

QLD CTP INDUSTRY STAKEHOLDERS SUBMISSION

Submission to the Motor Accident Insurance
Commission re: current factors and trends
influencing the cost of insurance under the
statutory insurance scheme

[September 2019]

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the Queensland Motor Accident Insurance Commission's ongoing series of consultations with stakeholders on current factors and trends influencing the cost of Compulsory Third Party ("CTP") insurance.
2. We believe the scheme generally continues to operate in line with its stated principles of affordability, efficiency, fairness and flexibility.
3. Scheme delivery results for underwriting year 2018 show that claimants are receiving an increasing portion of premiums (74%) compared to the last 5 years. This is a positive trend.
4. The performance of the scheme is attributable to:
 - a. Design: the scheme is a 'short-tail' scheme with the primary basis for recovery being common law principles;
 - b. Disputation rates remain low. The vast majority of matters resolve through legislatively mandated alternative dispute resolution (ADR). Litigated matters make up a mere fraction of 1 per cent of claims, which are adjudicated to judgement in court. This generally reflects the sensible approach of key stakeholders;
 - c. The 'long-tail' component of the scheme, the National Injury Insurance Scheme Queensland (NIISQ), is confined to those most severely injured and needing an expensive no-fault safety net; and
 - d. Continued high-quality regulatory oversight and stakeholder communication by MAIC.
5. The ALA confines its comments to the following factors and trends impacting scheme premiums:
 - a. Competition and insurer profits
 - b. Costs thresholds
 - c. Risk ratings
 - d. Legal costs

We specifically note that the claims farming issue is the subject of a separate process.

Competition and insurer profits

6. The ALA has on previous occasions made submissions in this series of consultations concerning substantial insurer profits and the lack of competition.
7. We understand the scheme was designed to deliver profits in the order of 8%. Scheme performance results presented by Taylor Fry of 27 May 2019 suggest that, for the first time, insurer profits for the 2018 underwriting year, are estimated at 9%. This is from the inordinate highs of 24% - 31% in the previous 5 years, which were the subject of comment in the 2016 review of the scheme.

Costs thresholds

8. In our submission of November 2018, the ALA outlined concerns with the annual increase in the costs threshold which governs the minimum settlement amount before which an insurer is required to contribute to some of the claimant's legal costs. A copy of our November 2018 submission is attached.
9. The intent of the costs threshold was to limit payment of the claimant's legal costs to claims which are not minor. In other words, a portion of the claimant's legal costs are only payable by an insurer if a claim is resolved over the costs threshold. This costs threshold is thus intended to allow recovery of some of the claimant's legal costs only if the claim was not a minor claim.
10. For injuries occurring after 1 July 2018 the cost threshold is \$75,750.00. For a personal injury claim to resolve above \$75,750.00 requires substantial injuries and impacts. It is simply not correct to categorise claims settling at this amount, or above, as minor claims.
11. To continue to increase this cost threshold is unfair. Claimants must make statutory refunds, being payments to refund Medicare, Centrelink and potentially workers' compensation. Many claimants must also refund private health benefits. Finally, claimants have to pay solicitors' costs, which are already strictly regulated under the *Legal Profession Act 2007*. There should be a fair entitlement to recover some of their

legal costs of having to make a claim for an injury which cannot be considered insubstantial if it settles for \$75,750.00.

12. MAIC should recommend implementing a stay of ongoing increases in the cost threshold.

Risk ratings

13. We again highlight comments made in our November 2018 submission in relation to risk ratings, which would offer greater flexibility to insurers to offer appropriate premiums.
14. The ALA would encourage MAIC further investigating, via broad stakeholder engagement, the risks, costs and benefits of any potential change.
15. Further, MAIC should undertake research of similar schemes in other jurisdictions to determine whether some risk rating in a CTP scheme does indeed provide benefits such as competition and reduced premium costs.

Legal costs

16. Legal costs in Queensland are highly regulated under the Legal Profession Act 2007. There are numerous avenues for claimants to negotiate legal costs, review legal costs and challenge them when necessary.
17. Lawyers must provide substantial up-front disclosures and estimates to claimants about legal costs. Moreover, the MAI Act mandates further disclosure of various steps in the claims process.
18. Further, there are also substantial ethical consequences for lawyers who charge excessive legal costs.
19. Therefore, no further regulation of legal costs is warranted or necessary.

Recommendations

- i. That MAIC continue to monitor insurer profits so as to retain them at the level designed by the scheme;
 - ii. That MAIC explore implementing a stay of any ongoing increases in the costs threshold;
 - iii. That MAIC further investigate, via broad stakeholder engagement, the risks, costs and benefits of any potential change to risk ratings.; and
 - iv. That MAIC undertake research on the risk ratings regime in other jurisdictions.
20. Should you have any questions about any of the issues identified above, please do not hesitate to make contact.

Yours sincerely,



Greg Spinda
Queensland President
Australian Lawyers Alliance