

Current factors and trends influencing the cost of insurance under Queensland's CTP insurance scheme

Submission to the Motor Accident Insurance
Commission, Queensland

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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 people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the Motor Accident Insurance Commission's (MAIC) ongoing series of consultations with stakeholders on current factors and trends influencing the cost of insurance under Queensland's Compulsory Third Party scheme ('CTP scheme').
2. Over the years, the ALA has made numerous submissions in these ongoing consultations. Most recently, the ALA made a submission to MAIC on 27 November 2023,² and we note that this submission largely replicates our position made at the time of that submission. Many of the factors we have identified historically are still in progress and developing. Those factors include:
 - a. The macroeconomic climate of higher inflation and interest rates;
 - b. RACQ lobbying, first for fundamental CTP scheme design change, and later for a premium equalisation model;
 - c. A comprehensive review of the CTP scheme occurring in early 2023. The ALA calls for the conclusions of that review to be shared with stakeholders. The ALA understands the premium equalisation model was not supported by any of the stakeholders who made submissions, other than RACQ;
 - d. RACQ deciding to exit the CTP scheme; and
 - e. Following RACQ's exit, there is the possibility that Suncorp have reversed their earlier view on a premium equalisation model ('PEM'). This is increasingly likely since Suncorp has indicated that they have/are engaging with stakeholders with respect to progressing Suncorp's advocacy in relation to the development of a PEM.

² Australian Lawyers Alliance, Submission to the Motor Accident Insurance Commission, Queensland, *Current factors and trends influencing the cost of insurance under Queensland's CTP insurance scheme* (27 November 2023) <www.lawyersalliance.com.au/documents/item/2611>.

The fundamentals of Queensland's CTP scheme

3. The ALA's view is that RACQ exiting the CTP scheme will not affect the fundamentals of the CTP scheme. Queensland's CTP scheme will remain efficient, affordable and well-run, including with regard to the following:
 - a. Claims farming activity has been significantly disrupted, through effective legislation and investigation by MAIC;
 - b. CTP premium affordability is 21.1% when compared to Queensland average weekly wages;³
 - c. Claimant benefits are 73% versus delivery costs of 27%. With claimant benefits being 2% higher in the financial year to 2023 than the five-year average;⁴
 - d. Claim frequency has reduced and is below forecast;⁵
 - e. Average claim size has only marginally increased, with no risk to the CTP scheme; and
 - f. The Queensland CTP scheme continues to retain full access to common law rights, supplemented with the National Injury Insurance Scheme.
4. With RACQ's portfolio now being shared – albeit in proportions which are yet to be seen – between the remaining CTP insurers, and based on the ALA's understanding, such reallocation ought not cause a material deterioration of the remaining CTP insurers' portfolios. There may well be an adjustment to profit margins, either upwards or downwards; however, realistically it is too early to tell.
5. The suggestion that RACQ's exit will cause a material negative impact on the profitability of any of the remaining three CTP insurers at such early stage is simply conjecture. The ALA has not been provided any data to support that contention.

³ Motor Accident Insurance Commission, *Annual CTP scheme insights: 2022-23* (Web Page, 15 August 2023) <<https://maic.qld.gov.au/publications/annual-ctp-scheme-insights-2022-23>>.

⁴ Ibid.

⁵ Peter Mulquiney, Danielle Ling and Soroush Amirabadi (Taylor Fry) *Queensland CTP Market Briefing: Review of the risk premium for the 2023Q2 underwriting quarter* (Report, 13 December 2022) <<https://maic.qld.gov.au/wp-content/uploads/2023/02/2023Q2-Queensland-CTP-Market-Briefing-Review-of-the-Components-of-Risk-Premium.pdf>>.

6. Unfortunately, claims durations have seen a sustained increase in recent years. The ALA has been pleased with the engagement between MAIC, the CTP insurers and the legal profession in the development of the recent *Claimant Experience Guidelines*. We look forward to continuing to work with MAIC and the CTP insurers to make improvements to claims efficiency. The *Claimant Experience Guidelines* have only recently been published and we are yet to see the impact on claims management. Although, the ALA remains positive that, with genuine implementation by both CTP insurers and the legal profession, the *Claimant Experience Guidelines* will improve claim durations and reduce claim costs for insurers.
7. The ALA considers the dominant focus, for all stakeholders, needs to be on claims management practices. This will continue to ensure Queensland's CTP scheme provides a good claimant experience, ongoing high levels of claimant benefits, whilst retaining common law rights and ensuring scheme sustainability.
8. However, the ALA also appreciates that there have been significant macroeconomic factors at play which have and continue to impact individual insurers. These factors ought to be considered by the scheme actuary, Taylor Fry, in the setting of the CTP premium. It is outside the scope of the ALA's expertise to comment further.
9. The ALA also assumes that the CTP scheme actuaries, Taylor Fry, will factor into its risk premium scenarios the potential upwards or downwards pressure that the CTP insurer may experience with the reallocation of RACQ's portfolio.
10. The ALA is pleased to see that the last few years has seen an adjustment in CTP insurer profit margins from the super-profits which lasted many years. Whilst the CTP insurers may raise concern about their reduced margins, it must be borne in mind that this is a compulsory insurance scheme intended to operate at an 8% margin. The actual margins for a five-year average have been 9% and for an eight-year average have been 15%.⁶ As recently as 2016, the average CTP insurer super-profits were in excess of 20%.⁷
11. Looking at a single year's margin, on this background, is not appropriate.

⁶ Peter Mulquiney and Danielle Ling (Taylor Fry), *Motor Accident Insurance Commission: Retrospective profit study of Queensland CTP premiums as at 31 December 2022* (Report, 5 June 2023) <https://maic.qld.gov.au/wp-content/uploads/2023/06/MAIC_Retrospective_Profit_Dec22.pdf>.

⁷ Ibid.

12. With a normalisation of profit margins, towards the scheme design margin of 8% is welcome. The setting of the floor and ceiling CTP premium rate now needs to be undertaken with care to ensure at least a three-year or five-year average 8% profit margin is achievable for CTP insurers. Knee-jerk responses to a single year's result or because of variations in margins between the insurers would not be conducive to CTP scheme stability.
13. Certainly, any calls for the establishment of a no-fault scheme are simply unwarranted, could severely damage the sustainability and stability of the scheme, and could negatively impact health and return to work outcomes for injured motorists. In short, it isn't broke.
14. The issue of effective rehabilitation is crucial to every compensation scheme. The governing legislation has a commendably simple mechanism, in section 51 of the *Motor Accident Insurance Act 1994* (Qld) ('the Act'), through which injured claimants can receive reasonable rehabilitation.
 - a. The ALA notes that this is always contextual to the individual, their injury and often their geographic location.
 - b. The jurisprudence, which has developed over more than 20 years, on insurers' obligations under section 51 of the Act is also commended by the ALA. Those cases are particularly instructive on the need for insurers to act on the best rehabilitation evidence available, and to not adopt prescriptive and obstructive approaches to claimants' rehabilitation needs.
 - c. The legislative and jurisprudential approach to section 51 issues stands in contrast to the unhelpful, restrictive, prescriptive and short-sighted approach to rehabilitation commonly seen by ALA members in the operation of long-tail schemes throughout Australia. Our members would be disappointed were any of those features to become part of Queensland's CTP scheme.
15. The ALA has historically called for mandatory reallocation of profits, above a specified ceiling, to road safety and rehabilitation initiatives. We continue to maintain that this is a reasonable manner in which super-profits can be sensibly utilised for the benefit of Queensland motorists.

Conclusion

16. The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide this submission to the Motor Accident Insurance Commission.
17. The ALA is available to provide further assistance to the Motor Accident Insurance Commission on the issues raised in this submission.



Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance