



Prepare for the crunch

—
Current challenges facing the
Queensland CTP insurance scheme

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Reform or pay the price

Compulsory Third Party (CTP) insurance, which covers people for injuries sustained in motor vehicle accidents, is a vital safety net for Queenslanders.

However, the scheme needs reform to ensure it continues to meet community expectations and provide the right outcomes for Queensland motorists, today and in the future.

A failure to reform is leaving Queensland with arguably the worst CTP insurance scheme in Australia and while today's CTP prices remain relatively low, this hides serious and growing problems.

Most people don't realise that CTP insurance in Queensland does not cover everyone.

Under the Queensland scheme, injured people are unable to claim if fault for the accident cannot be established and another driver cannot be held responsible.

Currently, thousands of people who are injured on Queensland roads – including children – are left exposed.

There is also financial risk. Over the past two years, the number of claims in Queensland has spiked. Widespread encouragement for anyone involved in even a minor motor vehicle collision to lodge a CTP claim is resulting in a greater number of exaggerated claims.

Despite this, CTP prices have been forced down by the regulator.

This is unsustainable and likely to lead to a future correction that means vehicle registration costs could suddenly increase.

The Queensland CTP scheme is also one of the most inefficient in the country, with only about 40 cents in the dollar going to injured motorists. The rest is eaten up by costs, driven out of the adversarial legal process.

As more money is directed to those with minor injuries and their lawyers, people with serious injuries are receiving a declining proportion of every dollar in premium.

With more than four million CTP policies sold every year in Queensland, this issue impacts the whole community.

Simple, well-proven reforms would solve these problems and should be considered by the government and regulator.

The status quo is protecting the lucrative business model available to lawyers that allows them to legally take 50 per cent of an injured person's payout, in addition to their regulated fees.

Given this opportunity, it is unsurprising that lawyers build a business around encouraging anyone who has been in a collision – no matter how minor – to lodge a CTP claim.

Queensland's current CTP legislation is inviting an influx of New South Wales (NSW) lawyers who have seen their business model disrupted by recent NSW Government reform that removes lump sum payouts for those with minor injuries.

As CTP claims in Queensland increase, so will premiums.

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STRUCTURAL PROBLEMS WITH QUEENSLAND'S AT-FAULT, COMMON LAW CTP SCHEME DESIGN

- Only about 40 cents in the dollar goes to injured people, making Queensland's CTP scheme potentially the most inefficient in Australia. A large, but unquantified, amount goes to lawyers.
- Lump sum payments for minor injuries encourage exaggeration and even fraud, and create a lucrative business model for lawyers, which is driving up claim numbers.
- Perverse incentives are created for claimants to delay their recovery and not return to work, as this will increase their lump sum payout.
- At-fault design means no coverage for people injured when a driver cannot legally be held responsible, including injured children who are the victims of road accidents.
- Large gaps exist in the cover of injured drivers, which particularly disadvantages people in regional areas where there are more single-vehicle accidents.
- A common law compensation design means future claims costs are volatile, which increases uncertainty, raises prices, and can result in insurer profits deviating significantly from expectations.

CURRENT ISSUES

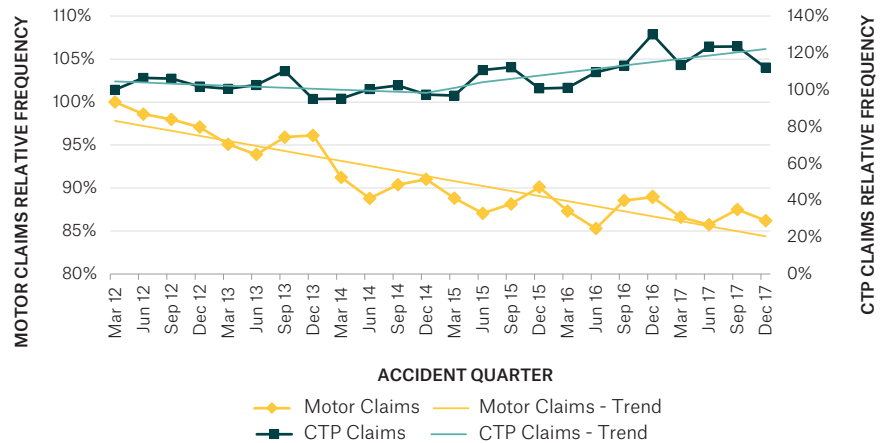
- Claims frequency is rising, despite fewer accidents due to improving car and road safety. CTP claim frequency is up 12 per cent in the two years from 2015 to 2017, reversing the previous trend where claims dropped by five per cent over the two years from 2012 to 2014 (see graph over page).
 - There has been a surge in legally-represented claims for minor injuries (such as whiplash). These have risen 16 per cent in the two years from 2015 to 2017, reversing the previous trend where these claims dropped by three per cent over the two years from 2012 to 2014 (see over page).
 - The scheme has experienced increased levels of exaggeration (even fraud) and claims-farming activity.
 - The costs of defending the scheme from exaggerated claims are increasing, which is ultimately borne by Queensland motorists through their premiums.
 - A declining proportion of claim costs is going to those with more serious injuries.
 - There is a growing influx of NSW-based lawyers, because their business model has been disrupted by the recent NSW CTP reforms.
 - CTP prices have been forced down by the regulator by over 10 per cent in the past year (despite rising claim frequency), deferring the costs to future years.
- Left unaddressed, these issues represent a time bomb for Queenslanders that could explode in the next two to five years, hurting motorists and impacting the government of the day.
- The solution is proven reform that increases coverage, reduces legal fees, increases certainty of projected insurer profits, focuses on the seriously injured and puts more of every dollar in the pocket of those injured.**

CTP CLAIMS RISING WHILE ACCIDENTS AND MOTOR INSURANCE CLAIMS FALL

As illustrated below, in the past two years (2015 to 2017) CTP claim frequency has surged by 12 per cent despite accidents resulting in motor insurance claims

having declined by two per cent over this period. Over the past eleven quarters (March 2015 to December 2017) CTP claim frequency has risen by 16 per cent.

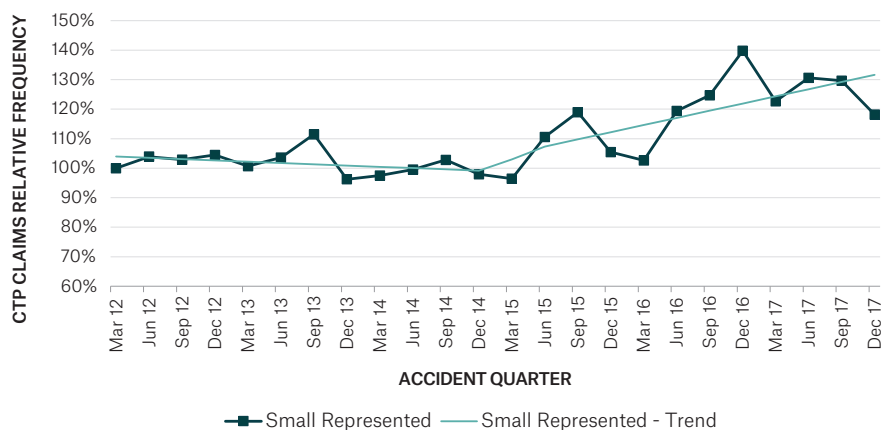
QLD CTP VS MOTOR CLAIMS RELATIVE FREQUENCY



The cause of this increase in CTP claims is a boom in the number of claims for minor injuries that are represented by lawyers, as illustrated below. The frequency of these claims has risen 16 per cent in two years (2015 to 2017),

reversing the previous downward trend. Over the past eleven quarters (March 2015 to December 2017) frequency of legally represented minor-injury claims has risen by 23 per cent.

QLD SMALL REPRESENTED CTP CLAIMS RELATIVE FREQUENCY





WHY ARE LEGALLY REPRESENTED CLAIMS FOR MINOR INJURIES BOOMING?

A flawed structural design has combined with recent events to make Queensland a growing market for personal injury lawyers.

In Queensland, injured claimants are paid lump sum financial compensation, rather than having their medical costs and lost wages paid as they are incurred.

Lump sums create an incentive for anyone involved in a motor vehicle

accident to make a claim for minor injuries, and to exaggerate or fabricate these claims. It generates a lucrative business model for lawyers to encourage more claims to be made.

Motorists are being 'cold called' by claims farmers and encouraged to pursue compensation for inflated injuries.



LEGAL FIRM BUSINESS MODEL

Lawyers in Queensland are legally permitted to take as much as 50 per cent of the lump sums paid to claimants for their injuries, in addition to the substantial legal fees they are paid by insurers.

This business model has underpinned the growth in advertising by law firms, including high-profile sponsorships.

It also supports the claims farming business model, as claims farmers can sell their product to law firms. Claims farming is well established in Britain and has expanded into Australia's common law personal injury insurance market.

As reforms are implemented in other Australian states removing lump sums for claimants with minor injuries, legal practitioners can be expected to look for customers in other jurisdictions to take advantage of lump sum payouts.

"Any time the Government tightens up compensation schemes it forces (lawyers and claimants) to look elsewhere."

ADAM TAYLER, BRISBANE SOLICITOR²

The recently reported strategy of high profile legal firm Slater & Gordon is to "grow its personal injury practices in Queensland" and other states in order to improve profitability.²



Any time the Government tightens up compensation schemes it forces (lawyers and claimants) to look elsewhere.

ADAM TAYLER, BRISBANE SOLICITOR¹



EFFICIENCY: HOW MUCH ACTUALLY GOES TO THE INJURED PERSON?

The benchmark for the efficiency of a CTP insurance scheme is how much of every dollar in premium goes into the pocket of the injured person.

A principal motivation for the recent reform of the NSW CTP scheme was that injured people were only getting 45 cents in every dollar of premium.

It is impossible to determine the actual efficiency of the Queensland CTP scheme because no data is collected regarding how much of a claimant's lump sum is taken by lawyers. These arrangements are confidential.

As a result, the official figure of 58.3³ cents in the dollar is misleading because it omits legal fees, including the amount lawyers take from an injured person's settlement (known as 'contracting out' or 'solicitor-client costs').

This lack of transparency regarding the full amount that lawyers extract from the Queensland CTP scheme is in contrast with other scheme costs (including insurer profit), which are publicly reported by the regulator.

Lawyers are estimated to take 30 to 40 per cent of lump sum payouts on average, meaning the actual figure that injured people receive is only around 40 cents in the dollar.

This leaves Queensland with potentially the most inefficient CTP scheme in Australia. It is failing to adequately perform its core task of helping injured people recover.

The proposed sampling of solicitor-client costs recommended by the recent review of the scheme is inadequate and unlikely to expose the truth of how much is being taken by personal injury lawyers in Queensland.

¹ "Lawyers seek fresh pastures as government turns off insurance claims tap", Michael Roddan, *The Australian*, 26 April 2017

² "Hedge funds to take control of Slater & Gordon", Adele Ferguson, *Sydney Morning Herald*, 31 August 2017

³ *Motor Accident Insurance Commission Annual Report 2016-17, Claimant benefits (most recent 3 years)*, p.22



THE BLAME GAME: RISKS AND INEQUITIES OF QUEENSLAND'S AT-FAULT CTP SCHEME

Queensland has an 'at-fault' CTP scheme. This is historical, based on the origins of CTP insurance that was designed to ensure that people injured by a negligent driver could access financial compensation.

The principal shortcomings of at-fault CTP schemes are:

- the driver has no cover from their vehicle's CTP policy for their injuries
- third parties injured in an accident (including children) are not covered unless a driver can be found to be legally responsible for causing the accident.

The implications of these shortcomings are profound.

CTP insurance does not cover any driver who is injured in a single-vehicle accident.

This means if someone in Queensland hits a kangaroo, swerves to avoid a dog or a child on the road, hits an oil slick or loose surface, they may have to rely on Medicare and Centrelink for support.⁴

A driver who runs into the back of someone who brakes heavily, makes a minor error of judgement or is simply in the wrong place at the wrong time, will not be covered.

In simple terms, if someone has an accident and cannot blame another driver with CTP insurance, they are on their own. It has been estimated that approximately 6,700 such drivers are injured in Queensland every year.⁵

Equally, for passengers and pedestrians, if they are injured but the driver cannot be held responsible from a legal perspective, the CTP insurance policy will not pay out.

This means a child in Queensland who runs out in front of a car and is hit will not be covered by the CTP scheme unless the driver can be found to have been legally negligent (they were speeding, drunk, not paying attention or otherwise doing something wrong). Children in most other states and territories are protected.

CTP insurance is poorly understood by the community and its design shortcomings are rarely reported.

Every year, thousands of Queenslanders are the victims of these shortcomings. Many are shocked and dismayed when they realise the devastating impact for themselves and their families.

If Queenslanders fully understood the gaps in cover they would be demanding a fairer and more equitable system.



INEFFICIENCY, VOLATILITY AND INSURER PROFITS

Paying lump-sum compensation through an adversarial common-law process based on negligence involves high levels of legal representation. Around 90 per cent of CTP claims in Queensland have legal representation, even for very minor injuries.

CTP insurance is referred to as 'long tail' because it takes many years before a claim is finalised and the total cost is known.

Injuries must stabilise before the long-term impact on the injured person can be assessed, which is often one to three years after the accident. It can take three to five years to finalise a claim.

When setting the price of a CTP policy sold today, the insurer must predict several factors for the next three to five years.

These include not only how many accidents will occur and the severity of the injuries, but also how much they will cost. Factors such as wages growth, medical-expense inflation and interest rates are relevant when calculating these costs.

When claim costs are based on common-law payouts with high levels of legal representation, this adds significantly to the uncertainty. A legal precedent can be set, or a loophole found, meaning costs can easily blowout.

The incentive this system creates for claimants to exaggerate their injuries, or lodge spurious claims, amplifies the uncertainty.

These dynamics add significant risk and insurers must price for this risk by increasing premiums. This also means that insurer profits can vary significantly from what was originally predicted when the price was set and the policy sold.

Insurers have benefited from this volatility over the past decade, with profits ultimately proving to be significantly higher than predicted.

However, this past performance is no guarantee of what will happen in future.



Around 90% of CTP claims in Queensland have legal representation

⁴ Since 1 July 2016 in Queensland, those with catastrophic injuries will have care provided on a no-fault basis through the National Injury Insurance Scheme, but this does not include income support.

⁵ "Indicative costing for no fault defined benefit scheme for Queensland CTP", Finity Actuarial and Insurance Consultants, November 2016.



PREPARE FOR THE CRUNCH

Despite clear evidence of concerning trends within the CTP scheme, the regulator has been reducing CTP prices.

From 1 January 2017 to 1 January 2018, the regulated ceiling price for passenger vehicles (Class 1) decreased by \$27 to \$233, a fall of more than 10 per cent.⁶

Vehicle registration costs have increased, but this increase has been offset by the regulated decrease in the price of CTP premiums, which is paid at the same time as vehicle registration fees.

For scheme sustainability, it is essential that the insurance premium reflects the

risk. To reduce the price ceiling despite rising claim frequency and without embarking on meaningful benefit reform, risks the scheme becoming unsustainable. The result could be a spike in premiums for motorists or losses for insurers.

If the scheme were to fail, the Government would become responsible for the costs. Such an outcome could have significant employment impacts, and would transfer risk away from the private sector and onto the Government's balance sheet.



THE SOLUTION: NO-FAULT DEFINED BENEFITS

Suncorp has long advocated for reform of the Queensland CTP scheme to make it cheaper, more efficient, and able to cover everyone who is injured on our roads.

A simple solution does exist — one that has worked effectively in other jurisdictions.

No-fault cover means that everyone who is injured, including the driver, will be looked after.

Defined benefits mean that people who are injured have their medical expenses and lost income covered. They would not be paid the lumps sums that incentivise fraud and exaggeration, and create the lucrative business model for law firms.

This reform would return the focus of the CTP scheme to ensuring the seriously injured are provided with the care, treatment and financial resources they need to recover and get back on their feet.

Defined benefits also reduce uncertainty and the volatility in claim costs that result, meaning insurer profits are much more predictable.

Crucially, defined benefits would greatly increase the proportion of every dollar in premium that ends up in the pocket of injured people. Reform could increase this figure from around 40 cents to over 60 cents in the dollar.

By reducing legal costs and increasing the certainty of projected insurer profit, cover can be expanded to include all drivers (no-fault) and the increasing pressure on premiums can be relieved.

Reform could also allow greater price reductions for those with newer vehicles or good driving records.

This would make the system fairer, more efficient and more affordable for Queensland motorists.



Reform could increase the amount going to injured people from around 40 cents to over 60 cents in the dollar.

⁶ This price decrease follows on from an earlier reduction in insurer premium of \$30 from 1 October 2016 following the introduction of the National Injury Insurance Scheme (NIIS). This \$30 was directed to the scheme to provide care on a no-fault basis for people with catastrophic injuries.

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