



National Disability Services

WESTERN AUSTRALIA

National Insurance Injury Scheme

**National Disability Services (NDS)
Western Australia Submission:**

**Government of Western Australia Green Paper
*'Options to add No-Fault Catastrophic Injury Cover
to Western Australia's Compulsory Third Party
Insurance Scheme'***

December 2014

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1. Purpose

National Disability Services Western Australia (NDS WA) is providing a submission to the Government of Western Australia's Green Paper 'Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme' released in September 2014.¹

This submission provides an assessment of the options put forward in the Green Paper and a recommended way forward to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme.

2. Executive Summary

NDS WA supports the implementation of Option 2 of the Green Paper, a no-fault system for all people catastrophically injured in car accidents and calls for the scheme to be operational by 1 July 2015.

NDS WA has highlighted to the Government of Western Australia through the 2014-15 and 2015-16 Pre Budget Submissions that Western Australia continues to lag behind the rest of the nation in providing care and support to people who acquire their disability through catastrophic injury as a result of a motor vehicle accident.

The current third party system is confusing as well as unfair. It divides people into two camps – those at fault and those not at fault – and it deals with them very differently, even when they have exactly the same injuries. For those where they are 'at fault' (and this is not necessarily related to reckless driving) or where there is no one to blame – think of a kangaroo hitting a car – they are deemed 'uncompensable'. They will receive state medical care until they can be released from hospital, but then they will face the huge financial pressures of funding house modifications, extra rehab, personal care, disability equipment, modified vehicles or whatever else is needed on top of their usual living costs. The evidence is that they, and their families who have to give up their jobs to care for them, often have to re-mortgage or sell their homes in order to afford the \$4 million average cost.

For those where another driver is deemed to be 'at fault' they do not receive automatic compensation even in very clear cut cases, but must pursue that driver through the courts. This often means the individual with the disability suing their family or friend. These cases are also not guaranteed to be successful as there is no certainty of compensation. Typically this will take many many years.

¹ Government of Western Australia, Green Paper 'Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme', September 2014.

Even when there is a compensation payout the evidence shows that there is no accurate way of predicting someone's needs, or changing circumstances, over their lifetime, or indeed the length of their life. That means that most payouts are inadequate and the person ends up in severe financial difficulty.

We are delighted the Premier, the Hon Colin Barnett MLA has shown commendable leadership on this issue demonstrated by his public comments on 3 December 2014 at the NDS WA International Day for People with Disability Breakfast confirming a no fault insurance scheme is to be factored into the 2015-16 Budget process with a view to implementation. Alongside the Treasurer, Hon Dr Mike Nahan MLA indicating his willingness to pay extra for a no fault insurance scheme, these comments are most reassuring and welcome.

NDS WA believes it is time that the State fully embraced its obligation to fund a no-fault motor vehicle insurance scheme so that lifelong care and support can be provided for all people catastrophically injured in motor vehicle accidents in Western Australia.

A firm commitment to a timetable for the full implementation of a NIIS is required and is of the highest priority. Every week without a NIIS in Western Australia a further two individuals, their families, friends and community are adversely impacted. Despite challenging budget constraints facing the State Government, the implementation of no-fault insurance needs to be prioritised and fully funded in the State Budget 2015-16 to enable it to be operational by 1 July 2015.

To assist the Western Australian community in sending a loud and clear message of support for the introduction of NIIS, on 19 November 2014 NDS WA created a website to enable individual citizens to send a pre-made submission of support or lodge their own written submission. In a five week period, 600 pre-made submissions and 25 written submissions have been sent by individual Western Australians to the ICWA, the Treasurer and NDS WA. These have been attached to this NDS WA submission.

The Western Australian community has confirmed that they are ready to pay the additional registration impost on motor vehicles registrations to ensure that all people catastrophically injured in motor vehicle accidents in our State are provided with adequate coverage and support as is the case in most jurisdictions in Australia.

NDS WA urges the State Government to:

1. Introduce No Fault Insurance based on Option 2 of the Green Paper;

2. Commit to a timetable for the 1 July 2015 full implementation of NIIS;

3. Provide greater transparency regarding the derivation and assumptions underpinning the modelling and costing of Option 2, including a further independent review of the costings and fully engage with NDS WA, the disability sector and stakeholders in this process;

4. Consider the inclusion of concessional rates for people on low incomes, consistent with other government concessions for essential services;

5. Consider how potential future cost increases to administering the scheme will be managed. NDS WA is of the view that future increases in motor vehicle registrations to cover increased costs of the no fault scheme should only be limited to CPI adjustments as a maximum.

6. Separate and outsource the assessment of need and the individual and family case planning and management role to organisations that have the disability, health and advocacy expertise including the not for profit disability sector and Disability Services Commission;

7. Adopt the principles of the National Disability Insurance Scheme (NDIS) of choice and control for self-directed lifelong services and supports to meet the needs of people with disability;

8. Endorse that the ICWA role is as 'funder' only and determining who, when, where and why individuals have access to NIIS is the role of expert disability, health, advocacy and other related organisations;

9. Ensure that in relation to the claims management model; whether the proposed no fault insurance scheme will be part of the existing CTP Scheme or whether it will be a separate scheme to maximise reduced costs to motorists, avoid prescriptive financial reporting principles and ensure easier financial management and communication to stakeholders via expert disability, health and advocacy providers;

10. Ensure there are no exclusions for access to the proposed scheme. The integrity of a no fault model will be undermined if such exclusions are adopted. Excluding people from this scheme will not save money, but merely shift the cost elsewhere and potentially lead to a higher cost to the community;

11. Consider the degree of integration of the scheme across government and the community sector; the ways in which the scheme can leverage informal support from mainstream programs (such as health, education, transport etc) for scheme participants; and the role it plays in advancing the National Disability Strategy to promote equal citizenship;² This is important to ensure protection against cost shifting to the Scheme by mainstream programs;

12. Ensure that surplus revenue raised from a no fault scheme should be ring-fenced, protected and quarantined. It should not be returned to Government as a dividend. Government should not be seen to be profiteering from the scheme;

13. This revenue should play a role in influencing road safety campaigns in WA and in the long run will potentially have a significant impact on the new scheme's cost base and therefore its premiums; and

14. For individuals who have acquired a catastrophic injury prior to 1 July 2015, ensure they have appropriate access to the lifelong care and support they need in order to live the best life possible as citizens of the Western Australian community.

² Commonwealth of Australia, National Disability Strategy, Canberra 2011

The ICWA Green Paper

NDS WA supports the implementation of Option 2 of the Green Paper as a minimum insurance model for the State. NDS WA does not support Option 1 or 3.

NDS WA strongly recommends to the Government of Western Australia that Option 2 of the Green Paper be implemented and factored into the next State Budget 2015-16 so it can be operational by 1 July 2015.

A No Fault Insurance Scheme, as per Option 2 of the Green Paper, would ensure care and support for all, and not require people to go through the onerous legal system. It would mean regular timely support and care that enables people to be as independent as early as possible, would offer some security and take away the huge pressure created by years of legal action. It would mean regular timely support and care that enables people to be as independent as early as possible, would offer some security and take away the huge pressure created by years of legal action.

The Green Paper estimates the cost for Option 2 would be capped at \$109 which would be added to car registrations, or approximately \$2 per week. An independent assessment of the cost of this option commissioned by NDS WA and conducted by Chris Latham, Actuary, and former Director at PriceWaterhouse Coopers concluded that the costs articulated in the Green Paper are higher than would be expected for a model that largely emulates the NIIS model implemented in New South Wales. This includes a higher current scheme administration fee of 9.5% in comparison to other jurisdiction schemes at an average of 8%.

This is also supported by expert analysis and modelling conducted by The Royal Automobile Club of WA (RAC) who have indicated that their research strongly suggest that cost of Options presented in the Green Paper appear to be overstated by about 30% based on the equivalent NSW no fault insurance model. The RAC has highlighted that the Green Paper Options are based around an estimated \$4million lifetime cost of reasonable and necessary support for people catastrophically injured to fund and manage the services and support required over the course of their lives. This is based on 2014 data and appears to be arbitrary and not a representative cost for previous years – estimated average cost of \$2.1 million in 2012 and \$2 million in 2013. The RAC has estimated that the projected \$4 million claim cost for a WA scheme is 30% higher than the equivalent NSW no fault scheme and 20% higher than the scheme operating in South Australia.

NDS WA highlights that there is clearly a need to more fully understand the derivation and assumptions around the underpinning costings of respective options in the Green Paper. This is critical because without a better understanding of the modelling is difficult to analyse or understand whether the scheme is reasonable and likely to meet the needs of people whose lives have been changed forever by a catastrophic motor vehicle accident.

This will also assist to address any community concerns around the proposed cost of implementing the no fault insurance scheme in particular difficulties for people living in rural and remote or Aboriginal communities, families on low incomes and farmers with multiple vehicles. There needs to be strong consideration of the inclusion of concessional rates for people on low incomes, consistent with other government concessions for essential services.

NDS WA with a range of other disability, advocacy, health, academic, injury prevention and community stakeholders twice met with the ICWA and the willingness of ICWA to encourage community debate and meet with interested parties is acknowledged and appreciated.

At these meetings NDS WA indicated that to enable an independent and more thorough evaluation of the options put forward in the paper and a better understanding of the costs and methodology of Options 2 (\$109) and 3 (\$101) the results and report of the independent actuary review that underpins the Green Paper option costings should be made available to NDS WA. This should include a breakdown of the elements comprising costs derived in each of these proposals with respect to the percentage breakdown of costs including those allocated to legal, administration, care and support, modifications and travel.

This will enable a more complete analysis of the paper and provides transparency to the Western Australian community around the assumptions behind the options presented in the Green Paper.

Our assessment of Options 1 and 3 presented in the Green paper is that they are not acceptable:

- Option 1 in the Green Paper is a 'do nothing' approach that essentially will leave things as they are. The current third party system is confusing and unjust. It divides people into two camps – those at fault and those not at fault – and it deals with them very differently, even when they have exactly the same injuries. For those where they are 'at fault' (and this may not be necessarily related to reckless driving) or where there is no one to blame they are deemed 'uncompensable'. They will receive state medical care until they can be released from hospital, but then they will face the huge financial pressures of funding house modifications, extra rehabilitation, intensive personal care, disability equipment, modified vehicles or whatever else is needed on top of their usual living costs. The evidence is that they, or their families who give up their jobs to care for them, often have to re-mortgage or sell their homes in order to afford the \$4 million average cost.

For those where another driver is deemed to be 'at fault', they do not receive automatic compensation even in very clear cut cases, but must pursue that driver through the courts. This often means the individual with the disability

suing their family or friend. These cases are not guaranteed to be successful so there is no certainty of compensation. Typically this will take many years. Even when there is a compensation payout the evidence shows that there is no accurate way of predicting someone's needs, or changing circumstances, over their lifetime. That means that most payouts are inadequate and the person ends up in severe financial difficulty.

This means that not-at-fault catastrophic injuries will continue to receive lump sum benefits determined at common law.

This option is not acceptable.

- Option 3 is a halfway house between Options 1 and 2. No change will be made for catastrophic injuries that are not-at-fault, while a scheme will be established for at-fault injuries as proposed under Option 2. This Option introduces different approaches according to fault and therefore this option is not supported. The needs of both groups are the same. The Green Paper cost for Option 3 (at \$101) is marginally lower than Option 2 (estimated at \$109, the additional cost added to car registrations. This difference in cost between Option 2 and 3 is small but the implications are enormous.

A further significant consideration inflating the cost of the ICWA Green Paper Options is that the projected cost of a no fault insurance scheme should be discounted to allow for the existing systemic support provided to people catastrophically injured through no fault of their own. The ICWA Green Paper Options do not make allowance for existing systemic expenditure of this kind but assumes that no support is provided for such injury. This would also partially explain the lower projected scheme costs for a WA no fault insurance scheme by the Productivity Commission who recognised the current costs of injury to the community. This issue is also supported by work undertaken by the RAC).

NDS WA is also supportive of the RAC view that surplus revenue raised from a no fault scheme should be ring-fenced, protected and quarantined. It should not be returned to Government as a dividend. Government should not be seen to be profiteering from the scheme. Appropriately such funds might best be utilised to fund road safety initiatives, noting that Western Australia benchmarked amongst other Australian jurisdictions road safety performance has deteriorated markedly over recent years. Over the long term, investment in road safety may result in a reduction in motor vehicle catastrophic injury.

Summary

NDS WA extensive consultation with people with disability, the disability sector and the Western Australia community indicates that there is strong support for the immediate introduction of no fault insurance scheme in Western Australia.

This will go a long way to ensure that people like Roslind (Roz) Shaw who experienced a catastrophic injury 26 years ago and has been an active campaigner for the introduction of no fault insurance will receive fair and adequate coverage to ensure they have the life time support and care they need and that family and all those around them are not financially economically disadvantaged.

Roz was severely injured while driving to a birthday party in the country approximately two hours north east of Perth went on to a gravel shoulder and lost control of the car. The car overturned. The accident fractured Roz' spine and caused a severe brain injury. Roz was in a coma for six weeks before she was treated at Royal Perth Rehabilitation Hospital in Shenton Park, the treatment lasting nine months and then became an outpatient of the hospital and the head injury unit for over a year. During that time she had to relearn the most basic of functions; swallowing, talking, walking, eating, showering and toileting.

The accident also impacted profoundly on Roz's family. They sold the farm so that they could move to Perth to support Roz and Roz parents paid for all the additional physio and speech therapy needed beyond what was provided, therapy that gave her a better chance at being independent. Unable to return to hairdressing Roz parents found and funded a bridging course to University as well to get her on track with a different career.

Roz says she doesn't know where she would be without her parents who gave her everything. She definitely believes she would not have made as much progress as she has, and been able to work in the disability field as well her current position in mental health. She is now in a relationship and she and her partner are parents to an 16 month old boy. Roz parents recently moved back to the country after 25 years of being her main source of support.

NDS WA through our engagement with the WA community has the support of many people like Roz and her family and friends who have spoken out to bring on no fault insurance in WA, so that no one else has to be put in the untenable situation of being without compensation. An important consideration is that it is not just the accident victim who is affected, but all those around them as well. Lives are shattered and lost as a consequence of a random no fault motor vehicle catastrophic injury that could happen to anyone in the community at any time.

NDS WA is of the view that this is a once off opportunity to call for the best and fairest no fault insurance system in Western Australia. The Green Paper Option 2

provides a platform for the Government of Western Australia to implement and factor into the next State Budget 2015-16 a no fault insurance scheme so it can be operational by 1 July 2015. The Western Australian community is ready to pay the additional registration impost on motor vehicle registrations in our State to ensure they are all provided with adequate coverage and support as is the case in most jurisdictions in Australia. This is confirmed by overwhelming number of submissions posted to the ICWA. The Treasurer has received through the dedicated NDS WA no fault insurance website – 600 supportive individual submissions and 25 personal submissions.

NDS WA urge the Government of Western Australia to put in place a no-fault third-party insurance scheme by 1 July 2015 with a view to get the necessary no fault insurance legislation through Parliament as quickly as possible.

NDS WA also recommends to the Government of Western Australia to further explore options to make the no fault insurance model retrospective with a review of cases on an individual basis. This will enable the review of high profile cases such as Warrick Proudlove who suffered catastrophic injuries when the car he was a passenger in hit a horse on Albany Highway, near Mt Barker, in 2011. The absence of no-fault third party insurance in WA forced the Proudlove's to sue the driver of the car, in a bid to claim damages under WA's compulsory third-party insurance scheme. There have also been reports of negative ramifications for the Albany community with a divide over the Proudlove's needing to sue for compensation against Warrick's friend as the driver. This ripple effect adversely impacting families, friends and the community, taking its financial and emotional toll must and can be avoided. A judgment on 18 November 2014 against Warrick Proudlove meant not only did his family not win compensation for their son, but they were also left to pay the government insurer's massive legal bills.

On 9 December 2014, media reported the ICWA's position that a \$5 million offer was offered to the Proudlove's the day prior to proceeding to court. While no comment or judgement is made on the ICWA or Proudlove's position regarding any offer, the fact that this case had to go to court in the first place is at the core of the unfairness of the current system and why change is of the highest priority. The family's subsequent struggle to secure fair compensation for Warrick's tragic accident should not be repeated.

A further recommendation to Government is for consideration of whether the proposed no fault insurance scheme will be part of the existing CTP Scheme or whether it will be a separate scheme. Options 2 and 3 only refer to a scheme being established.

Expert advice received from Chris Latham, Actuary, PriceWaterhouse Coopers suggests that a separate scheme would be subject to higher levels of uncertainty than the alternative of being part of the larger CTP Scheme and would mean higher

overall administration expenses. However it would have the advantage that it can be structured so that GST is not payable on the premium required to fund the benefits, thereby reducing the costs to motorists.

A separate scheme could also be structured such that more prescriptive financial reporting principles that apply to insurance entities can be avoided. This makes for easier management and communication to stakeholders, in particular the Government. NSW and South Australia have established separate schemes.

3. Consultation and Engagement with the WA Community

NDS WA has consulted widely with NDS WA member organisations, advocacy groups, health and community services, individuals and families to inform this submission to the Green Paper. Many of these organisations have made individual submissions to the Government and their input has been also been considered when developing this submission. Importantly, in addition, expert technical comments have been provided by an independent actuary, Chris Latham, a former Partner and Director at PricewaterhouseCoopers.

Consultation was also undertaken with other peak bodies such as the RAC and the Australian Physiotherapy Association.

In addition, a No Fault Insurance Green Paper Coalition of Agencies was formed to discuss and examine the Green Paper options and shape the recommendations of this submission. Participation included:

- NDS WA;
- People With Disability WA;
- Headwest;
- UWA;
- Young People in Nursing Home Alliance;
- Brightwater;
- Developmental Disability Council WA;
- Advocacy South West;
- Spine and Limb Foundation;
- Aboriginal Health Council of WA;
- Injury Control Council of WA; and
- Road Trauma Support Service.

NDS WA also established a dedicated website to promote community comment about the ICWA Green Paper and encourage interested parties to put forward submissions found at www.submit.nds.org.au/

The website provided a direct link to the ICWA Green Paper and outlined the case for the implementation of a no fault insurance scheme in Western Australia as of 1 July 2015.

Information was also provided on the direct experiences of families and people catastrophically injured in motor vehicle accidents and the unacceptably hard

circumstances they have faced as a result of the lack of no fault insurance coverage in Western Australia. These were their stories and experiences.

People visiting the website were invited to write a submission to the inquiry by filling out a form that indicated their support for the introduction of no fault insurance in WA so that West Australians get the same level of compensation, care and support as in other states, and lessen the financial, physical and emotional suffering of those who are catastrophically injured on our roads, as well as their families.

The pre written submission indicated that Option 1 and Option 3 are unacceptable as they maintain the serious injustice that currently exists and that Option 2 is the fairest of the Options presented. It also urged the Treasurer and State Government to agree to No Fault insurance and commit to a speedy timeline for its introduction.

Alternatively visitors to the website were encouraged to write their own submission to the inquiry.

All submissions were sent to the inquiry and to Hon. Dr Mike Nahan MLA, Treasurer; Minister for Energy; Citizenship and Multicultural Interests.

In total, 625 individual submissions were posted to the ICWA inquiry through the NDS WA website, 600 pre-made submissions and 25 written submissions.

4. Background

In August 2010 the Productivity Commission inquiry into a long-term disability care and support scheme proposed a National Injury Insurance Scheme (NIIS) to provide support to people who acquire their disability through 'catastrophic' injury. It would be a 'cause based' insurance scheme available to all Australians with a new catastrophic injury, usually severe traumatic brain injury, spinal cord injury, severe burns or multiple amputations.³

The NIIS is intended to be a complement to the National Disability Insurance Scheme (NDIS). The Commission proposed that the first stage of this scheme will involve expanding compulsory third party car insurance, beginning with long-term disability (catastrophic injuries) sustained through motor vehicle accidents on a no-fault basis. Ultimately, the scheme will cover all causes of catastrophic injury including those related to medical treatments, criminal injuries and general accidents in the home or community, such as severe brain injury, spinal cord injury, severe burns and multiple amputations and provide lifetime support to people who suffer such an injury.

The Productivity Commission recommended that by 2013 each State and Territories in Australia should implement their own model of a National Injury Insurance Scheme, which would cover the lifetime care and support needs of people who get a catastrophic injury from an accident.

Western Australia and the NIIS

To date Western Australia is yet to approve the implementation of our model which is called the 'No Fault Insurance Scheme'

Under Western Australia's current third party motor vehicle insurance scheme, two people may suffer identical injuries and lifelong impairment, but one will receive no compensation because there is no driver 'at fault' who can be sued. Even those who can mount a case face years of legal action and uncertainty. Many other forms of catastrophic injury are not covered by any form of insurance and no compensation is available to those who suffer those injuries.

The Government of Western Australia has indicated its support for a NIIS and its gradual introduction beginning with long-term disability sustained through motor vehicle accidents. The first stage of such a scheme would be likely to involve expanding compulsory third party car insurance.

In considering its approach to a NIIS, the State Government has indicated an intention to balance any expanded level of cover with an affordable cost for households. The Green Paper provides some clarification on the cost of the scheme.

³ The Productivity Commission, Productivity Commission Inquiry Report, Disability Care and Support, July 2010.

NDS WA notes that the Intergovernmental Agreement for the NDIS launch committed to minimum benchmarks to provide no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents prior to the commencement of the NDIS launch:

“If a host jurisdiction is unable to implement benchmarks prior to or during the launch that host jurisdiction will be responsible for 100 per cent of the cost of participants in the NDIS who are in the NDIS because they are not covered by an existing or new injury insurance scheme that meets the minimum motor vehicle benchmarks.”⁴

The NDS WA 2015-16 Pre-Budget Submission articulated that NDS WA was extremely disappointed at the failure of the State Government to provide for the establishment of a no-fault motor vehicle accident insurance scheme as part of the State Budget 2014-15 and to correct a long-term injustice.

Western Australia continues to lag behind the rest of Australia in providing this fundamental protection to its citizens. This has now been on the table for years and the Government has had ample time to work through all the issues.

NDS WA believes it is time that the State fully embraced its obligation to fund a no-fault motor vehicle insurance scheme so that lifelong care and support can be provided for all people catastrophically injured in motor vehicle accidents in Western Australia.

Despite challenging budget constraints facing the State Government, no-fault insurance needs to be prioritised and fully funded in the State Budget 2015-16. Every day it is delayed means more people and families will be placed in unacceptably hard circumstances.

Until Western Australia commits fully to a no-fault motor vehicle accident insurance scheme Western Australia and Queensland will stand alone as the only jurisdictions still to take on this challenge. New South Wales, Victoria and Tasmania have had no-fault insurance for many years, with South Australia and the Australian Capital Territory recently coming on board.

This is a serious injustice that must be corrected, and it is important that the introduction of no-fault motor vehicle insurance is just a first step towards full implementation of all elements of a NIIS so that victims of all forms of catastrophic

⁴ DisabilityCare Australia, Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch. Available at http://www.disabilitycareaustralia.gov.au/sites/default/files/Intergovernmental_Agreement_for_the_National_Disability_Insurance_Scheme_Launch-signed.pdf. The agreed minimum benchmarks are shown at Appendix 1 of this paper.

injury receive the support they require. We therefore urge the Government make this a top funding priority.

NDS WA recommends that the State Government commits to fully funding a no-fault motor vehicle accident insurance scheme and provides a timetable for full implementation of the scheme in the State Budget 2015-16. In addition, the Government should commit in-principle to ultimately expanding the scheme to cover all causes of catastrophic injuries, including those related to medical treatment, criminal injury and general accidents occurring in the community or at home.

5. The ICWA Green Paper

The Western Australian Government recently released Green Paper discusses options for no-fault cover for those catastrophically injured in motor vehicle accidents. This submission provides comments on the proposals.

NDS WA assess that the Green Paper gives the context of the proposals, which can be summarized as follows:

- The current CTP Scheme provides cover for all injuries on an at-fault basis only i.e. there must be somebody to sue at common law;
- Schemes in most other jurisdictions now provide cover for those catastrophically injured on a no-fault basis i.e. irrespective of fault. Of all the States and Territories only Western Australia and Queensland do not provide this cover;
- Western Australia is now considering options to introduce no-fault cover for those catastrophically injured.

The Paper proposes 3 options, namely:

1. Leaves things as they are;
2. Introduce a no-fault scheme for all people catastrophically injured; or
3. Introduce a no-fault scheme only for those not already covered by the current CTP Scheme.

6. Technical Assessment of the ICWA Green Paper

NDS WA commissioned Chris Latham, Actuary, and former Director at PriceWaterhouse Coopers to provide technical advice on the ICWA Green Paper and more importantly implementation options. NDS WA supports the findings of this analysis presented below. This submission provides comments under the following headings:

- The National Injury Insurance Scheme (NIIS).
- The catastrophically injured group.
- The form of the proposed cover.
- A separate scheme?
- The cost of the scheme.
- In an ideal world – the extension of no faults benefits.

6.1 The NIIS

The impetus to provide no-fault cover for those catastrophically injured derives from the previous Federal Government's work on the National Disability Insurance Scheme (NDIS). As well as addressing care and support for severely disabled persons the report by the Productivity Commission considered those injured in accidents.

Such accidents can occur in all forms of human activity i.e. workplace, motor vehicle, sporting, doing household jobs, shopping etc etc. Of these, workplace accidents are already covered by the various workers' compensation schemes. The next easiest group to address are those injured in motor vehicle accidents, as these are covered, to a greater or lesser extent, by CTP schemes and the like. The other sources of accident are harder to address.

The Productivity Commission proposed that, in due course, a National Injury Insurance Scheme (NIIS) be established which would provide care and support for all those catastrophically injured in accidents on a no-fault basis. In the meantime steps would be taken to extend the no-fault cover to motor vehicle accidents.

Some States and Territories were already providing this cover, and others have subsequently responded to the Government's encouragement.

6.2 The Catastrophically Injured Group

The catastrophically injured group comprises those with severe spinal injuries, severe brain injuries, and those who have suffered multiple amputations or severe burns.

For motor vehicle accidents this might comprise around 400 people a year Australia-wide. They would represent less than 0.5% of all persons injured.

A high proportion (around 40%) of these are aged less than 25 at the time of injury. While they are severely injured experience shows that quite often life expectancy is not significantly less than unimpaired lives. This means that care and support can be needed for many years into the future.

The catastrophically injured group is therefore a small fraction of all injured persons, but their costs of support are very large. The average cost can easily be over \$3 million.

6.3 The Form of the Proposed Cover

Option 1 in the Green Paper is to leave things as they are. This means that not-at-fault catastrophic injuries will continue to receive lump sum benefits determined at common law. The benefits will comprise amounts in respect of past and future economics loss, care and support together with a further amount for general damages (sometimes called non-economic loss).

Under **Option 2** a scheme will be established to provide all care and support services for both not-at-fault and at-fault catastrophic injuries. Not-at-fault injuries will continue to receive lump sums for economic loss and general damages from the existing CTP Scheme.

This is same approach as was introduced in NSW in 2006, and South Australia the ACT in 2014.

As well as the extension of cover to at-fault injuries the important difference is that the care and support services will be paid as and when the services are provided i.e. not as a single lump sum. In my view this is highly desirable.

When future amounts are converted to a single lump sum a myriad of assumptions are needed, either explicitly or implicitly. These include future life expectancy, numbers of hours of future attendant care, future inflation in carers' wages, medical, hospital costs etc. And then a discount rate must be chosen to apply to these future unknown costs.

The end result is that the income from a single lump can never properly match the future needs of the catastrophically injured: - it will either be too little, or too much. All of the uncertainty about future costs is borne by the injured person.

It is preferable, and more appropriate, for the scheme providing the benefits to assume responsibility for the future uncertainty, not the injured person.

The degree of uncertainty is most apparent in the costs of attendant care services, which represents around 70% of the total cost. The hourly rates for attendant carers will come under increasing supply and demand pressure as the NDIS matures.

Furthermore, and unfortunately, past experience has shown that some of those receiving large lump sums are at risk of spending it unwisely, either because they do not appreciate the period of time that it is intended to cover, or because it is spent on things that it was not meant to provide. The lump sum is then exhausted too soon and the injured person must rely on other sources e.g. disability pensions, family.

Option 3 can be thought of a halfway house between Options 1 and 2. No change will be made for catastrophic injuries that are not-at-fault, while a scheme will be established for at-fault injuries as proposed under Option 2.

This Option introduces different approaches according to fault. The needs of both groups are the same.

This option disadvantages the not-at-fault group because they are not protected against the uncertainty associated with the lump sums, discussed above. While it there may be a psychological attraction to a large lump sum, it is generally not in the injured person's interests.

NDS WA is of the view that there should be no reason why the two groups of catastrophically injured persons should be treated differently and hence this option is not supported.

6.3 The Case for a Separate Scheme

While Options 2 and 3 refer to a scheme being established, it is not clear whether this will be part of the existing CTP Scheme or whether it will be a separate scheme.

A separate scheme would start off with small numbers of participants. In the first year there would be around 90 (Option 2) or 40 (Option 3). These numbers would grow over time as the scheme matures. Ultimately the number of participants would reach around 2,700 (Option 2) or 1,200 (Option 3).

The liabilities of the scheme would have a very long duration, averaging some 20-25 years. This compares with the current CTP Scheme where the average duration would be around 3-5 years.

The long-term nature of the scheme would have consequences for injury management and for the financial management, including the investment policy to be adopted by the scheme.

Chris Latham has indicated that in his view such long-term schemes are generally not attractive to private sector insurers because of the capital needed to support the

liabilities. Other, similar schemes in Australia are all managed through a Government-backed agency.

A separate scheme would be subject to higher levels of uncertainty than the alternative of being part of the larger CTP Scheme and would mean higher overall administration expenses. However it would have the advantage that it can be structured so that GST is not payable on the premium required to fund the benefits, thereby reducing the costs to motorists.

A separate scheme could also be structured such that more prescriptive financial reporting principles that apply to insurance entities can be avoided. This makes for easier management and communication to stakeholders, in particular the Government.

NSW and South Australia have established separate schemes. At this stage the WA Government has not decided which approach might be taken.

6.4 The Costs of the Scheme

The premiums to be paid by motorists to fund the proposed scheme should be sufficient to cover:

- i. The care and support payments for injured persons;
- ii. The expenses of managing and administering the scheme; and
- iii. Any Government-imposed fees/levies.

At the time of preparing this paper the breakdown of the premiums into these components was not available, but may become so at a later date. However the premiums do include GST of 10% which (as noted in section 9 above). This cost may be possible to avoid if a separate scheme is established.

Ignoring Government levies/taxes the care and support payments will represent by far the majority of the premium. There are many assumptions needed to estimate these payments in the long-term future, including:

- The numbers of catastrophic injuries. As noted above the numbers are small, and could vary significantly from one year to another. An average number of 90 per year could easily vary from 70 to 110;
- The ages of the injured persons. The younger the age the greater the cost;
- The severity of the injuries;
- The hourly rates of attendant carers;
- Future inflationary increases of hospital, medical and rehabilitation treatments; and

- The cost of home and car modifications.

It is clear that it is a challenging exercise to estimate these costs over the long-term future.

The Green Paper advises additional premiums (i.e. additional to the current CTP premium) of \$109 per family car for Option 2 and \$101 per family car for Option 3. Of these amounts administration expenses for a separate scheme are likely to be around \$8-\$10 per family car.

These amounts have been estimated by independent actuaries, although the advice has not been made public. Different views can easily be taken on the most appropriate assumptions and resulting in different costing outcomes.

NDS WA is of the view it is important for the advice to have been formally reviewed by another set of actuaries who consider that the advice and underlying assumptions are at least 'reasonable'. The Green Paper does not refer to such a review.

Initial scrutiny shows the costs of Options 2 and 3 are high in comparison to South Australia and Tasmania. For example the Green paper estimates the administrative costs in WA at 9.5 per cent but in those States they are only 8 per cent.

There is clearly a need to more fully understand the derivation and assumptions around the underpinning costings of respective options in the Green Paper.

NDS WA has formally met with the ICWA and indicated that that to enable an independent and more thorough evaluation of the options put forward in the paper and a better understanding of the costs and methodology of Options 2 (\$109) and 3 (\$101) the results and report of the independent actuary review that underpins the Green Paper option costings should be made available to NDS WA. This should include a breakdown of the elements comprising costs derived in each of these proposals with respect to the percentage breakdown of costs including those allocated to legal, administration, care and support, modifications and travel.

This will enable a more complete analysis of the paper and provides transparency to the Western Australian community around the assumptions behind the options presented in the Green Paper.

Chris Latham has also indicated as part of his technical analysis of the assumed frequency of catastrophic injuries, the estimated 92 catastrophic injuries per year represent a frequency of 44 per million vehicles. The corresponding frequencies for NSW and South Australia are around 30 per million vehicles i.e. some 30% less. This means either that the definition of catastrophic injury is weaker than in other jurisdictions; or WA experience is considerably heavier than other jurisdictions.

The first explanation is unlikely to be deliberate, in that the definition would be intended to satisfy the same NIS requirements. More details is required around the WA experience.

Consultation with RAC and Assessment of Option Costs

NDS WA's consultation with the RAC has highlighted the following important issues which are supported:

- There expert analysis and modelling concludes that the cost of Options presented in the Green Paper appear to be overstated by about 30% based on the equivalent NSW no fault insurance model. The RAC has highlighted that the Green Paper Options are based around an estimated \$4million lifetime cost of reasonable and necessary support for people catastrophically injured to fund and manage the services and support required over the course of their lives. This is based on 2014 data and appears to be arbitrary and not a representative cost for previous years – estimated average cost of \$2.1 million in 2012 and \$2 million in 2013. The RAC has estimated that the projected \$4 million claim cost for a WA scheme is 30% higher than the equivalent NSW no fault scheme and 20% higher than the scheme operating in South Australia; and
- The projected cost of a no fault insurance scheme should be discounted to allow for the existing systemic support provided to people catastrophically injured through no fault of their own. The ICWA Green Paper Options do not make allowance for existing systemic expenditure of this kind but assumes that no support is provided for such injury. This would also partially explain the lower projected scheme costs for a WA no fault insurance scheme by the Productivity Commission who recognised the current costs of injury to the community.

NDS WA highlights that there is clearly a need to more fully understand the derivation and assumptions around the underpinning costings of respective options in the Green Paper.

With respect to the two different options the additional costs are quite similar. Relative to Option 3 the cost of Option 2 benefits will be:

- i. Lower because legal expenses in the CTP environment will be removed; and
- ii. Higher because the lump sum benefits under Option 3 are estimated using an artificially high discount rate, leading to lower lump sums.

The fact that Option 3 is less than Option 2 means that (ii) above is greater than (i). Expressed differently it means that the current CTP lump sum benefits are less than the "full value" of the care and support benefits provided under Option 2.

NDS WA welcomes an independent evaluation and analysis of the full costings of options presented in the Green Paper and has requested this from ICWA.

6.5 Surplus Revenue from a WA No Fault Scheme

A final consideration for Government is to ensure that surplus revenue raised from a no fault scheme should be ring-fenced, protected and quarantined. It should not be returned to Government as a dividend. Government should not be seen to be profiteering from the scheme. Appropriately such funds might best be utilised to fund road safety initiatives, noting that Western Australia road safety record benchmarked amongst other Australian jurisdictions has deteriorated markedly over recent years. Over the long term, investment in road safety may result in a reduction in motor vehicle catastrophic injury. It is important that surplus scheme revenue should play a role in influencing road safety campaigns in WA which in the long run significant impact on the new scheme's cost base and therefore its premiums.

Thought also needs to be given to how potential future cost increases to administrating the scheme will be managed. NDS WA is of the view that future increases in motor vehicle registrations to cover increased costs of the no fault scheme should only be limited to CPI adjustments as a maximum.

6.6 The Extension of No Faults Benefits

The extension of no-fault benefits to catastrophic injuries from motor vehicle accidents is but one step in a longer journey as recommended by the Productivity Commission report. From options in the Green Paper, Options 2 is the preferred option as potentially if implemented effectively and expediently provides appropriate and timely support to all individuals who suffer a catastrophic injury in a motor vehicle accident. However, NDS WA notes it is limited to catastrophic injury and not extended to all injuries received in motor vehicle accidents as is the case in Victoria.

The rest of the journey would proceed as follows:

1. No-fault benefits for care and support for catastrophic injuries will extend to accidents from all causes;
2. It will be acknowledged that benefits for care and support for non-catastrophic injuries should also be paid not as lump sums but in income form as they are incurred;
3. More concentrated efforts will be made to help injured people to return to work or return to active community life; and

4. All jurisdictions in Australia will have the same benefit designs and approaches aimed at achieving these aims.

7 Contacts

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APPENDIX 1: Agreed minimum benchmarks for motor vehicle accidents

Who is covered by a NIIS for motor vehicle accidents?

At a minimum, jurisdictions should have eligibility rules which include people who suffer the following catastrophic traumatic injuries in motor vehicle accidents:

1. Spinal cord injury — based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
2. Traumatic brain injury — based on evidence of a significant brain injury which results 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.⁵
3. Multiple amputations of the upper and/or lower extremities or single amputations involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or “short” transfemoral amputation involving the loss of 65% or more of the length of the femur.
4. Burns — full thickness burns greater than 40 per cent of the total body surface area (or greater than 30 per cent in children under 16 years) or full thickness burns to the 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).
5. Permanent traumatic blindness, based on the legal definition of blindness.

What is the scope of motor vehicle accidents for the first stage of the NIIS?

Each jurisdiction’s NIIS should cover injuries which arise from accidents which:

- involve at least one registerable vehicle.
- 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.

⁵ 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.

- agreed minimum benchmarks for motor vehicle accidents 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.

Jurisdictions may provide a broader scope if they desire.

For avoidance of doubt the NIIS need not as part of the first stage cover:

- Unregistered vehicles on private property such as farm vehicles.
- Unregisterable vehicles such as motor cross bikes, quad bikes, trikes, off-road or racing vehicles.
- Bicycles.
- Other modes of transport (trains, trams, waterborne craft).
- Injuries arising from organised motor sports.
- Injuries arising from acts of terrorism involving the use of a motor vehicle.

Which jurisdiction's NIIS should provide cover?

- At a minimum each jurisdiction's NIIS will cover people who are catastrophically injured in motor vehicle accidents which occur in that jurisdiction. Jurisdictions may, if they wish, provide broader coverage extending beyond their jurisdiction.
- State and Territory NIIS schemes will establish arrangements to purchase care and support services from each other when a scheme participant resides in a different jurisdiction to that which assumes funding responsibility.
- A review will be undertaken every 5 years to assess the extent to which State and Territory NIIS schemes face differential (net) financial burdens in relation to liability for services provided to non-residents.
- In all cases the jurisdiction assuming financial responsibility should retain the right to seek recovery from the CTP insurer of an interstate registered vehicle.

Should there be any exclusions?

The minimum benchmark is that exclusions be limited to persons who:

- have received a common law compensation payment in respect of their care and support needs resulting from the motor vehicle accident;
- have an existing catastrophic injury; or

- are already a participant of the NDIS in respect of the costs of care and support already being provided by the NDIS.

What are the entitlements?

A minimum level of entitlement in each jurisdiction's NIIS will include reasonable and necessary needs for eligible persons for the following services to the extent that they arise from the motor vehicle accident:

- medical treatment (including pharmaceutical)
- dental treatment
- rehabilitation
- ambulance transportation
- respite care
- attendant care services
- domestic assistance
- aids and appliances
- artificial members, eyes and teeth
- education and vocational training
- home and transport modification.

An individual jurisdiction's NIIS may provide a broader range of services, and may also provide capacity for self-managed funding by participants where appropriate.

Entitlements will only be provided within the Commonwealth of Australia.

Reasonable and necessary supports:

- (a) are designed to support the individual to achieve their goals and maximise their independence;
- (b) support the individual's capacity to undertake activities of daily living to enable them to participate in the community and/or employment;
- (c) are effective, and evidence informed;
- (d) are value for money;
- (e) reflect community expectations, including what is realistic to expect from the individual, families and carers; and
- (f) are best provided through a NIIS and are not more appropriately provided through other systems of service delivery and support, including services that

are offered by mainstream agencies as a part of its universal service obligation to all citizens.

In determining what is reasonable and necessary the following factors should be considered:

1. Benefit to the participant — to progress or maintain the participant's recovery, management and participation.
2. Appropriateness — services provided are consistent with the participant's current medical or rehabilitation needs, are consistent with current clinical practices and are congruent with other services provided to the participant.
3. Appropriateness of the provider — service providers are qualified, readily accessible and appropriate given the participant's age, ethnicity and other characteristics.
4. Cost effectiveness of the services — the benefits and expected outcomes outweigh the costs, the cost is comparable to those of other providers, no other services would achieve comparable outcomes and alternatives to purchasing equipment or undertaking modifications have been considered.
5. That the services provided relate to needs arising from the injury sustained in the motor vehicle accident.

Consistent reporting standards

That each Scheme agree to collect information in regard to the following items and report under a consistent definitional framework:

1. The number of entrants to each scheme and their characteristics (age/gender/location of service provision — i.e. metro/regional/rural);
2. The classification of injuries of entrants — Spinal injuries (including level of lesion), head injuries (moderate + severe), other severe injuries;
3. The average cost of support of scheme entrants (overall and by the agreed injury classification);
4. The average cost of care in each jurisdiction (to understand variations in the cost of attendant care and monitor trends); and
5. The amount of care per claim overall and by injury classification.

APPENDIX 2: Pre made No Fault Insurance Submissions

Attached as separate electronic files.