Introduction

The Law Society of the ACT (Society), ACT Bar Association (ACT Bar) and the Australian Lawyers Alliance (ALA) (together, legal practitioners) welcome the opportunity to participate in the pilot citizens' jury that has been established to consider changes to the ACT's compulsory third party (CTP) scheme.

The Society is the peak professional association that supports and represents members of the legal profession in the ACT. The Society maintains professional standards and ethics as well as providing public comment and promoting discussion regarding law reform and issues affecting the legal profession. The Society currently represents over 2,400 legal practitioners within the ACT.

The ACT Bar has promoted and fostered the growth of a strong and independent Bar in the Territory. The ACT Bar's aim is to promote the administration of justice by ensuring that the benefits of the administration of justice are reasonably and equally available to all members of the community. The ACT Bar endeavours to represent the views of its members by making recommendations with respect to legislation, rules of the court and the business and procedure of the courts.

The ALA is a national association of lawyers and other professionals, dedicated to protecting and promoting justice, freedom and the rights of individuals. The ALA takes an active role in contributing to the development of policy and legislation that will affect the rights of individuals, especially the injured and those disadvantaged through the negligence of others.

ACT CTP Scheme

CTP insurance is a compulsory form of insurance that all registered motor vehicle owners are required to purchase. All drivers in the ACT pay CTP insurance as part of their vehicle registration fee. The insurance provides compensation for people injured or killed as a result of the negligent acts of an at-fault driver. CTP insurance cover extends to all innocent road accident victims, including pedestrians, cyclists, motor bike riders, passengers and other drivers.

The operation of the scheme and the responsibilities and functions of the CTP Regulator in the ACT are set out in the *Road Transport (Third-Party Insurance) Act* 2008 and the *Road Transport (Third-Party Insurance) Regulation* 2008.

CTP premiums are set by the insurers who submit those premiums to the CTP Regulator for approval. The CTP Regulator may reject premiums if they do not fully fund an insurer's liabilities, if they are excessive or if they do not comply with guidelines issued by the CTP Regulator.

Why do we need CTP insurance?

Unfortunately, motor vehicles accidents can happen to anyone. The recently released ACT Government report, the *2016 ACT Road Crash Report,* outlines the number and severity of motor vehicle accidents in the ACT. Importantly, the report notes that in 2016:

- there were over 7,900 on-road vehicle accidents recorded, involving 15,476 vehicles and resulting in 11 fatalities and 110 hospital admissions;
- 88% of vehicle crashes in the ACT involve two or more vehicles;
- the most frequent cause of vehicle accidents were rear end collisions with approximately 45% of all motor vehicle accidents the result of rear end collisions;
- there is an upward trend in the number of vulnerable road users (cyclists, pedestrians and motor-cyclists) injured on our roads; and

- collisions with animals (including wildlife) accounted for only four injury crashes.[1]

This data highlights the importance of having an accessible and fair CTP scheme in the ACT. It is crucial that all road users are able to claim fair compensation under the ACT CTP insurance scheme when they have been injured in an at-fault motor vehicle accident.

Position of ACT legal practitioners

Legal practitioners are uniquely placed to comment on the operation of the ACT's CTP system, given their involvement in all aspects of the scheme, including those who work with injured persons and those that represent insurers. Legal practitioners who work with injured people on a daily basis see first-hand the devastating impact motor vehicle accidents can have on victims and their families.

Legal practitioners believe that the ACT currently has a fair system of compensation. The scheme reflects best practice within Australian jurisdictions and provides an appropriate balance between the imposition of affordable CTP premiums and the need to effectively and fairly support innocent injured accident victims. The scheme accommodates a range of factors including justice, fairness, responsible driving, road safety and deterrence.

Key elements of the existing CTP scheme include:

- moderate premiums are paid by all motorists to fully fund the scheme. ACT CTP premiums are not the highest in Australia, and over recent years have been decreasing. The Government has reported that in the period July 2013 through to 30 June 2016, the average private passenger vehicle premium in the ACT fell by 5%.[2] There is no suggestion that the scheme is currently under financial stress and profit levels for the licensed insurers as assessed by the scheme actuary have remained relatively stable at between 8% - 12%[3];

- early notification of claims and payment of treatment expenses;

- injured people are eligible for compensation for their expenses and losses, including loss of income, medical expenses, domestic care and assistance, and damages for pain and suffering;

- an important feature of common law damages is that the lump sum awarded to an injured victim is tailored specifically to the individual concerned;

- innocent injured people are able to receive a lump sum payment which they can use as they determine most appropriate for their needs;

- caps on legal costs for small claims;

- mandatory pre-litigation settlement negotiations incorporating severe costs consequences for unreasonable claimants; and

- when litigation commences, claims are subject to the Court's performance guidelines requiring parties to prepare matters for hearing in well under one year.

Legal practitioners strongly oppose reducing the compensation benefits currently available to people injured in motor vehicle accidents through no fault of their own in order to extend the application of the scheme to those whose negligence caused the accident in the first instance.

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1 *2016 ACT Road Crash Report*, ACT Government, page 12
2 *2015-16 Annual Report*, Chief Minister, Treasury and Economic Development Directorate, page 225
3 *2015-16 Annual Report*, Chief Minister, Treasury and Economic Development Directorate, page 232

While legal practitioners have no objection in principle to the extension of the scheme to at-fault drivers, it should be a genuine addition to the scheme and not be achieved at the expense of those injured through no fault of their own.

Notwithstanding our firm position that the fundamentals of the existing ACT CTP scheme are sound, ACT legal practitioners have consistently indicated their commitment and willingness to work co-operatively with Government to ensure the scheme operates as efficiently and fairly as possible. Legal practitioners believe that a range of measures could be implemented to improve the CTP scheme and the outcome for injured persons. These include for example, measures to deter claims harvesting, improve early access to medical and rehabilitation treatments, and facilitate timely insurance settlements.

Measures to deter claims harvesting

Legal practitioners do not support claims harvesting and believe that legislative amendment is required in order to prevent the escalation of this practice in the Territory.

Claims harvesting is a practice where a person will be called and asked if they have recently been involved in an accident. If the person answers in the affirmative, the caller seeks to encourage them to pursue compensation for their injuries and attempts to refer them to a law firm. In other calls, the caller appears to be selling insurance policies, and if in response to a seemingly routine question about recent injuries or accidents, the call recipient indicates they have been involved in an accident, the caller refers the person to a law firm to seek compensation for their injury. At no time is the call recipient informed that the caller will receive a referral fee. While some claims harvesters are thought to cold call listed phone numbers, it is of concern that some claims harvesters are thought to be working from data supplied by third parties with knowledge of the identity of accident victims (such as tow truck operators).

The issue of claims harvesting is not specific to the ACT and a number of jurisdictions (including NSW where the practice is thought to have originated) have legislated to make claims harvesting illegal. Legal practitioners are concerned that the practice will become more widespread in the ACT given legislative changes in NSW aimed at eliminating the practice.

Legal practitioners believe that it would contribute to the elimination of claims harvesting practices in the Territory if a similar provision to that enacted in NSW was included in the *Road Transport (Third Party Insurance) Act 2008* (ACT) or its associated Regulation. The Society has previously written to Government indicating its support for such an amendment.

Legal practitioners are pleased to note the recent acknowledgement by the CTP Regulator that there is no evidence of fraudulent practices in the ACT (as has been the case in jurisdictions such as NSW). Specifically, the blowout in claims for soft tissue injuries experienced in some other jurisdictions is not apparent in the ACT. In its 2015-2016 annual report, the CTP regulator noted:

> *The CTP regulator has been analysing the ACT's scheme data, and is working co-operatively with other Heads of Motor Accident Insurance Schemes in regard to fraud issues and monitoring. The typical characteristics of fraud that have tainted the NSW CTP schemes are not currently evident on a systemic basis within the ACT CTP scheme. For example, ... claims frequency since 2011 has remained within a tight band (unlike the NSW CTP scheme with an average annual growth estimated of over 5 per cent for the same period). Further, the ACT Scheme has not experienced a spike in minor severity claims in recent years.*[4]

Early access to medical treatment

Currently any person injured in a motor vehicle accident in the ACT may receive up to $5,000 for early medical expenses. This is a valuable element of the ACT CTP scheme that legal practitioners believe could operate more effectively.

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[4] *2015-16 Annual Report*, Chief Minister, Treasury and Economic Development Directorate, page 230

The first hurdle for many injured people is lack of knowledge. They are unaware that they must report the accident to the relevant insurer within 28 days. People often do not know which insurer they should contact and do not realise that their access to the benefit will be curtailed if they do not make contact with the insurer within 28 days.

It appears that insurers are treating injured people with suspicion and refusing payments in many cases:

- people do not know that most insurers require a written referral from a GP to other treatment providers such as physiotherapists before they will reimburse the injured person for the costs, leaving injured people out of pocket for payments already made, and forcing people to make extra visits to their GP to obtain the referrals;

- insurance claims officers scour prior medical records to find potentially similar symptoms pre-accident (commonly prior occasions of back, neck and shoulder pain) in order to deny that current symptoms (and the need for treatment) arise from the road accident;

- similar tactics are used to deny payments for psychological injuries or transient psychological distress arising from motor vehicle accidents;

- insurers are deciding, contrary to the opinion of primary care providers like GPs, that treatment is no longer necessary and will not be paid for or reimbursed. This often occurs well below the $5,000 threshold;

- when insurers refuse to pay reasonable treatment expenses, injured people without lawyers often then choose to engage lawyers, or they simply give up;

- when insurers refuse to pay reasonable treatment expenses, people with lawyers are forced to instruct their lawyers to advise them on how to get the reimbursements they are due, and to negotiate on their behalf with insurers. This to-ing and fro-ing between injured peoples' lawyers and insurers' lawyers costs money which would not be incurred if the insurers treated injured people with less suspicion, more compassion, and a greater facilitation of physical rehabilitation activities.

It is understood that a number of injured people have complained to the CTP Regulator during the past financial year about insurers refusing to pay for (or reimburse them for) reasonable medical treatment.

ACT legal practitioners believe that the burdensome administrative processes outlined above could be simplified considerably to the benefit of injured people and their recovery.

ACT Government's Position

In establishing the pilot citizens' jury process, the Government criticised the ACT's current CTP scheme on a number of grounds, including that:

- ACT motorists pay some of the highest premiums in the country;
- it can take two years or more to get a full payout; and
- it does not cover everyone injured in a motor vehicle accident.

ACT legal practitioners consider that such claims are misleading and are deliberately used by the Government to bias potential jurors. The ACT Government's preferred outcome of the citizens' jury process can be determined from its previous unsuccessful attempts to strip benefits from the ACT's CTP scheme.

The ACT Government has previously proposed changes to the CTP scheme, including:

- removal of some of the benefits covered by CTP insurance, including access to general damages via the common law;

- imposition of a threshold on who is eligible to make a claim for damages for pain and suffering. The proposed threshold was 15% whole person impairment (WPI) on the basis of the American Medical Association Guides to Evaluation of Permanent Impairment, Fifth Edition (AMA 5). This would have meant 80% or more claimants would have been ineligible to claim damages for pain and suffering;

- use of the AMA Guides to determine thresholds even though the Guides specifically state that they should 'not be used for direct financial awards nor as the sole measure of disability'. This is because injuries affect different people in different ways. For example, an injury to a hand will have a markedly different effect on a singer than a pianist, and a foot fusion would impact a brickie's labourer more than a deskbound computer programmer;

- the use of medical panels to conclusively determine thresholds. This was considered problematic as the CTP regulator was to be empowered to appoint the medical assessors to the panel (creating a conflict of interest) and the assessors themselves were to be immune from facing any consequences for exercising their functions negligently; and

- raising the discount rate from 3% to 5%. This assumed the injured person could invest the money at a low risk for a continuing return of 5% after tax and after inflation.

It is not clear to legal practitioners why the Government continues to seek to reduce compensation payable to innocent injured persons. Claims by Government that changes to the scheme will achieve reduced premiums, extended coverage, shorter resolution times and certainty of benefits are not valid. In advocating for such changes, it is incumbent on the Government to:

- fully justify the removal of compensation rights for innocent injured victims;
- explain how many people will be affected; and
- detail the impact of its preferred changes on the compensation available to injured people.

It is important that any changes debated by the citizens' jury be based on comprehensive and accurate information. The table below sets out a number of the Government's repeated misstatements about CTP and sets out the more accurate context for these statements.

The ACT Government says ...	In fact, ...
Right now our CTP scheme does not cover everyone injured in a motor vehicle accident	CTP insurance is intended to compensate those people injured in a motor vehicle accident in the ACT through no fault of their own. The underlying rationale for CTP insurance is (to the extent possible) make good an injury caused by the fault of another. The scheme was not established to compensate negligent or careless drivers (such as drunk drivers, drug affected drivers, drivers using their mobile devices, etc). That said, there are an increasing number of mechanisms becoming available to at fault drivers. Three of the four CTP insurers currently licensed to operate in the ACT provide at-fault driver coverage at no additional cost. The three insurers in question

	(namely, the NRMA, GIO and APIA) hold over 91% market share in the ACT.[5] If an at-fault driver is catastrophically injured, they will be eligible to receive lifetime payments (for treatment, rehabilitation and care) through the Lifetime Care and Support scheme. In addition, any person injured in a motor vehicle accident in the ACT may receive up to $5,000 from a CTP insurer for early medical expenses.
The ACT's scheme relies on negotiation between insurers and injured parties. If an agreement cannot be reached, it is often necessary to go to court to have the claim resolved. A full payout of benefits is not made until a claim is finalised. On average, large claims take around 48 months and small claims take 18 months to finalise.	All insurers require injury or damage to be clearly demonstrated before they will pay out on any insurance policy. Many injured persons will elect to engage a legal practitioner to assist them to pursue their claim against the insurer. The alternative is that the injured person (or their family members) will be forced to deal with large corporate insurance companies by themselves. Most claims reach a negotiated settlement between the parties and are not determined by the Courts. While claims can take some time to settle, this is due to a range of factors, including: - the need to allow sufficient time for the injury to settle; - the need to allow sufficient time for the extent of the injury to become known; - the stringent requirements of the insurance companies for proof of the extent of the injuries, that require the injured person to obtain numerous reports addressing specialist medical opinion, economic loss, occupational therapy needs, psychological treatment requirements, labour market research, pharmacological requirements, etc; - the stringent requirements of the insurance companies for proof of causation where people have pre-existing injuries; - the stringent requirements of the insurance companies for proof of liability where the circumstances of the motor vehicle accident are in dispute, including expert reports; - the requirement for some injured people to undergo multiple surgeries; and - adequate time for injured people to progressively return to the workplace and to their pre-injury activities.

[5] *2015-16 Annual Report*, Chief Minister, Treasury and Economic Development Directorate, page 228

Some other states, like NSW, also have common law schemes but they are different from the ACT scheme because they define or have limits on the benefits that are payable for different types of injury, which can make premiums cheaper. The reason ACT residents pay different premiums from other jurisdictions is largely because of the benefits structure, and court-based model of resolving claims.	NSW CTP premiums are currently the highest in Australia.[6] A range of factors influence the premium levels: - unlike other Australian States and Territories, CTP premiums in the ACT are not differentiated on the basis of risk factors such as geographic location, age, driving record or claims history. In the ACT, the premium for a class 1 passenger vehicle is the same, regardless of these factors; - in the ACT, injured people are entitled to compensation for loss of income. The 2016 census data showed that Canberrans earn approximately $300 per week more than Australians nationally and that the ACT median outcome is the highest in Australia.[7] The higher average weekly earnings in the ACT inevitably increases payments for loss of income; - some CTP schemes in other jurisdictions arbitrarily cap benefits and/or strictly define benefits. It is acknowledged that the imposition of such limitations mean that some injured people are not fully compensated for their injuries. The shortfall in compensation paid also means that injured people are forced to rely on savings, extended family, social security and the public health system for their ongoing care and support. Affordability, measured as a proportion of average weekly earnings in the ACT, has consistently improved since 2013-14.[8]
A no-fault scheme provides some benefits regardless of who was at fault for the accident, without the need to sue and go to court.	Legal practitioners have no in principle objection to the extension of the scheme to include at-fault drivers, but we strongly oppose achieving the extended coverage at the expense of innocent motor vehicle accident victims. Given the Government has specified premiums are not to increase as a result of the citizens' jury process, if coverage is extended, benefits must decrease. It is important to acknowledge the deeply adverse impact of cuts to compensation on injured people: - a reduced payment for economic loss (because the injured person has lost their job, or can no longer do overtime or has lost a promotional opportunity) could lead to the loss of the family

[6] *Citizens' Jury on Compulsory Third-Party (CTP) Insurance, Frequently Asked Questions*, page 6

[7] http://www.canberratimes.com.au/act-news/census-2016-act-household-income-300-a-week-above-national-median-pay-20170627-gwzgpk.html

[8] *2015-16 Annual Report*, Chief Minister, Treasury and Economic Development Directorate, page 229

	home when the usual wage payments are no longer available to meet mortgage repayments; - if compensation is removed before the injured person has recovered or before they are able to return to work, they will be forced to recruit their families as carers, rely on social security benefits and increase pressure on the public health system; - if compensation benefits are inadequate, in order to properly protect themselves, people will be forced to take out expensive supplementary insurance such as income protection insurance. As the Government would be aware, many people are not eligible for income protection insurance and eligibility criteria for such insurance discriminates against women and people with mental health problems in particular; - if benefits for future loss of earnings are reduced then people out of the workforce, such as children, students, parents and carers, who cannot obtain income protection insurance, will also suffer. As noted above, there are an increasing number of mechanisms becoming available to at-fault drivers.
The single largest component of CTP premium dollars payments is paid for non-economic loss, commonly known as 'pain and suffering' damages. These payments don't cover bills, but rather provide compensation for intangible losses like the experience of pain over time, or lost enjoyment of a person's time.	The point of CTP insurance is to place the innocent injured victim in the same position they were injured through the fault of another. This includes compensating the injured party for their pain and suffering. This element compensates the victim for: - no longer living pain free; - no longer being able to enjoy the same activities as they could prior to their injury; - physiological distress including shock, depression, anxiety and post traumatic stress disorder; - grief at the loss of their old life; - distress at the harm the accident has indirectly caused their loved ones; - physical pain and restricted physical capacity arising from the accident itself and any subsequent treatment, including surgeries and rehabilitation; and - embarrassment at the loss of dignity and independence that can arise as a result of injuries sustained in a motor vehicle accident.
In 2016-17, 27 per cent of finalised scheme payments went to treatment and care costs, with almost the same share going to legal and investigation costs. In 2014-15 and 2015-16, legal and investigation costs for finalised claims amounted to more than treatment and care costs.	Many of the costs categorised as legal costs are not legal fees, but appear to have been included in the legal costs category to bolster the Government's argument about excessive legal costs. Legal costs appear to include: - investigative reports, including surveillance;

	- the cost of obtaining medical records from health service providers; - expert medical reports; - reports from occupational physicians; - labour market research reports; - expert liability reports; - court fees; - mediator's fees; - barrister's fees; - witness expenses; and - legal fees. Allegations of contributory negligence, refusal to fund reasonable medical treatment and unrealistically early and low opening offers to settle claims are all reasons why innocent injured victims seek the assistance of a lawyer in making a claim for compensation. The alternative is that injured people and their families argue their case for compensation unassisted against large insurance companies.

Further material

Legal practitioners believe that it will assist the citizens' jury participants if further material on:

- CTP schemes in other jurisdictions; and
- case studies of people injured in motor vehicle accidents in the ACT;

are; made available for their consideration. Legal practitioners propose to provide jury participants with this further material as a supplementary submission as soon as practicable.

26 September 2017

The Hon Andrew Barr MLA
Chief Minister
Treasurer
Minister for Economic Development
Minister for Tourism and Major Events
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Email: yoursayonCTP@act.gov.au

Dear Chief Minister,

CTP Insurance in the ACT

I am writing to you, on behalf of the Actuaries Institute, in response to your request of the 24 August 2017, regarding the ACT Government's review of its CTP scheme.

Our response is aimed at the citizen jury. We would be happy to provide additional advice when the various trade-offs and hybrid combinations are formalised. The attached appendices are designed to lead a conversation with the citizen jury around the key considerations required in designing a new scheme.

The community members affected by CTP schemes are the road users who pay for the scheme and the injured road users who receive benefits from the scheme. There is an obvious trade-off between the costs of the CTP premiums and the benefits provided to the injured road users. There are also considerations to be made about what the public will consider fair and just.

Modern CTP schemes have placed an increasing focus on achieving better whole-of-person health outcomes for the injured road users as opposed to simple monetary recompense when it comes to benefit structure design. This is beneficial for both the injured road user and society as the enhanced recovery of the injured road user means they can resume their place within the working community. It is important to note that achieving better health outcomes for injured road users does not necessarily result in an increase in the cost of the CTP scheme.

Therefore, it is suggested that to improve CTP scheme the citizen jury will need to consider and balance the following areas:

- Improving the health outcomes for the injured road user post-injury
- Achieving affordability of CTP premiums at levels that is acceptable to the road user
- Having pricing systems and benefits that are perceived as fair and just by the community

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Please note that this response is intended to be a fair and unbiased discussion of the different considerations for CTP scheme improvement highlighting pros and cons of the various potential design aspects. There is no intention to promote one option over another.

Please do not hesitate to contact myself or the Chief Executive Officer of the Actuaries Institute, David Bell (phone 02 9239 6106 or email david.bell@actuaries.asn.au) to discuss any aspect of this letter.

Yours sincerely,

J.A. Lyon

Jenny Lyon
President

Appendix A – Objectives of a Scheme

Balance between Premiums and Benefits	The key community members affected by CTP schemes are the road users who pay for the scheme and the injured road users who receive benefits from the scheme. Ultimately the citizens need to balance the affordability of premiums with the fairness of benefits for the injured road user
Stability of the scheme	The scheme should be designed as to create the greatest likelihood that cost targets and outcomes are achieved - today and in the future - ultimately keeping premium rates and benefits in line with original objectives
Efficiency of the Scheme	The scheme should ensure that expenses, service fees and profits available to scheme providers are reasonable
Health & Lifestyle outcomes for Injured Persons	There is an increasing focus on achieving the better whole-of-person health outcomes for the injured road users as opposed to simple monetary terms when it comes to benefit structure design.
How does the system contribute to improved safety	Does the operation of the scheme encourage safer use of the roads although other factors have greater impact

Appendix B – Design Elements

Design Elements	Description	
Who should receive benefits - Everyone ("No Fault") or only those not at fault ("Fault")	**No Fault** • More consistent coverage across road users and social benefits for providing cover for all road users. • There is no/limited need to establish fault - cheaper & faster in dealing with injuries & financial issues • Less adversarial system as fault does not need to be established. This can allow for the claims process to focus on recovery outcomes • Covers more injuries hence more expensive	**Fault** • Is inherently fair, as it works on the premise that someone who injures another is responsible • Generally, provides more individual outcomes as often coupled with Common Law redress • Covers less injuries hence is cheaper • Requires an adversarial system to determine fault and loss - increases administration costs • Generally, creates greater risks to stability of the scheme as more exposed to superimposed inflation
How should benefits be paid	**As required to offset loss – periodic payments for earnings, medical & other costs as required** • Financial security over lifetime providing peace of mind • Scheme can define medical and rehabilitation benefit structures to target agreed societal outcomes for injured road users • Easier to integrate periodic benefits with other social security benefits • Avoids family and other conflicts often associated with receipt of a lump sum • People are generally more used to regular income and can manage this more effectively than a lump sum	**Lump Sum representing all future costs** • Cheaper administratively as there are no ongoing assessment and admin costs • Provides individual with control over their future, which in itself has positive psychological impacts. The clean break allows injured person to move on. • Less risk of future benefit changes increasing/reducing benefits retrospectively • Periodic benefits only will mean no compensation for the injury/suffering experienced

For both benefit design and fault/No fault there are hybrid versions that can be considered		
Underwritten by the State or by Competitive Insurers	The economic benefits of a competitively underwritten scheme with continual innovation and expense management needs to be considered against the efficiency of a monopoly provider in the public sector. If privately underwritten market is a need for a regulator to oversee the operation of the scheme - ensuring outcomes are achieved and the private sector is fairly but not excessively rewarded for the risk taken on and the service delivered.	
First Party v Third Party	**First Party** • The insurer of the injured party deals with the claim • Simple as injured person contacts own insurer • Insurer immediately deals with recovery and lodgement • Insurer has higher incentive due to relationship with customer	**Third Party** • Insurer of the "At Fault" car deals with the claim • Need to determine fault and insurer to commence claim process • Can lead to delays before recovery and financial support is available • Works with a "At Fault" system
Premium System	**Should the premium system provide any cross subsidisation between road users** • What rating factors would be allowed? Generally speaking, the more rating factors allowed the fairer the prices will be with less cross subsidisation but could end up with unaffordable policies for certain road users • Are all rating factors seen as fair (i.e. seen as discriminatory by the public)? • Limits on the pricing relativity of the different market segments (defined by the rating factors). This can help to avoid unaffordable prices but introduces the cross-subsidisation issue • Risk pooling can potentially help to balance the subsidised groups losses amongst the insurers. However, this can reduce competitiveness and innovation in the scheme The scheme regulator must form a view of what is an acceptable level of profit for insurers for selling CTP policies	

From: Adrian Flor
Sent: Saturday, 16 September 2017 10:41 PM
To: YourSayonCTP
Subject: Feedback to citizens' jury

Dear Citizens' Jury,

Compulsory Third Party (CTP) insurance scheme citizens' jury

I am writing to you to express my concern for the ACT government's review into CTP insurance and how CTP may subsequently change in the ACT as a result. I have completed the available online activities on "Yoursay" regarding this issue but I am writing to you to sufficiently express my concerns given my relatively unique perspective on this issue.

Some of the information on the Yoursay website seems to be directed at denigrating the rights of innocent victims of car accidents – the people who this system is meant to protect. For example, the FAQs about the citizens' jury states that '*it will be important that the jury explore the right balance between the interests of injured people and motor vehicle owners*.' The right balance currently exists – we pay a reasonable amount for CTP insurance so that those people who may need it are sufficiently covered. It forces me to question whether the ACT government sees the 'right balance' as reducing the right of innocent people to fair compensation.

Background

I am 33 years old, a Senior Lawyer in the APS, and have recently been involved in a car accident where I was hit by a vehicle as I was getting my son's pram out of our parked car. There was no contributory negligence on my part but I sustained numerous injuries from the initial impact, getting squashed between two cars, and the two falls I experienced soon after the accident.

The CTP system in the ACT should largely remain as it is – without an erosion of the rights of innocent victims – victims of someone else's negligence.

1. **The rights of innocent victims of road traffic accidents should be preserved**

As stated above, the rights should not be eroded for the benefit of the people who have caused an accident. If the Government intends to introduce compensation entitlements for those who are at fault, that should not be done at the expense of innocent victims.

2. **Compensation entitlements should be appropriate for the circumstances**

Even minor and whiplash injuries can have a devastating effect on the individual victims and their families, especially for low-income families. Additionally, the same injury occurring to two different people can have very different consequences including time off work, treatment expenses, pain and suffering and the

need for domestic assistance. As such, the Government should not consider introducing thresholds as a minimum requirement for compensation claims or introducing capped amounts for certain injuries.

From a personal perspective, my accident has resulted in numerous injuries occurring to me but the effects of these injuries have arguably been more extensive as I have a pre-existing medical condition that requires additional care and attention. The point I am attempting to emphasise is that the system must be kept receptive to individual circumstances.

3. The CTP fees paid by road users in the ACT also benefit a wide range of Canberrans who do not pay the fees, such as pedestrians, children, bicycle users, etc.

The small reduction in premiums which may flow to households from this process will be greatly outweighed by the loss in compensation benefits for all family members available in the event of an accident. Further, research in other jurisdictions suggests that changes of the type supported by the Government do not usually result in a significant reduction in premiums. In fact, in NSW, premiums have continued to rise despite the very large reduction in benefits to injured people. Now, those premiums are amongst the highest in the country.

4. If the government proceeds with a citizens' jury, the process must be open and transparent, and the jury members must be informed about the rights that ordinary Canberrans would lose in the event of changes.

The jury should be presented with models based on amendments to the current scheme in the interests of innocent victims of road accidents, not limited to types of CTP schemes from other jurisdictions in which the bulk of rights have been slashed. More to the point, they should be informed of the benefits the current system provides and how these would be taken away by any proposal.

5. The Government should investigate ways to make the current system fairer and more efficient

If the review was to change anything, then the current complicated rules for the recovery of costs in court for small claims put too much negotiating power in the hands of the insurers. These rules are arbitrary. They make it unfair, expensive, and difficult for innocent victims to recover proper compensation for their injuries. This aspect of the current scheme should be reviewed, with the view to creating a fairer playing field between claimants and insurers.

I hope that my feedback may provide some context to the concerns and fears for the rights of those who have been injured in car accidents through no fault of their own. The Government's proposal to review the current system seems misguided.

I hope to hear from you.

Regards,

Thank you for the opportunity to provide comment on the ACT government's proposed changes to the CTP system. I generally do not support the changes proposed.

The rights of innocent victims of road traffic accidents should be preserved. They should not be eroded for the benefit of the people who have caused an accident. The ACT Government should not introduce compensation entitlements for those who are at fault – doing so would be so at the expense of the innocent victims. A lot of Canberra driver, drive without proper due diligence – introducing at fault compensation will further encourage poor driver behaviour. Perhaps instead the AFP should focus on targeting dangerous driving behaviour – for example tail gaiting, running red lights, speeding, not indicating etc. At the moment the police presence on the road is very small when compared to within NSW. If more people consider that they are more likely to be caught, fined and penalised for unlawful road behaviour you would decrease the level of CTP premiums due to less accidents. As I understand it, rear enders are the most common accident in the ACT – this should be easily preventable.

Also, address licensing. ACT driver do not do adequate training when compared to NSW counterparts. In my opinion it is too easy to obtain a licence in the ACT. More information should be provided about road laws in the ACT. For example, I believe that most people in the ACT are not aware of the two years trial of the 1-1.5 metre bicycle passing and not requiring cyclist to dismount at pedestrian crossing.

One element of the CTP system that needs to be addressed is more adequate payment for medical expenses. I was hit by an at fault car last year and had to fork out thousands in medical bills before being reimbursed by the CTP scheme. The costs for medical payments should be at the point in time; even before at fault has been determined. If the fault determination is different, CTP should allow for repayment of claim.

I understand that the ACT Government is considering minimum threshold requirements for all compensation claims. I consider that this is a bad idea. All innocent parties should maintain the right to compensation for accidents that are not their fault. If the ACT government wants to introduce such a scheme for minor accidents, there should be an assessment by an independent doctor, and then a minimum payment made for all related costs to the victim. This should save the CTP system money if these cases do not have to go through prolonged settlement with the involvement of lawyers etc for low cost settlements.

The CTP system needs to continue to protect non-fee paying road users including pedestrians, children, bicycle users etc. I consider that the changes that the ACT government are proposing will decrease the rights to compensation for these vulnerable road users. Some research in other jurisdictions suggests that changes of the type supported by the Government do not usually result in a significant reduction in premiums. In fact, in NSW, premiums have continued to rise despite the very large reduction in benefits to injured people. Now, those premiums are amongst the highest in the country. Maybe you should examine the efficiency of the CTP system where a settlement seems pretty prolonged and victims often seek legal assistance because the system is confusing and convoluted, and that they don't trust that the system would provide them with fair compensation if they went it alone.

I do not support the idea of a 'citizens' jury'. I believe that the system would be ill-informed and be subject to the whims of those on the jury. A number of people in Australia have an absolute but unfounded hatred for cyclists. I believe that these people would have a preconceived view that cyclists are always at fault due to their own prejudice – for example they often consider that the compulsory third party pays for road infrastructure and gives them a right over cyclist on the road, and that cyclist have not right to cycle on the road.

I submit that the Government should investigate ways to make the current system fairer and more efficient. For example, the current complicated rules for the recovery of costs in court for small claims

put too much negotiating power in the hands of the insurers. These rules are arbitrary. They make it unfair, expensive, and difficult for innocent victims to recover proper compensation for their injuries. This aspect of the current scheme should be reviewed, with the view to creating a fairer playing field between claimants and insurers.

Regards,
Allan C