

29 April 2016

Research Director
Education, Tourism, Innovation and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

Email: ETISBC@parliament.qld.gov.au

Dear Sir/Madam

National Injury Insurance Scheme (Queensland) Bill 2016

The Insurance Council of Australia (ICA) welcomes the opportunity to provide feedback on the National Injury Insurance Scheme (Queensland) Bill 2016 (the Bill).

The ICA provided feedback to the inquiry into a suitable model for the implementation of the National Injury Insurance Scheme which concluded in March. Our submissions supported a no-fault lifetime care model whereby catastrophic injuries are managed by a statutory scheme and the scheme is funded through a levy paid by motorists.

We welcome the provisions in the Bill for the establishment of the National Injury Insurance Scheme, Queensland (NIIS(Q)); funded through the NIIS (Q) Fund; and administered by the National Injury Insurance Agency, Queensland (NIIA (Q)).

Our understanding is that all people catastrophically injured in a motor vehicle accident will become participants of the NIIS(Q). Those who are eligible, may be able to opt-out and pursue a lump sum payment for care and support from the NIIA(Q).

The ICA is concerned that there are sections in the Bill where this arrangement is not detailed with absolute clarity. Our members also have concerns with some aspects that impact the interaction between the NIIA(Q) and the CTP scheme, and with the NIIS funding arrangements.

Lump sum payment for treatment, care and support

According to the Treasurer's Introductory Speech and the Bill's Explanatory Notes, certain participants will be able to opt-out of the NIIS(Q) and obtain payment for treatment, care and support damages from the NIIA(Q). The CTP insurer will make payments for all other heads of damages.

Under Section 42 of the Bill – Liability of agency to contribute towards damages - it states:

If the participant gives a preservation notice, the agency is liable to contribute towards the insurer's liability, if any, on the claim for treatment, care and support damages.

This Section could be interpreted in such a way that the insurer is liable for payment of treatment, care and support damages. Once paid, the insurer will then recover these costs from the NIIA(Q).

This is not how the scheme is intended to operate. We submit that the legislation must be absolutely clear that insurers are not liable to fund care and support costs for catastrophically injured claimants. That is, similarly with NSW, it must be clear that all lifetime care and support payments are made by the NIIA(Q) as funded by the levy.

In NSW the *Motor Accidents Compensation Act 1999* contains the following provision under Section 141A:

No damages relating to treatment and care needs for Lifetime Care and Support Scheme participants

(1) No damages may be awarded to a person who is a participant in the Scheme under the Motor Accidents (Lifetime Care and Support) Act 2006 in respect of any of the treatment and care needs of the participant, or any excluded treatment and care needs, that relate to the motor accident injury in respect of which the person is a participant in the Scheme and that arise during the period in which the person is a participant in the Scheme.

(2) This section applies:

(a) whether or not the treatment and care needs are assessed under the Motor Accidents (Lifetime Care and Support) Act 2006 , and

(b) whether or not the Lifetime Care and Support Authority is required to make a payment in respect of the treatment and care needs concerned, and

(c) whether or not the treatment, care, support or service (provided in connection with treatment and care needs) is provided on a gratuitous basis.

The ICA supports Queensland's *Motor Accident Insurance Act 1994* being similarly amended. Unambiguous legislation is fundamental if all parties are to understand the benefits available under the CTP policy and the benefits available from the NIIA(Q). This will promote confidence in the scheme and avoid lengthy and costly legal disputes concerning payment of benefits.

Interaction between the CTP scheme and the NIIA(Q)

For catastrophic injury claims, CTP claims managers will be working closely with the NIIA(Q). Clear processes and guidelines will need to be established to ensure interaction between the two schemes are as seamless as possible. Our members look forward to working with the NIIA(Q) in this regard. We can also share insights and best practices learnt from other jurisdictions.

For those individuals who will be able to opt out of the scheme, they will have a claim against the CTP insurer and a claim against the NIIA(Q). Catastrophic injury claims tend to take longer to settle. It is therefore probable that the NIIA(Q) will be managing the claim for care and support damages after the claim against the CTP insurer has been finalised.

For claims that are legally represented, legal costs may be deducted from the final payment made from the CTP insurer and the final payment made from the NIIA(Q). This could result in

a significant increase in total legal costs charged to catastrophically injured claimants. The Queensland Government should give careful consideration to the potential for legal costs to be deducted from payments that are intended to fund a person's lifetime care and support needs.

Fully funded NIIA(Q)

Clause 93 of the Bill establishes the NIIS(Q) Fund. This Fund will partly consist of premiums returned by insurers that relate to the risks that are now covered by NIIS(Q). Insurers will be working closely with the Motor Accident Insurance Commission to ensure that amounts paid by insurers accurately reflect the liability that has now been transferred to the NIIA(Q).

The report prepared by Taylor Fry in January estimated that the net increase in the annual cost per vehicle would be \$76 if a no-fault lifetime care model with a common law component was adopted. In the Treasurer's Introductory Speech, it was announced that the NIIS(Q) will add a net additional cost to CTP insurance of \$32 per vehicle. The savings of approximately \$44 is to be achieved, in part, by improving CTP premium affordability.

It is vital that the NIIS(Q) levy is adequate to meet all costs associated with the provision of lifetime care and support or possibly a lump sum payment. This will prevent underfunding and the risk that recovery will be made from the CTP scheme, exposing the scheme to uncertainty and volatility.

The ICA and our members recognise that many processes and arrangements will need to be established to provide for the operations of the NIIS(Q). These will undoubtedly have to be readjusted and altered as stakeholders become more familiar with the scheme and best practice is established.

There is a relatively short time until NIIS(Q) implementation. We consider open and timely consultation between insurers and the Queensland Government, in both the lead up to implementation and afterwards, fundamental to delivering a scheme that effectively meets the needs of Queensland's catastrophically injured.

If you wish to discuss any of the issues raised in this submission further, please contact Vicki Mullen, General Manager, Consumer Relations & Market Development Directorate, on (02) 9253 5120 or vmullen@insurancecouncil.com.au

Yours sincerely



Robert Whelan
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