors respond in kind. People are more willing to commit the time required if they know that the government is committed to the process and the jurors take their role very seriously. They know the impact their recommendations / report will have and they feel this responsibility.

There are two jury processes and each has its own authority.

Jury Part 1 - The Government will accept the objectives of the Jury and will work with stakeholders and industry experts to design up to four models that reasonably meet those objectives for consideration of the Jury.

Jury Part 2 – The Government commits to pursuing the model which the Jury prefers on the basis that it meets the community's values (as identified in Jury 1).

Witnesses and evidence

Central to deliberative processes and in particular to citizens' juries, is that the participants are informed with access to all the information they need to help them come to a reasoned judgement. This means that the Jury should have access to evidence, information and perspectives across the issues. The Jury will be supported to interrogate and examine the veracity of views and the quality of evidence.

Evidence can come in many forms and from many sources including:

- The views and opinions of the broader Canberra community
- The views and opinions of key stakeholders in the CTP sector
- Experts in the CTP scheme (researchers, academics, scheme design experts, actuaries)
- Those who have experienced the implementation of other CTP models (representatives from other jurisdictions).

The evidence can be presented in a number of different ways;

- Written material - articles, reports, submissions and general reading material.
- Witnesses – presentations, Q&As and panel sessions.
- Video / Audio visual content.

Witnesses

Expert witnesses include all those persons who aid the jurors in understanding the issues central to the charge to the jury, from the neutral resource persons who introduce them to the vocabulary and history of the topic to the experts who either discuss all the options or advocate for one point of view.

The role of the expert witnesses is to help jurors understand all aspects of the remit. Because the issues contained within the remit may be ones that the jurors have not thought about before, witnesses need to be able to explain the complexities in language that average citizens can understand.

Approach to evidence

The following table summarises the approach to the provision of evidence to the Jury.

The views and opinions of the broader Canberra community

How and Why?

To support Jury 1 in gathering and considering views of many, not just a few.

Format:

- Written material
- Submissions
- Research summaries
- Online discussion

Process

Submissions - Submissions to the Jury have been sought via Your Say ACT. Submissions to help answer Jury Part 1's remit, – *“What should the objectives of an improved CTP scheme be to best balance the interests of all road users?”*

Research –An online and phone survey of the broader Canberra community has been conducted to get a sense of their views about what the objectives of the scheme should be (in line with the remit of Jury Part 1).

The views and opinions of key stakeholders in the CTP sector

When and How? Jury Part 1 and to a lesser extent in Jury Part 2

Format:

- Written material – submissions
- Witness presentations

Process

Submissions – again, submissions to the Jury have been sought via Your Say ACT and via direct invitation from the Chief Minister, helping to answer Jury 1’s remit *“What should be the objectives of an improved CTP scheme to best balance the interests of all road users?”*

Witnesses - As part of Jury Part 1 and Jury Part 2 we anticipate that stakeholders will also be central providing evidence to the Jury.

Experts in the CTP scheme (researchers, academics, scheme design experts, actuaries), and those who have experienced the implementation of other CTP models.

How? Primarily witnesses (supported by reports etc)

Process and When Information and advice from experts and those experienced in the implementation of CTP models will be critical to the Jury’s work.

Jury Part 1

These experts have been chosen in two ways.

1. The Stakeholder Reference Group in conjunction with the facilitator has chosen witnesses to brief and support the Jury’s deliberations on the first weekend. These witnesses will cover the breadth of the issues and the breadth of the debate.
2. The Jury itself at the end of Day 2 identify if they feel like they need additional information to support them in their work and what information it is they need. The facilitators, with support from the SRG, will then work to find this information for the Jury to assist them on days 3 and 4. This information may then be provided to the Jury either through witness presentations or through written material – or even video / audio visual content (depending on what is needed and the availability of potential witnesses).

Jury Part 2

We anticipate that evidence provided to Jury 2 will be primarily from actuaries / scheme design experts (and most likely those in the SRG) with the aim of assisting the Jury in understanding the models.

Stakeholder Engagement

There are a range of stakeholders who have a direct interest in the CTP scheme and will be impacted in some ways by any changes which may result.

It is vital that these stakeholders are significantly involved in the citizens' jury process for a number of reasons;

1. They represent the interests and needs of all those Canberrans who have a significant and ongoing interest in the operation of the CTP scheme.
2. They have extensive knowledge and experience of the CTP scheme from an operational perspective that will be very helpful to the citizens' jury.
3. They are significant contributors to public discussion and debate about the issues surrounding the CTP scheme.

Consequently, there is a significant role for the involvement of key stakeholders in the development of new CTP models for the jury to consider and also in supporting the jury in their work.

Definition of a 'stakeholder'

Any individual organisation, individual NGO or organisation that represents a broader group of individuals or groups, that has a 'stake' or interest in the issue being considered.

Stakeholders will work with an actuary and CTP scheme design expert on a Stakeholder Reference Group (SRG) to develop a number of CTP models (possibly up to 4) in line with the Jury's brief. The members of the SRG are listed later in this document.

We believe that their involvement in this way will make best use of their knowledge and experience in the CTP system, but within the frame of delivering models that meet the values and needs of Canberrans.

In addition, the SRG or its members will have the following roles:

- Supporting the facilitator to identify appropriate experts as witnesses to the Jury.
- Potentially appear as members of a panel or as presenters to the panel to raise awareness about the substance of the debate about CTP.
- Provide their views and feedback to Jury Part 2 about the model that they think best achieves the objectives as identified during Jury Part 1.
- Provide advice to the facilitators about important reports / documentation that could be of interest or importance to the Jury's deliberations.
- Public communications with their sector and the community about the issues surrounding CTP.

Not all stakeholders with an interest in the process will be represented on the SRG, however it is important that the perspectives of these stakeholders are heard. Stakeholders have been invited to share their views with the Jury through a submissions process.

Role and Involvement of Government

The role and involvement of Government is as follows;

1. To establish the parameters for the process and to provide feedback / advice to the Jury about whether those parameters are being met.
2. To be a participant on the Stakeholder Reference Group.
3. To support the Jury in any way that the Jury wants/ requests.
4. To explain the Citizens' Jury process and the rationale for the process to the community generally and more specifically to the community.
5. To undertake and support communications and engagement activities in support of the Jury process.
6. To organise venues and logistics for the Jury.
7. The Government will receive the Jury's recommendation/ report.
8. A limited number of officials to attend and watch the Jury process as observers and potentially helping Jurors access written evidence via a Resource Hub.



General Facilitative approach

To support the work of the Jury, we provide a detailed and structured facilitation approach using a facilitator skilled in deliberative practice. Our foundation is the International Association of Facilitators Core Competencies that guide our practice 'in the room' and this process will be supported by a team that can:

Create and sustain a participatory environment.

- Demonstrate effective participatory and interpersonal communication skills
- Apply a variety of participatory processes
- Demonstrate effective verbal communication skills
- Develop rapport with participants
- Practice active listening
- Demonstrate ability to observe and provide feedback to participants

Honour and recognise diversity, ensuring inclusiveness

- Encourage positive regard for the experience and perception of all participants
- Create a climate of safety and trust
- Create opportunities for participants to benefit from the diversity of the group
- Cultivate cultural awareness and sensitivity

Manage group conflict

- Help individuals identify and review underlying assumptions
- Recognise conflict and its role within group learning / maturity
- Provide a safe environment for conflict to surface
- Manage disruptive group behaviour
- Support the group through resolution of conflict

Evoke group creativity

- Draw out participants of all learning/thinking styles
- Encourage creative thinking
- Accept all ideas
- Use approaches that best fit needs and abilities of the group
- Stimulate and tap group energy

Guide the Group to appropriate and useful outcomes

- Guide the group with clear methods and processes
- Establish clear context for the session
- Actively listen, question and summarise to elicit the sense of the group
- Recognise tangents and redirect to the task
- Manage small and large group process

Facilitate group self-awareness about its task

- Vary the pace of activities according to needs of group
- Identify information the group needs, and draw out data and insight from the group
- Help the group synthesise patterns, trends, root causes, frameworks for action
- Assist the group in reflection on its experience

Guide the group to consensus and desired outcomes

- Use a variety of approaches to achieve group consensus
- Use a variety of approaches to meet group objectives
- Adapt processes to changing situations and needs of the group
- Assess and communicate group progress
- Foster task completion

Specific Facilitative approach – for Jury Part 1 and 2

Jury Part 1

The facilitation of Jury Part 1 will include:

- **Building critical analytical skills** – to support jurors to analyse and interpret information and evidence.
- **Starting from what matters to the Jury** – the facilitation process should allow the Jury the opportunity to explore how this issue affects / impacts them, and their community, tapping into and uncovering the important values that the Jury want to see reflected in the models proposed.
- **Consideration of trade-offs and consequences** – the facilitation process should allow adequate time and supportive process to enable the Jury to consider the trade-offs they can live with, and those they cannot. This should also allow the Jury the opportunity to nuance the trade-offs – and provide some clear advice and direction about the importance / impact of all.

When setting the objectives for the CTP scheme and in considering the above trade-offs, the jury must remain within the scope of the deliberative engagement process including that premiums cannot increase.

It will be vital for this Jury to come up with clear and cohesive direction, from which models can be determined and community preferences easily understood.

Jury Part 2

The rubber will hit the road with this Jury – with the group being asked to undertake a detailed analysis or audit of models provided by the Stakeholder Reference Group.

This may seem a simple technical checking off, however this will require:

- An analysis of how well the Jury believes its intentions (values / what matters to them) is reflected in each model,
- Awareness of Jury members' unconscious bias / preferences, to ensure that they are putting the needs of the community before themselves,

- A reconnection and a strengthening of critical analysis skills learnt in the first Jury process to ensure their recommendations meet the test of accuracy, relevance, logic, breadth, depth and clarity,
- Undertaking a process to allow the Jury to analyse and prioritise each model against the objectives they have outlined in Jury one. There may be the opportunity to use techniques such as:
 - o Multi-criteria analysis (MCA) or grid analysis – which includes identifying and weighing up stakeholders’ interests, building a decision framework, rating alternatives, weighting stakeholder interests and then scoring and deciding on the best model.
 - o If there are 2 models to select between, a pairing comparison approach should be used – outlining criteria and comparing the two.
 - o Throughout, to gain individual juror support (or not) we may use sociometry (either in person or through using tools an online deliberation tool) to ensure that individuals have the opportunity to contribute their positions / views to the views of the room.
- Ensuring that there is the opportunity for deep deliberations to occur and that all minority or different views are considered and understood in the alternatives agreed.

ATTACHMENT A

About the Team behind the strategy

democracyCo offer the most comprehensive service in deliberative democratic practice in Australia with a wealth of experience in;

- Developing high level, whole of government engagement strategies and policies for government.
- Developing and implementing frameworks for driving cultural and system change in government to ensure that the community are more involved in governments' decision-making processes.
- Designing and delivering training programs in community engagement, deliberative democratic practice, citizens juries and facilitation.
- Designing, planning, implementing and facilitating deliberative processes.
- Recruiting randomly selected groups of the community for involvement in deliberative processes.

We are the only organisation in Australia that can, on its own, run an entire deliberative process from 'end to end'; incorporating design, recruitment, implementation, facilitation and training.

In addition, because of our work experience in politics and the public service as well as within the field of deliberative democratic practice we understand the needs of government like no other organisation.

Co-CEO Emma Lawson instigated, designed and led a process of public sector reform in South Australia to improve the way the public service involves the community in decision making with a focus on deliberative and collaborative forms of engagement. The starting point for this work was (and remains) the government's engagement policy/ strategy and guide "*Better Together – Principles of Engagement*". Emma led the team that developed Better Together and designed and ran a suite of initiatives to drive its implementation.

Emma pursued this work from within the public service and on the back of years of experience in politics as an advisor to the Premier and Treasurer.

Meanwhile Emily Jenke has specialised in designing, facilitating and running deliberative processes, including citizens' juries for the last 10 years. Emily is widely regarded as one of the best facilitators of deliberative processes nationally. Emily also designed and runs the "Better Together" training in South Australia and has now trained thousands of public servants through this program.

Together, as democracyCo we have facilitated and implemented numerous deliberative processes including the largest ever citizens' jury globally on nuclear waste storage.

For the development of this strategy we have drawn on the knowledge of two preeminent experts in the field worldwide.

Janette Hartz Karp from **Empowering Participation** and **Kyle Bozentko** from the **Jefferson Centre** in the United States have provided feedback and advice in helping us to develop this strategy.

The team members at Empowering Participation have decades of experience in academic research in deliberative democracy, democratic innovations and collaborative governance.

The Jefferson Centre is a nonpartisan not for profit that engages Americans directly to solve shared challenges and craft better policy. Their mission is to strengthen democracy by advancing informed, citizen-developed solutions to challenging public issues. Whilst the Jefferson Centre is the home of citizens juries' they are continuously designing, testing, and exploring new methods of high quality, inclusive engagement.

As a collective, what we know, is that deliberative processes must be designed bespoke; to meet the objectives of our client, their budget constraints and the needs of their communities.

Compulsory Third Party Insurance Stakeholder Reference Group (SRG) Draft / Unapproved Terms of Reference¹

The Stakeholder Reference Group is an important part of the Compulsory Third Party Insurance Jury's deliberations.

The time and effort from members and their organisations is greatly valued and appreciated.

Purpose and roles

The Stakeholder Reference Group (SRG) will have the following six core responsibilities:

1. Model development – working with a scheme design expert and an actuary to develop models which meet the 'brief' as developed by Jury Part 1.
2. Identifying witnesses – support facilitators in determining witnesses to 'brief' the Jury.
3. Appear as witnesses – where appropriate / required members may appear as witnesses (either together or separately) to the Jury.
4. Evidence - Provide advice to the facilitators about important reports / documentation that could be of interest or importance to the Jury's deliberations.
5. Providing advice - facilitators may choose to seek the SRG's advice on how witnesses present to the Jury in the context of the overall agenda.
6. Building understanding and awareness of the Jury process in the wider community.

Members will provide their organisation's perspective on the Citizens' Jury witness and speaker identification process, and share information about past, current and emerging issues.

The facilitator, democracyCo, will convene and administer the SRG.

¹ At time of printing the TOR were with SRG members for final approval.

Protocols

As with the Citizens' Jury itself, the SRG is a deliberative process involving individuals and groups who have a high level of interest and stake in the CTP scheme with a range of viewpoints and perspectives.

To ensure that the SRG is productive and achieves its purpose as described above, the SRG will work in line with the following protocols and principles:

Transparency and openness -

Notes reflecting a high-level summary will be published (once SRG has approved) and will be available for SRG members to distribute to their members.

Where timely and appropriate, SRG members may consult with their own networks regarding the position they put to the Jury (on their members behalf). This may include;

- In preparation for the speed dialogue or other speaking opportunities to the Jury as they arise, or
- In developing feedback to provide to the SRG on appropriate models that meet the Jury's brief.

The Citizens' Jury process benefits from wide promotion and public dialogue, debate and constructive commentary. It is expected that members will want to discuss and debate the issues surrounding CTP schemes in the media and this practice is encouraged by the group.

Having said this, the sharing by SRG members of information with the media and with their own networks will be done respectfully.

Sensitive information and data from other schemes may not be able to be shared with the SRG.

Respect

SRG members will be respectful of both the work of the SRG and the work of the Jury. This will include;

- Ensuring that statements made to the media or on social media be made clearly in terms of it being the view of the individual or their organisation rather than that of the SRG.
- Valuing and being respectful of the work of the Jury, their role and any requests the Jury make to the SRG about the process by which they would like the models communicated back to them and or their work in general.
- Being cooperative and collegiate;
- The facilitator will run each SRG workshop in a collaborative workshop style, members will respect others' opinions, be open and honest, participate fully, willingly share experience and expertise and importantly 'share the air'.

Workshop Style

SRG meetings are not formally run— they are facilitated by democracyCo and run in a conversational dialogue style. The SRG will work on a consensus model for all decisions.

Membership

Lisa Holmes	Representative for the CTP Regulator	
Richard Glenn	Deputy Director General, Justice	Justice and Community Safety Directorate
Mark Blumer	Solicitor	Law Society of the ACT
Jamie Ronald	Barrister	ACT Bar Association
Madeleine Hibberd	Manager, Regulatory Policy	ACT CTP insurer – Insurance Australia Group (IAG)
Surayez Rahman	Executive Manager, ACT CTP	ACT CTP insurer - Suncorp
Fiona Tito Wheatland	Consumer representative	Health Care Consumers Association
Professor Ian Cameron	Professor of Rehabilitation Medicine	John Walsh Centre for Rehabilitation Research, University of Sydney
Geoff Atkins	Principal, Finity	Insurance scheme design expert
Peter McCarthy	Executive Director, EY	Actuary

Meeting Dates and Location

13 September 2017, Canberra

3 November 2017, Canberra

Further meetings to be confirmed

Witnesses

Observers

Compulsory Third Party Insurance

Observer Code of Conduct

Members of the Stakeholder Reference Group

This Citizens' Jury is an opportunity for 50 randomly selected citizens from the ACT to take the time to consider information, hear firsthand from experts, and explore the question

“What should be the objectives of an improved CTP scheme to best balance the interests of all road users?”

If you are not a member of the Jury, then you are an Observer, all be it a very important Observer due to your role as a member of the Stakeholder Reference Group.

We encourage your attendance at the Jury meetings as it helps ensure transparency of process and will also assist you in understanding what the Jury values for the CTP scheme, but we need to manage the process so that the work of the Jury is not disrupted.

We ask you to maintain a respectful standard of behaviour and only get involved if or when invited to by the facilitator.

Note that some sessions may be for Jurors only, and you may be asked to leave. There will be a table in the Jury room for you at all other times, from which you will be able to watch the proceedings of the Jury. As a general rule we would ask that you observe the following:

1. Please only talk to Jurors if approached by them. The Jury will be advised about the role of the SRG and the individuals on the SRG and their roles will be introduced on the first day so that the Jurors can approach you if they wish to discuss issues in more detail. The Jury will also receive this document.
2. Come along 10 minutes before the specified start times and sign-in at the door. You will need to provide photo ID to confirm your registration on arrival. Note that the length of jury sessions will be flexible around the needs of the Jury. The Jury ultimately has control of the agenda and activities.
3. Once you are in the room please stay until there is a break. People coming and going is surprisingly disruptive.
4. We ask that all observers maintain a standard of behaviour that does not disrupt the work of the Jury.
5. Please be understanding if the agenda timings are not exact: if the jurors want to continue a discussion, then we will let that happen (as they 'own' the process).
6. Please note that video recording and photography is occurring and by attending you understand you may end up in images used to explain the process.
7. You are not permitted to take photos, videos or audio of Jury proceedings. This is because some jurors may have asked that they are not identified.
8. democracyCo reserve the right to ask observers to leave at the request of the Jury, or if disruption occurs.
9. Please set your phone to silent during Jury sessions.

If you have concerns or questions about the process the best time and place to have these addressed will be at lunch time.

Emma Lawson CoCEO of democracyCo or Ilka Walkley, Principle Consultant at democracyCo will be hosting a lunch for all SRG members present on the day. During this time they will provide an overview of the process for the day and how it fits into the work of the weekend (and the entire process). They will also work to answer any questions you have and to address any issues that you might have observed.

All inquiries about the process should be directed to either Emma or Ilka.

Please let Cecilia Willis know if you will be attending Jury meetings so that we can ensure that catering is appropriate.

We hope you enjoy observing the Jury at work.

Compulsory Third Party Insurance Public Observer Code of Conduct

This Citizens' Jury is an opportunity for 50 randomly selected citizens from the ACT to take the time to consider information, hear firsthand from experts, and explore the question

“What should be the objectives of an improved CTP scheme to best balance the interests of all road users?”

If you are not a member of the Jury, then you are an Observer.

democracyCo welcomes Observers to the Jury, but needs to manage the process so that the work of the Jury is not disrupted. We ask you to maintain a respectful standard of behavior and only get involved if or when invited to by the facilitator. Note that some sessions will be for Jurors only, and you will be asked to leave.

As a registered Observer please comply with the following guidelines:

1. Come along 10 minutes before the specified start times and sign-in at the door. You will need to provide photo ID to confirm your registration on arrival. Note that the length of jury sessions will be flexible around the needs of the Jury. The Jury ultimately has control of the agenda and activities.
2. Once you are in the room please stay until there is a break. People coming and going is surprisingly disruptive.
3. We ask that all observers maintain a standard of behavior that does not disrupt the work of the Jury.
4. Please be understanding if the agenda timings are not exact: if the jurors want to continue a discussion, then we will let that happen (as they 'own' the process).
5. We offer a chance for your contributions through written comment cards which are posted for the jurors to consider in the breaks.
6. Lead facilitator, Emily Jenke will advise the Jury who is in the room at the start of each open session. If you have a formal interest in proceedings (interest group, government role, community group) we ask that you declare this so we can share this with the Jury.
7. Please note that video recording and photography is occurring and by attending you understand you may end up in images used to explain the process.
8. You are not permitted to take photos, videos or audio of Jury proceedings. This is because some jurors have asked that they are not identified.
9. Catering and refreshments are not provided for Observers who registered from the public call.
10. Seating for observers will be in a specific area.
11. democracyCo reserve the right to ask observers to leave at the request of the Jury, or if disruption occurs.
12. Please set your phone to silent during Jury sessions.

You will be supported in your attendance at the Jury meeting by one of the democracyCo staff (identified upon your arrival). Please direct all questions to them.

You will receive an introductory briefing about citizens juries and the work of this jury in particular when you arrive, to assist you in contextualizing what you see the Jury's work on that day.

We hope you enjoy observing the Jury at work. If you have any questions between sessions please contact Emma Lawson on 0421098355.

Name:

Date:

I agree to the Observer's code of conduct.

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Media and Filming

Transparency of the Jury process is central to building respect in it and trust in the outcomes.

Therefore, parts of the process will be filmed or photographed and the media will be present at various times.

It is completely up to you whether you speak to them or not. We encourage public discussion and debate both about the process and the topic.

If you do not want to be photographed we will give you a lanyard or a badge which signifies to those taking photographs or filming that you would prefer not to be identified publicly.

If you agree to be filmed or photographed, please take the time to fill in the “Photographic and Video Consent Form” and present it to the team when you register on Day 1.

Photographic and Video Consent Form

For participants attending the Citizens' Jury to improve the CTP insurance scheme

This is an agreement between the ACT Government, democracyCo and a:

- | | |
|--|--|
| <input type="checkbox"/> Juror on the CTP Citizens' Jury | <input type="checkbox"/> CTP Citizens' Jury Witness |
| <input type="checkbox"/> ACT government employee | <input type="checkbox"/> CTP Citizens' Jury Observer |

This agreement acknowledges that the above party agrees that the ACT Government, democracyCo and external media organisations can use their image or video footage, in:

- their publications, external promotional and educational material
- their own print, broadcast or television services and online (website and social media) formats.

Note: For photos and videos used on a website or in social media:

- the information can be copied and used by any web user
- once information has been published on the web, the ACT Government or democracyCo has no control over subsequent use and disclosure

I agree to the above statements.

Signature:
Name: <input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms
Address:
Contact No:
Date:

Information on this form is personal information and will be stored, used and disclosed in accordance with the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1989*. The ACT Government or democracyCo is not liable for any damages, injuries or personal misfortune resulting from publication or use of the above identified information.

Information from the ACT Government

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