



GOVERNMENT OF
WESTERN AUSTRALIA



Green Paper

Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme

Contents

Foreword – Treasurer.....	3
Executive summary	5
Our current CTP insurance scheme.....	8
Our Current CTP insurance scheme - key metrics	11
Why introduce a no-fault scheme for catastrophic injuries caused by motor vehicles?	12
No-fault catastrophic CTP insurance for people catastrophically injured in motor vehicle accidents ...	14
How much would it cost and how many people would benefit?.....	17
Overview of possible scheme options.....	20
Option 1	20
Option 2	22
Option 3	24
Should the new scheme have exclusions?.....	26
How to submit feedback.....	27

All figures quoted in the paper are inclusive of GST and Insurance Duty where relevant.

Foreword – Treasurer



Since 1947, Western Australia (WA) has had a Compulsory Third Party (CTP) motor vehicle personal injury insurance scheme in place. The scheme insures the owner/driver of the registered motor vehicle against their liability for injuries they may cause to another person. The premium for the CTP insurance is paid at the same time as the motor vehicle registration fee.

The CTP scheme is an ‘at-fault’ scheme. If you are injured, in order to make a successful insurance claim, fault needs to be identified on the part of a driver of a WA registered motor vehicle. Passengers in vehicles, pedestrians and cyclists can also claim against an at-fault driver to obtain compensation for their injuries. Drivers who are entirely at fault are not able to claim for injuries to themselves from a crash.

The current WA fault based CTP scheme has served our community well. The annual cost from 1 July 2014 will be \$291 for a family car and this is **significantly lower than anywhere else in Australia**. This has been the case for more than 17 years.

However, sometimes it is not possible to find fault with a driver involved in an accident and therefore, in WA under the current arrangements, no compensation claim is possible for the injuries sustained.

There has been significant debate in recent years suggesting that CTP personal injury insurance schemes should be expanded to fund the care of those who suffer catastrophic injury, whether or not a driver can be found to be at fault.

The Commonwealth Government's Productivity Commission recommended that no-fault CTP insurance schemes should be introduced by all States and Territories to provide care and support for people who suffer catastrophic injuries in motor vehicle accidents under the banner of the National Injury Insurance Scheme (NIIS). A no-fault catastrophic CTP insurance scheme would not be retrospective to catastrophic injuries caused from motor vehicle accidents before a future scheme implementation date.

The policy objective of the State Government is to ensure that all people catastrophically injured in motor vehicle accidents in our State are provided with reasonable and necessary support. The State Government has provided in-principle support for the introduction of a no-fault catastrophic CTP insurance scheme for motor vehicle accidents. It has also committed to consider the nationally-consistent minimum benchmarks developed for consideration by States and Territories to provide no-fault reasonable and necessary support for people who are catastrophically injured in motor vehicle accidents.

Under the Commonwealth's proposal, these schemes are to be the responsibility of State and Territory Governments with the additional premiums to be paid by motorists in each State and Territory.

For that reason, the WA Government has chosen to issue this Green Paper to inform the community about the proposed changes to CTP motor vehicle personal injury insurance cover, and seek community feedback before the Government determines how to proceed.

I encourage you to provide your feedback on this Green Paper so that fully informed decisions are made about any expansion of CTP insurance cover and the additional costs involved for motorists and additional support to those catastrophically injured.



Hon Dr Mike Nahan MLA

Treasurer; Minister for Energy;

Citizenship and Multicultural Interests

Executive summary

The release of this Green Paper by the WA Government provides an opportunity for the Western Australian community to comment on the proposal to introduce a no-fault catastrophic compulsory third party (CTP) insurance scheme for people catastrophically injured in motor vehicle accidents in WA.

There is a strong sense from many in the community that people catastrophically injured in motor vehicle accidents should receive adequate funding for reasonable and necessary care, without having to contend that another person was at fault in the accident. Without such support, the person that is catastrophically injured and their family and friends are subject to additional emotional and financial hardship resulting from the motor vehicle accident, especially if they do not have personal accident, superannuation or income protection insurance.

As such, the Commonwealth Government's Productivity Commission has recommended that Australian States and Territories should implement fully funded, care and support schemes for all people catastrophically injured as a result of motor vehicle accidents, on a no-fault basis.

The policy objective of the State Government is to ensure all people catastrophically injured in motor vehicle accidents in Western Australia are provided with reasonable and necessary support. The State Government has provided in-principle support for the introduction of a no-fault catastrophic CTP insurance scheme for motor vehicle accidents. It has also committed to consider the nationally-consistent minimum benchmarks developed for consideration by States and Territories to provide no-fault reasonable and necessary support for people who are catastrophically injured in motor vehicle accidents.

Catastrophic injuries mean spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns or permanent traumatic blindness.

It is estimated that in WA, 92 people annually suffer a catastrophic injury as a result of a motor vehicle accident, 48 of whom are able to claim compensation under the current CTP scheme. The remaining 44 people rely on support available through Government funded services, personal accident, superannuation or income protection insurance and/or families and friends. This number is estimated to grow by approximately 4% each year based on forecast growth in the number of registered vehicles.

The premium for the current CTP personal injury insurance scheme covers WA motor vehicle owners and drivers against claims for personal injuries they may cause to another person as a result of motor vehicle accidents. The scheme is fault based, whereby for a claim to succeed, the injured person must contend that their injury was caused by the negligence (fault) of a driver of a WA registered vehicle. A no-fault scheme would provide reasonable and necessary support for all people catastrophically injured in motor vehicle accidents irrespective of fault. The no-fault scheme would not be retrospective to catastrophic injuries caused from motor vehicle accidents before a future scheme implementation date.

Compensation for economic loss and pain and suffering would still only be claimable under the existing CTP scheme where fault can be asserted against another party involved in the accident.

A major consideration for Western Australians on the merits of a no-fault catastrophic CTP insurance scheme is the cost it will add to the current annual CTP premium.

The cost of reasonable and necessary support for people catastrophically injured is estimated at \$4 million per person on average to fund and manage the services and support required over the course of their lives. To fund the reasonable and necessary support needs of 92 people catastrophically injured each year, the annual CTP premium would need to increase by an estimated \$109 (including GST and insurance duty) for a family car. The additional premiums collected as the scheme matures over time will allow the scheme to provide reasonable and necessary support for the estimated 92 or more people each year who suffer a catastrophic injury as a result of motor vehicle accidents.

Currently, motor vehicle owners in WA pay significantly lower CTP insurance premiums than anywhere else in Australia. As at 1 July 2014, the owner of a family car will pay an annual premium of \$291 (including GST and insurance duty).

Therefore, feedback is sought from the community on how best to ensure that all people catastrophically injured in motor vehicle accidents in WA are provided with reasonable and necessary support. The choices available and their associated costs are summarised in the following three options for CTP insurance in WA:

Option 1: No change. Retain the existing fault based CTP scheme. An estimated 48 people each year would continue to receive lump sum payments. An estimated 44 people each year would not be entitled to any compensation under this option and would continue to rely on support available through Government funded services, personal accident, superannuation or income protection insurance and/or family and friends.

Cost: \$291 for a family car each year.

Option 2: Introduce a no-fault catastrophic CTP insurance scheme for **all** people catastrophically injured as a result of a motor vehicle accident (92 each year). Under this option, no lump sum payment for reasonable and necessary support will be available; instead, regular payments will be made for these services.

Estimated **Additional** Cost: \$109 for a family car each year.

Option 3: Introduce a no-fault catastrophic CTP insurance scheme **only** for the estimated 44 catastrophically injured people each year that do not receive compensation from the existing scheme. An estimated 48 people each year catastrophically injured who are eligible for compensation under the existing scheme would continue to be eligible for lump sum payments.

Estimated **Additional** Cost: \$101 for a family car each year.

Options to Add No-Fault Catastrophic Injury Cover to CTP Insurance Scheme			
CTP Scheme Options	<u>Option 1</u> No Change – Retain the existing CTP Scheme.	<u>Option 2</u> A no-fault catastrophic CTP insurance scheme for ALL people catastrophically injured.	<u>Option 3</u> A no-fault catastrophic CTP insurance scheme for catastrophically injured people not currently covered by the existing CTP scheme.
Scope of Cover	<p>48 people not at fault each year are compensated for care and support by lump sum payment.</p> <p>44 people at fault and unable to assert fault against another driver each year have no entitlements under the current CTP scheme and rely on public health and disability systems and their own private resources.</p>	<p>92 people each year provided with ongoing reasonable and necessary support.</p>	<p>48 people not at fault each year are compensated for reasonable and necessary support by lump sum payment under the existing CTP scheme.</p> <p>44 people at fault and unable to assert fault against another driver each year are provided with ongoing reasonable and necessary support.</p>
Additional Annual Costs	NIL	\$109	\$101
Total CTP Premium each year	\$291	\$400	\$392
<p>Notes:</p> <p>1) All premiums quoted are for a family car each year and include GST and insurance duty.</p> <p>2) For option 1, all compensation payments remain subject to contributory negligence deductions.</p> <p>3) For options 2 and 3, where a person is partly at fault for an accident, no deduction for contributory negligence will be made for reasonable and necessary support. Compensation payments for pain and suffering, economic loss and other heads of damages will be subject to contributory negligence deductions.</p>			

Our current CTP insurance scheme

Background

Our present CTP scheme is underwritten and administered by the Insurance Commission of Western Australia (Insurance Commission).

In WA, all motor vehicles that are registered to be used on a public road are required to have CTP insurance. The CTP policy is paid at the same time as the motor vehicle registration fee, making it convenient and efficient for you to insure your vehicle and yourself against liability for personal injury caused to third parties. The CTP premiums are collected by the Department of Transport when the vehicle is first registered or the vehicle licence renewed.

Currently, there are 23 different insurance classes of motor vehicles in WA and the two dominant classes are private family cars and goods vehicles (trucks, utilities etc). CTP premiums vary depending on the class of motor vehicle, with higher risk vehicles (based on the number of claims and associated claims costs) attracting higher CTP premiums.

The CTP premiums paid by WA motorists, together with Insurance Commission investment income, are used to fully fund claims and scheme administration costs.

Claims

As an injured person you can only claim compensation under our current CTP scheme if you can assert that the driver of a WA registered vehicle was at fault in the accident that injured you. Based on claims experience, the Insurance Commission confirms that over 70% of claims have liability decisions made within 25 business days of claim receipt.

Compensation Principle

Professor Harold Luntz defines the **compensation principle** as follows:

“The compensation principle..... has been held to be applicable to personal injury, so that plaintiffs should be awarded such sums of money as would restore them to the positions that they would have been in, if there had been no negligence”.

Luntz Harold; Assessment of Damages for Personal Injury and Death; 4th Edition-2002

Your compensation may be reduced by a percentage reflecting the degree of your contributory negligence (if any) in having done something, or not done something, which either contributed to the accident or made the resulting injury worse.

For example:

- You may be equally responsible in a two-vehicle collision and therefore only recover 50% of the assessed compensation; or
- You were not wearing a seatbelt at the time of the collision, resulting in more severe injuries. This would generally result in a reduction of the assessed compensation of up to 25%.

In some instances, it is not possible to identify the vehicle involved in a motor vehicle accident such as in a 'hit and run' situation. Where it can be contended that the unidentified vehicle was at fault for the accident, an injured claimant would be eligible to claim for compensation. In this situation, the insurer acts in the role of a 'Nominal Defendant'.

Compensation payments

Generally, compensation payments are paid as a one-off lump sum. Receiving a lump sum payment provides the flexibility to self-direct those funds to the care and support you, your family or a trustee determines is right for you. However, some of the risks associated with lump sum payments include funds being inappropriately managed / invested, or not reflective of a potential worsening of a claimant's condition if the care needs increase after the lump sum compensation payment has been made. In addition, a person may live longer than expected and therefore compensation could be insufficient.

Lump sum compensation payments will generally include sums to cater for past out of pocket expenses, future medical expenses, economic loss and future care costs, as well as compensation for pain and suffering.

The Insurance Commission covers the costs of medical and allied health services on an 'as you go' basis until the claim is settled to ensure injured claimants are properly cared for. The Insurance Commission will also generally make interim payments against loss of wages to avoid unnecessary hardship on the injured claimants and their families.

In order for a claim for pain and suffering to be paid, the injuries need to be assessed at a certain level of severity as caps and thresholds apply. These restrictions were introduced in 1993 and are an important factor in maintaining the affordability of the CTP premium and the viability of the insurance scheme.

Claims for economic loss are restricted to a maximum of three times the full-time adult average weekly earnings in WA. No limits apply to medical and allied health services costs including payments for nursing and attendant care.

Breaches of the CTP insurance policy

The CTP insurance policy is subject to certain warranties and conditions. This is consistent with all other insurance policies as breaches of the law may affect your entitlement to claim under the policy.

Breaches of the CTP insurance policy warranties and conditions may result in the offending driver having to reimburse the Insurance Commission for all costs incurred in settling an injured person's claims.

Examples of when the CTP insurance policy will not cover you:

- driving without a driver's licence or the right class of licence
- driving an unregistered/uninsured or unsafe vehicle
- driving a vehicle under the influence of alcohol
- allowing an unlicensed driver to drive your vehicle.

WA's experience with fault based insurance arrangements for people catastrophically injured:

- Engagement of plaintiff lawyers is common for claimants that have been catastrophically injured in terms of determining the level of care required and life expectancy.
- While settlement can take several years, a claimant's costs for medical, care and support needs are generally paid on an 'as you go' basis by the Insurance Commission until settlement of the claim if any degree of liability is accepted.
- Receiving a lump-sum compensation settlement payment provides the flexibility to self-direct funds to procure care and support in the most efficient manner.
- During the 2013/14 financial year 44 catastrophic injury claims were settled for approximately \$261 million at an average total cost of \$5.9 million per injured person.

Funding and comparison to other States and Territories

The WA CTP insurance scheme is fully funded through premiums paid by vehicle owners and Insurance Commission investment income.

WA has had the most affordable CTP insurance scheme in Australia for the past 17 years with minimal premium increases over the last decade. The State Government and the Insurance Commission have been conscious to keep CTP insurance premiums at an affordable level to minimise the cost of insurance to households.

Measured as a proportion of one week's worth of the average weekly wage, WA has the most affordable CTP Insurance in the country at under 20% of the average weekly wage. Most other States and Territories are between 36% and 40%.

The graph below compares WA's 1 July 2014 CTP premium for a family car to the CTP insurance premiums in other States and Territories in Australia. This graph also compares CTP premium costs as a percentage of one week's average wages in each State and Territory.

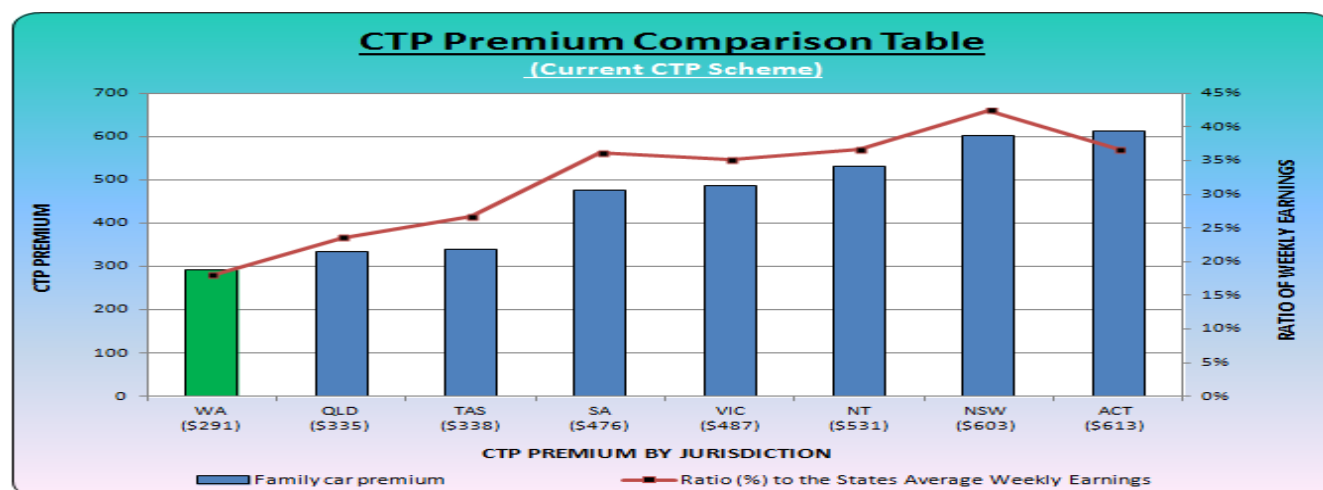


Figure 1 CTP premium comparison table – current scheme

Note: The premiums for South Australia and the Australian Capital Territory include the additional no-fault catastrophic CTP injury insurance premium which was introduced on 1 July 2014 in those jurisdictions.

Our Current CTP insurance scheme - key metrics

Claims Volumes

- 3,509 new claims were made in the 2012/13 financial year.
- 3,561 new claims were made in the 2013/14 financial year.
- Approximately 6,100 claims remain outstanding.
- Over 70% of claims have liability decisions made within 25 business days of claim receipt.

Total Claims Payments

- Total claims payments in the 2012/13 financial year were \$373 million.
- Total claims payments in the 2013/14 financial year were \$494 million.
- Approximately 90% of claims payments are made for the direct benefit of claimants.
- Approximately 46% of all claim payments are to cover the costs of past and future medical, care and support, rehabilitation, home help, aids and appliances, house modifications and other services.
- \$53 million of the \$494 million paid in 2013/14 related to claimant and Insurance Commission legal costs.

Catastrophic Claims

- In the 2013/14 financial year 44 catastrophic injury claims were settled for approximately \$261 million at an average total cost of \$5.9 million per injured person.
- Over the last two years, approximately 34% of claims costs have been for catastrophic injuries.
- The average care and support lump sum award for a person who is catastrophically injured is approximately \$3-4 million, but there are some claims that will result in costs exceeding \$10 million (e.g. a person with quadriplegia who is reliant on a ventilator).

Administration Costs

- Scheme administration costs as a percentage of premiums are approximately 9.5%.

Why introduce a no-fault scheme for catastrophic injuries caused by motor vehicles?

Catastrophic injury as a result of a motor vehicle accident is something that could happen to anyone. The consequences to the injured and their families often include extreme physical, emotional and financial hardship.

The case study below provides an example of an accident scenario where the people involved were not able to claim under the current at-fault CTP scheme.

Case study – example only

Accident circumstances

Stephen and Linda were both 60 years of age and were looking forward to their retirement. They have two children Max and Peter.

One Saturday morning whilst travelling at 70kmph on their way to their regular shopping trip, Stephen suffered a stroke at the wheel, lost control of the vehicle and crashed into a tree. As a result of the impact, both Stephen and Linda unfortunately suffered traumatic brain injuries.

A few weeks prior to the accident Stephen had also undertaken a full health check and was considered totally fit and healthy.

Compensation Entitlements from the existing CTP scheme

The emergency transport costs and emergency hospital treatment costs were paid for Stephen and Linda.

Stephen

As Stephen was unable to assert that his injuries were caused by the negligence of the driver of another vehicle, no claim for compensation could be made for the care and support now required to assist him with his day to day living.

Linda

Although it was her husband Stephen who crashed into the tree and Linda was simply an innocent passenger in the vehicle, Linda was also unable to pursue a claim for compensation. Her husband Stephen's stroke, which was the cause of the accident, could not have been reasonably foreseen or expected and accordingly, no negligence could be asserted against Stephen, preventing any successful claims being made against his CTP insurance policy.

Care and support provisions

As no claims for compensation were able to be made by Stephen or Linda for the required level of care and support, they had to rely on public health and disability services, their personal assets and personal accident, superannuation or income protection insurance, and the additional support provided by their two children, Max and Peter.

Providing this full-time care and support placed considerable emotional and financial hardship on Peter and his wife, especially as Stephen and Linda did not have sufficient personal assets and personal accident, superannuation or income protection insurance to provide the level of care and support they required.

Had a no-fault catastrophic CTP insurance scheme been in place, lifetime care and support would have been provided for Stephen and Linda.

In August 2011, the Commonwealth Government's Productivity Commission released the *Disability Care and Support: Productivity Commission Inquiry Report*, following a review of disability care in Australia, initiated by the Commonwealth Government.

<http://www.pc.gov.au/projects/inquiry/disability-support/report>

The Productivity Commission described the current disability support system as underfunded, unfair, fragmented and inefficient. It recommended that Australian States and Territories implement fully funded, insurance based, care and support schemes for people catastrophically injured as a result of motor vehicle accidents.

The State Government has provided in-principle support for the introduction of a no-fault catastrophic CTP insurance scheme for motor vehicle accidents. It has also committed to consider the nationally-consistent minimum benchmarks developed for consideration by States and Territories to provide no-fault reasonable and necessary support for people who are catastrophically injured in motor vehicle accidents.

The NIIS will complement existing disability reforms, including the National Disability Insurance Scheme (NDIS). The differences between NDIS and NIIS are primarily the cause of the disability and the funding source for reasonable and necessary support services. The NIIS will focus on providing cover for catastrophic injuries sustained through motor vehicle accidents and be funded from increased CTP insurance premiums. The NDIS will cover all other eligible people with a disability and be funded from general government revenue.

The Productivity Commission's primary argument to support the introduction of no-fault catastrophic CTP insurance is to meet people's reasonable and necessary support needs efficiently because fault-based schemes often require legal services and costs and court outcomes can be uncertain. It also means that people who do not have access to no-fault catastrophic CTP insurance schemes and are at fault, have to rely on the public health and disability systems and their own private resources, including support from family members to provide for their ongoing care and support.

The State Government is committed to exploring if the existing CTP scheme can be positioned to better provide reasonable and necessary support for people catastrophically injured in motor vehicle accidents.

Some have argued that removing access to lump sum compensation for people catastrophically injured and substituting it with ongoing funding for reasonable and necessary support is better than that person, their family or a trustee carrying the responsibility and risk of managing the lump sum funds.

A major consideration for Western Australians on the merits of a no-fault catastrophic CTP insurance scheme is the cost it will add to the current CTP premium.

No-fault catastrophic CTP insurance for people catastrophically injured in motor vehicle accidents

The national benchmarks for the proposed no-fault CTP care and support schemes have been developed for consideration by States and Territories. The benchmarks state that you should be provided with reasonable and necessary support if you experience a catastrophic injury.

Catastrophic injuries are defined as:

- spinal cord injuries
- traumatic brain injuries
- multiple amputations
- severe burns
- permanent traumatic blindness.

If you are catastrophically injured, then you would be entitled to the following services:

- rehabilitation
- attendant and nursing care services
- domestic assistance
- respite care
- dental treatment
- ambulance transportation
- aids and appliances
- home and transport modifications
- artificial members, eyes and teeth
- medical treatment
- educational and vocational training.

The three benchmarks that show eligibility and scope of scheme cover are shown on the following pages. The full list of benchmarks is available at:

<http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>

National benchmark 1 - Definition of a Catastrophic Injury:

Injury Type	Definition
Spinal Cord Injury	Based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
Traumatic Brain Injury	<ul style="list-style-type: none">• Resulting in permanent impairments of cognitive, physical and/or psychosocial functions.• A defined period of post traumatic amnesia plus a Functional Independence Measure (FIM) at five or less, or two points less than the age appropriate norm (or equivalent where other assessment tools are used), would be required.
Multiple Amputations	Of the upper and/or lower extremities, or single amputations involving: <ul style="list-style-type: none">• forequarter amputation / shoulder disarticulation• hindquarter amputation / hip disarticulation• short transfemoral amputation involving the loss of 65% or more of the length of the femur.
Severe Burns	<ul style="list-style-type: none">• Full thickness burns greater than 40% of the total body surface area (or greater than 30% in children under 16 years old).• Full thickness burns to hands, face or genital area, or inhalation burns causing long-term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used).
Permanent Traumatic blindness	Based on the legal definition of blindness.

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

National benchmark 2 – The scope of motor vehicle accidents:

Injuries arising from accidents which:

Covered	Not Covered
Involve at least one registrable motor vehicle.	Involve organised motor sports.
Occur on a public road or other locations where registered vehicles are commonly driven including driveways and car parks, and areas adjacent to roads such as nature strips, footpaths and other road related areas.	Involve acts of terrorism involving the use of a motor vehicle.
Are the result of the driving of the vehicle, the vehicle running out of control, action taken to avoid a collision with the vehicle, or a collision with the vehicle while it was stationary, and includes injuries to pedestrians and cyclists injured as a result of such incidents.	Are through other modes of transport (e.g. trains, trams, and waterborne craft).
	Have no registrable vehicles involved. e.g. <ul style="list-style-type: none"> • unregistrable vehicles on private property such as farms • motocross bikes, quad bikes, trikes, off-road or racing vehicles • bicycles.

National benchmark 5 – What are the entitlements:

The following reasonable and necessary services will be provided for eligible catastrophically injured claimants.

Home and transport modifications	Dental Treatment	Rehabilitation
Ambulance Transportation	Respite Care	Attendant Care Services
Domestic Assistance	Aids and appliances	Artificial members, eyes and teeth
Education and vocational training	Medical Treatment (Including pharmaceutical)	

Jurisdictions may also provide a broader range of services, but entitlements will only be provided in the Commonwealth of Australia.

Reasonable and necessary support costs delivered through these services would be paid for by the no-fault scheme on an 'as you go' basis rather than a one-off lump sum payment. People catastrophically injured that are not at fault or could assert fault against another party would retain the right to compensation for economic loss and pain and suffering from the existing CTP scheme including provision for interim upfront payments for economic loss. Catastrophically injured people that are at fault would not be entitled to compensation for economic loss and pain and suffering.

How much would it cost and how many people would benefit?

Costs of a new no-fault catastrophic CTP insurance scheme

It is difficult to accurately predict the cost of no-fault catastrophic CTP insurance schemes, as costs are dependent on the number of people catastrophically injured each year who require support, the potential changes to reasonable and necessary support costs over time as well as changes to other economic conditions. Costs are also dependent on long-term financial results and investment returns achieved by insurers. This therefore requires estimates that are based on assumptions of economic parameters over a long period and there is a risk that the actual cost of the scheme could vary significantly from the estimated cost. It is expected to take several decades for a no-fault catastrophic CTP insurance scheme to mature and achieve a reasonable degree of predictability.

Advice on the cost of the introduction of a no-fault catastrophic CTP insurance scheme was provided to the Insurance Commission by independent actuaries in March 2014. Based on the Commonwealth Government's proposed scheme design, the total cost for WA is estimated at \$370 million each year.

A large portion of this cost would be offset by the transfer of entitlements to support payments for claimants catastrophically injured from the existing CTP scheme to the new scheme (i.e. the estimated 48 people each year that can assert that their injuries were caused due to the fault of another driver). These offsets would reduce the additional estimated cost of a no-fault catastrophic CTP insurance scheme to around \$223 million each year. It is estimated that this will result in an increase of \$109 to the annual CTP premium for a family car.

In the absence of any no-fault catastrophic injury claims experience available in WA on which to calculate appropriate premium rates for each of the vehicle classes, to assist in keeping all CTP insurance premiums at an affordable level, the highest additional annual premium to be paid by any vehicle class will be no greater than \$109.

The intent is to review the premium requirements for the various classes of vehicles as their respective claims experience develops over time.

Premium rates for motorbikes (or at least larger capacity motorbikes) are higher in the other States with no-fault insurance than the rate charged for a family car due to the higher cost claims history for motorbikes. In the absence of no-fault catastrophic injury data for motorbike riders and passengers in Western Australia it is proposed that premium rates would be set at the same rate as a family car. This will involve a cross subsidy from the car class to motorbikes, but the absence of insurance claims history means that the scale of this cross subsidy cannot be quantified in the near term.

While comprising only 5.5% of total registered vehicles in WA, motorcyclists and their pillion passengers account for 33% of the claimants catastrophically injured (using a registrable vehicle) for the period 1 Jan 2010 to 31 Dec 2013.

The graph below shows the new WA CTP premium for a family car including the estimated additional premium of \$109 for no-fault catastrophic CTP insurance.

It can be seen that even after increasing WA's CTP premium by \$109 (and allowing for the fact that Queensland does not provide no-fault catastrophic CTP insurance), WA's CTP premium for a family car will remain lower than the majority of other jurisdictions.

Also of significance is the fact that WA's CTP premium will remain below 25% of one week's worth of average weekly wages. This compares favourably with all other States and Territories with the exception of Queensland.

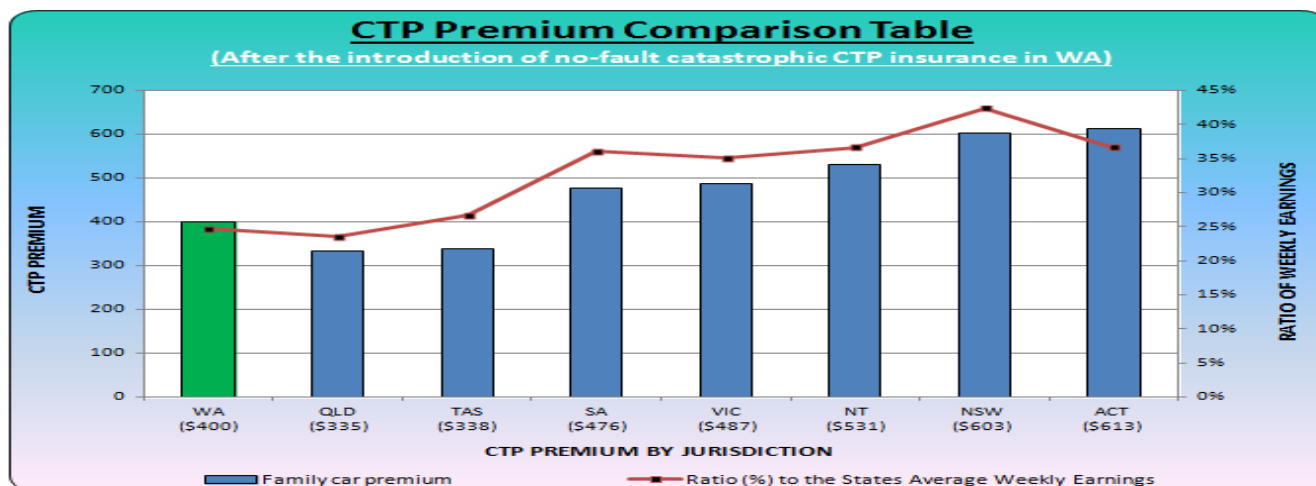


Figure 2 CTP premium comparison table - after the introduction of no-fault catastrophic CTP insurance

Number of claimants

It is estimated that 92 people in WA will be catastrophically injured each year in motor vehicle accidents and will require support.

Of this number, an estimated 48 of the potential 92 people will be covered under the existing WA CTP scheme (as they will be able to assert that someone was at fault) and that a new no-fault catastrophic CTP insurance scheme will therefore expand cover for reasonable and necessary support to the estimated 44 people catastrophically injured each year who are not currently covered. These numbers are estimated to grow by approximately 4% each year, in line with forecast growth in the number of registered vehicles.

Persons catastrophically injured, along with their family and their friends, often suffer from significant pressures and anxiety about the availability of lifetime care and support. There can often be great responsibility placed upon family and friends to support the catastrophically injured persons physically, emotionally and financially when those catastrophically injured do not receive compensation for reasonable and necessary support through the current CTP scheme. This is especially true if the person who is catastrophically injured does not have sufficient personal assets and personal accident, superannuation or income protection insurance to provide the level of care and support they require.

The benefits of a no-fault catastrophic CTP insurance scheme would be evident in greater levels of ongoing reasonable and necessary support for an estimated 92 people each year who have suffered catastrophic injuries as a result of motor vehicle accidents.

Benefits and Disadvantages

The following tables compare the benefits and disadvantages to claimants under WA's existing CTP scheme and a no-fault catastrophic CTP insurance scheme.

Claimant benefits	
WA's existing fault based CTP scheme	No-fault catastrophic CTP scheme
You have immediate access to care and support services if any degree of negligence is accepted and can also claim for lump sum compensation for a care and support award that you believe reflects your individual circumstances.	There is no need to assert fault, removing delays and legal costs involved in settling a claim.
You receive a lump sum payment that provides self-directed funding for you, your family or trustee to organise care and support.	You have access to reasonable and necessary support services if eligibility criteria are met.
A lump sum payment finalises the claim for compensation, assisting you to psychologically move on with your life.	Ongoing reasonable and necessary support provisions remove your one-off lump sum payment.
If you can assert fault against another party, you receive payments for economic loss (including interim payments against loss of wages to avoid unnecessary hardship) and pain and suffering.	The risk that you could run out of funds for reasonable and necessary support is removed. More people are covered.

Claimant disadvantages	
WA's existing fault based CTP scheme	No-fault catastrophic CTP scheme
If fault can't be asserted, no compensation is provided and you will have to rely on Medicare, private health insurance, own assets, disability or income support insurance through your superannuation fund or elsewhere and family or friends.	Your freedom of choice to self-direct funds towards reasonable and necessary support organised by you is reduced.
Lump sum payments are generally made once injuries/disabilities are stable which leads to delays in reaching settlement (ongoing care and support costs are paid for the period to settlement if any degree of liability is accepted).	Your lump sum payment is not available to self-direct towards care costs or invest those funds for the future.
Delays are often involved over what is considered a fair payment, meaning claims made in fault based schemes could take between 18 months and a number of years to finalise.	Your family could be left with less in the event of your death as no lump sum will be paid as care costs cease when the claimant is deceased.
The possibility of the lump sum payment running out if inappropriately managed / invested, or if the claimant's condition worsens and the care and support needs increase after the lump sum compensation payment has been made.	
Family and friends may have to act as carers and case managers for your ongoing needs.	Additional annual premiums will be required to cover the cost of reasonable and necessary support needs for all people catastrophically injured in motor vehicle accidents. It has been estimated up to an additional \$109 (Including GST and insurance duty) for a family car each year.
Costs of increased service provider rates and inflation have to be paid by you as there is only a one off lump sum payment.	

Overview of possible scheme options

Option 1

No Change - Retain the existing scheme

This option does not change WA's CTP Insurance scheme.

It retains the principle that compensation is provided by the insurer when an injury is caused by another person.

It is estimated that annually 92 people in WA are catastrophically injured in motor vehicle accidents. 48 of these people would currently be eligible for compensation under the existing CTP Scheme (as they would be able to contend that another person was at fault). The 44 other people would continue to rely on support available through:

- Medicare
- Private Health Insurance
- Income Protection Insurance
- Disability Insurance
- Disability Insurance provided through superannuation funds
- services from the Disabilities Services Commission/National Disability Insurance Scheme (NDIS)
- family and friends
- personal assets.

No premium increases would be required. The 1 July 2014 premium for a family car would remain at \$291 as there is no change to the existing CTP scheme.

Tax payers who are also motor vehicle owners pay CTP premiums, which together with Insurance Commission investment income, fund motor vehicle injury claims and scheme administration costs. This includes the 48 persons eligible for compensation under the existing scheme who are catastrophically injured.

The remaining 44 people who are not eligible for compensation in the current scheme rely on the public health system and disability services, which are also funded by tax payers.

The introduction of a no-fault catastrophic CTP insurance scheme would ensure the reasonable and necessary support costs for all people catastrophically injured in motor vehicle accidents would be funded from the CTP insurance premiums from motorists rather than from general government expenditure funded by tax payers. This would help to reduce the overall pressure on State finances from the growing demand for health and disability services. The State Government of WA has budgeted \$8 billion for health services and \$873 million for disability services in 2014/15.

Example of the existing scheme coverage

Two vehicles were travelling south on the freeway when **Vehicle 1** suddenly collided with the rear of **Vehicle 2**.

The **driver** of **Vehicle 1** was held fully at fault for the accident as a result of their careless driving.

- The **drivers** of both **Vehicle 1 and Vehicle 2** suffered catastrophic spinal injuries.
- The **front seat passenger** in **Vehicle 2** also suffered a catastrophic traumatic brain injury. This passenger was however considered to have contributed 25% in negligence to their injury through their failure to wear a seatbelt at the time of the accident.
- No other passengers were travelling in **Vehicle 1**.

Entitlements under the existing scheme

- 1) The **driver of Vehicle 2** was able to contend that their injury was caused by the fault of the **driver of Vehicle 1** and so was able to pursue a claim for compensation for all injury related losses. The claim for compensation consisted of:
 - Payments for care, support and treatment for 3 years following the crash until claim settlement. This included some interim payments against loss of wages to avoid unnecessary hardship.
 - \$5.7 million lump sum settlement for future care, support and treatment. This also included compensation for pain and suffering, past/future economic loss and legal costs.
- 2) The **front seat passenger** in **Vehicle 2** was also able to contend that their injury was caused by the fault of the **driver of Vehicle 1**, and so claimed for all injury related losses sustained in the accident, payable as a one off lump sum settlement. Care and support costs were paid in full on an '**as you go**' basis until the settlement.

However, as the claimant was confirmed to have contributed at least 25% to the injuries sustained (contributory negligence) the lump sum settlement amount was reduced by 25%.

- 3) The **driver of Vehicle 1** was unable to contend that their injury was the fault of another driver of a vehicle and so was unable to make any claim for compensation. The Insurance Commission paid for emergency transport costs and emergency hospital treatment.

The driver of **Vehicle 1** will therefore depend on other insurances, Medicare, their own assets, Commonwealth income support payments and/or the assistance and support available through the Disabilities Services Commission and/or their family and friends.

Option 2

A no-fault catastrophic CTP insurance scheme for ALL people catastrophically injured as a result of a motor vehicle accident.

This option proposes a new no-fault catastrophic CTP insurance scheme to provide reasonable and necessary support cover to the estimated 92 people catastrophically injured each year as a result of a motor vehicle accident.

If you are catastrophically injured there would be no access to a lump sum compensation payment for your future care costs for you or your family to manage your future reasonable and necessary support. That may mean more certainty that your care needs would be met, but takes away the common law right to a lump sum settlement for care and support if you are able to contend that your injury was caused by the fault of another driver.

The Insurance Commission would appoint a relationship manager to manage the cost of your care. Some flexibility may be available for you to choose the necessary and reasonable support services that suit your individual needs. For example, the NSW lifetime care and support scheme allows claimants' choice of carer and community activities and input into decisions about their care.

The goal is to provide a service that not only addresses the financial burden of care but also to contribute to improved physical, psychological and emotional outcomes for you and your family.

You would have less need for legal representation since you would not have to contend that someone was at fault to receive reasonable and necessary support.

In addition to reasonable and necessary support, where a claimant who is catastrophically injured asserts fault against another person involved in the accident, they will retain the right to pursue a claim for common law compensation from the existing CTP scheme for pain and suffering and economic loss (of which upfront interim payments against loss of wages may be made to avoid unnecessary hardship).

For claimants without a catastrophic injury, there would be no change to CTP insurance cover. A lump sum payment from the existing CTP scheme would be available for all injury related losses for those who can assert that another person was at fault.

This option is expected to reduce legal costs associated with the claims management and settlement process.

The estimated cost of this scheme option is an additional \$109 for a family car each year. An estimated 92 people each year would be cared for under this option.

Compared to Option 1, this option will increase administration costs, as the no-fault catastrophic CTP insurance scheme will administer and manage reasonable and necessary support services for the rest of the lives of the 92 or more people injured in each year of the scheme's operation.

Similarly, Option 2 will have increased administration costs compared to Option 3 due to the number of people provided with reasonable and necessary support for the rest of their lives being 92 or more each year compared to 44 or more under Option 3.

Option 2 continued

Example of scheme coverage

Two vehicles were travelling south on the freeway when **Vehicle 1** suddenly collided with the rear of **Vehicle 2**.

The **driver** of **Vehicle 1** was held fully at fault for the accident as a result of their careless driving.

- The **drivers** of both **Vehicle 1 and Vehicle 2** suffered catastrophic spinal injuries.
- The **front seat passenger** in **Vehicle 2** also suffered a catastrophic traumatic brain injury. This passenger was however considered 25% contributory negligent for their sustained injuries through their failure to wear a seatbelt at the time of the accident.
- No other passengers were travelling in **Vehicle 1**.

Entitlements under this scheme option

- 1) As the **driver of Vehicle 1 and Vehicle 2** and the **front seat passenger in Vehicle 2** all sustained catastrophic injuries they would all qualify for reasonable and necessary support **paid 'as you go'** from the new no-fault catastrophic CTP insurance scheme. There is no lump sum settlement available for support under this option.
- 2) As the **driver of Vehicle 2** would also be able to contend that their injuries were caused by the **fault** of the **driver of Vehicle 1**, they could pursue claims for other injury related losses resulting from the accident, which would all be payable as a lump sum from the existing CTP scheme (e.g. compensation for pain and suffering and economic loss).
- 3) Similarly, the front seat **passenger** in **Vehicle 2** would be able to pursue claims for any other injury related losses sustained in the accident from the existing CTP scheme. However, as the passenger was confirmed to have contributed at least 25% to the injuries sustained (contributory negligence) the lump sum settlement amount was reduced by 25%.
- 4) As the **driver of Vehicle 1** is the driver at fault, there would be no additional claim entitlements from the existing CTP scheme (e.g. no compensation for pain and suffering and economic loss).

Option 3

A no-fault catastrophic CTP insurance scheme for catastrophically injured people that are not compensable in the existing CTP scheme.

This option proposes a new no-fault catastrophic CTP insurance scheme to provide reasonable and necessary support to the estimated 44 people catastrophically injured each year as a result of a motor vehicle accident that are not able to assert that their injuries were caused by the fault of another driver.

The existing CTP scheme would remain for people catastrophically injured who are able to assert that their injuries were caused by the fault of another driver. Lump sum payments would be made to people who are catastrophically injured, their family or trustee to manage the investment and expenditure of funds for reasonable and necessary support.

The method of compensation is based on who is at fault for the motor vehicle accident.

1. If you can assert that another person was fully or partly at fault:

- a) If you can assert that another person is fully at fault, your claim will be paid under the existing CTP Scheme. All your entitlements, including reasonable and necessary support costs, will be paid by lump sum. You retain your common law rights to ultimately have your entitlements independently assessed by a Court and the discretion to allocate your compensation payment as you see fit.
- b) If you are partly at fault, all lump sum components (other than life time reasonable and necessary support costs) may be reduced by the extent of your contributory negligence (i.e. compensation for pain and suffering and economic loss would be paid on a proportional basis).

The payment of reasonable and necessary support costs as a lump sum allows people who are catastrophically injured to retain the flexibility to self-direct those funds to the support they, their family or a trustee determines is right for them.

2. You are fully at fault (i.e. responsible for your own injuries) or you cannot assert that another person was at fault:

You would not have any entitlements under the existing CTP scheme (as is the case now) but your reasonable and necessary support needs will be funded on an 'as you go' basis, from the new no-fault catastrophic CTP insurance scheme. You would not have any entitlement to lump sum compensation. You will not be eligible to claim for compensation for pain and suffering and economic loss.

The estimated cost of this scheme option is an additional \$101 for a family car each year.

One reason this cost is slightly lower than Option 2 is that there will need to be less people employed or engaged by Government to manage the scheme, as a result of the 48 people each year who would receive a lump sum. Following settlement of the claim, these people will manage their own care needs without their care being managed by the Insurance Commission.

Compared to Option 1, this option will increase administration costs as the no-fault catastrophic CTP insurance scheme will administer and manage reasonable and necessary support services for the rest of the lives of the 44 or more people injured in each year of the scheme's operation.

Option 3 (continued)

Example of scheme coverage

Two vehicles were travelling south on the freeway when **Vehicle 1** suddenly collided with the rear of **Vehicle 2**.

The **driver** of **Vehicle 1** was held fully at fault for the accident as a result of their careless driving.

- The **drivers** of both **Vehicle 1 and Vehicle 2** suffered catastrophic spinal injuries.
- The **front seat passenger** in **Vehicle 2** also suffered a catastrophic traumatic brain injury. This passenger was however considered 25% contributory negligent for their sustained injuries through their failure to wear a seatbelt at the time of the accident.
- No other passengers were travelling in **Vehicle 1**.

Entitlements under this scheme option

- 1) The at-fault **driver** of **Vehicle 1** would qualify for reasonable and necessary support **paid 'as you go'** from the no-fault catastrophic CTP insurance scheme. No compensation would be claimable from the existing CTP scheme for any other injury related losses sustained in the accident (e.g. no compensation for pain and suffering and economic loss).
- 2) The not at-fault **driver** of **Vehicle 2** would be able to claim for any injury related losses sustained in the accident, which would all be payable as a lump sum from the existing CTP Scheme (payments for reasonable and necessary support would be paid on an '**as you go**' basis until the lump sum settlement is made).
- 3) The **front seat passenger** in **Vehicle 2** would also be able to claim for any injury related losses sustained in the accident, which would be payable as a lump sum from the existing CTP scheme (payments for reasonable and necessary support would be paid on an '**as you go**' basis until the lump sum settlement is made).

While all reasonable and necessary support related costs would be paid in full, any other injury related compensation would be subject to the confirmed 25% contributory negligence (fault) deduction, for failing to wear a seatbelt (e.g. Compensation payments for pain and suffering and economic loss would be reduced).

Should the new scheme have exclusions?

All insurance policies include conditions and warranties and the CTP insurance policy is no different. Breaches of the conditions and warranties may impact your entitlements. The current CTP insurance policy contains warranties and conditions, such as:

- driving without a driver's licence or the right class of licence
- driving an unregistered/uninsured or unsafe vehicle
- driving a vehicle under the influence of alcohol
- allowing an unlicensed driver to drive your vehicle.

Should a person be entitled to receive reasonable and necessary support under the no-fault catastrophic CTP insurance scheme if they are responsible for catastrophically injuring themselves whilst driving in breach of a CTP policy warranty or condition?

If there are to be exclusions, should the conditions and warranties be expanded to include the following?

- being a driver or passenger in a stolen vehicle
- vehicle being used for other criminal activities
- driving to escape police pursuit
- driving under the influence of illicit drugs.

Example

A driver is convicted of driving under the influence of alcohol after having knocked a pedestrian over on a crosswalk and clipped a cyclist before crashing into a wall.

The pedestrian sustained a moderate injury and received \$150,000 in personal injury compensation under the existing CTP scheme.

The cyclist sustained relatively minor injuries and did not meet the threshold for pain and suffering under the existing CTP scheme although their reasonable medical and allied health costs were met by the Insurance Commission.

The driver was rendered a paraplegic and therefore qualified for reasonable and necessary support under the no-fault catastrophic CTP insurance scheme.

Should the driver having been convicted of driving under the influence of alcohol be eligible for reasonable and necessary support in the no-fault catastrophic CTP insurance scheme?

How to submit feedback

The Insurance Commission welcomes your feedback on the CTP Green Paper and the potential introduction of no-fault catastrophic CTP insurance. Submissions can be made from Wednesday 15 October 2014 to 5pm on Wednesday 24 December 2014 using any of the following methods:

- By Online Submission: www.icwa.wa.gov.au/ctpgreenpaper
- By e-mail to: CTPgreenpaper@icwa.wa.gov.au
- By post marked confidential to:
CTP Green Paper
The Insurance Commission of Western Australia
C/O Commission Secretary
GPO Box U1908
Perth WA 6842
- By telephone at 1800 632 242 (free call).

Feedback is welcomed on all aspects of the Green Paper, particularly in relation to the following question:

How can the State Government best ensure that all people catastrophically injured in motor vehicle accidents in WA are provided with reasonable and necessary support?

In answering this question, you may wish to indicate your support for one of the three Scheme Options outlined in the Green Paper:

- 1) **Scheme Option 1** – No change to the existing CTP scheme. Lump sum compensation is paid for care and support only if another driver caused the accident (i.e. was at fault).
- 2) **Scheme Option 2** – Introducing a no-fault catastrophic CTP insurance scheme to provide reasonable and necessary support on an ‘as you go basis’ to all people catastrophically injured in motor vehicle accidents, irrespective of fault, at an additional premium of \$109 for a family car each year.
- 3) **Scheme Option 3** – Introducing a no-fault catastrophic CTP insurance scheme to provide reasonable and necessary support on an ‘as you go’ basis for people that are not entitled to compensation under the existing scheme due to them being at fault or unable to assert fault against another driver at an additional premium of \$101 for a family car each year.

You may also wish to comment on whether a person should be entitled to receive full reasonable and necessary support entitlements under a no-fault catastrophic CTP insurance scheme if they are responsible for injuring themselves as a result of an illegal acts such as dangerous driving and driving under the influence of alcohol.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Submissions/comments on the Green Paper will be made public unless explicit requests for that information to be held confidential are received by the Insurance Commission.

This Green Paper is available upon request in alternative formats such as easy read, screen read, electronic format (disk or e-mailed), audio or Braille.

