

Compulsory Third Party Insurance Queensland Citizens' Jury

2020

How can our motor injury insurance scheme be improved to better support people injured on Queensland roads, now and into the future?

FINAL REPORT

About the RACQ Citizens' Jury

Thousands of Queenslanders were randomly selected from the RACQ membership database and ABC Vote Compass database to receive an invitation in early January 2020 to be part of the Queensland ReThink Compulsory Third Party (CTP) Citizens' Jury.

From this selection process, approximately 200 people registered their interest in being part of the process. Of this group, the jury facilitators, DemocracyCo, chose a range of participants to represent the diversity of Queenslanders as closely as possible - in terms of age, gender, location, employment and road user grouping.

The selected group makes up the Jury which has written this report.

Our remit has been to consider ***“How can our motor injury insurance scheme be improved to better support people injured on Queensland roads, now and into the future?”***

We worked together for four and a half days from February to March 2020. However, we also spent countless hours reading and considering evidence in our own time outside our meeting sessions.

Our final two days were spent using online platforms due to restrictions as a result of COVID-19 - and it appears we were the first citizens' jury in the world to work online in this way. The technology was new to many of us, but facilitated discussions worked well and no jurors were hampered by the change in delivery.

During our time as a Jury we heard from a range of witnesses and stakeholders including legal academics, insurers, scheme design experts, health professionals and injured parties to better understand the scheme from their perspectives. Unfortunately, we didn't hear from practicing Queensland lawyers, Motor Accident Insurance Commission (MAIC) and Insurers (Allianz and QBE) despite DemocracyCo's best efforts to encourage them to participate or provide submissions to this process. As a result, undertakings were made by members of the Jury to personally gather information from these stakeholder groups and some evidence was received by way of a letter outlining the position of the Australian Lawyers Alliance. We acknowledge that MAIC did publish an updated scheme report during the deliberation of the jury.

We thank those who met with us for assisting us to better understand the CTP scheme.

We expect that this report will be distributed by RACQ to MAIC and all relevant Government entities and political parties. We understand and believe that RACQ will be using this report as a basis for their advocacy work. The jury hopes that this report will start the conversation leading to a review of the CTP Scheme.

As this report is distributed, we request to be supplied with a list of recipients.

The Jury acknowledges that the participation of RACQ, and the materials they developed for the knowledge base of rethink CTP could have provided jurors with a biased viewpoint, however, the Jury was acutely aware of this possibility and were extremely vigilant in maintaining objectivity throughout the process.

A number of individual jurors have indicated their intentions to submit a dissenting report.

About this report

This report comprises 10 recommendations, made by the Jury in order of priority beginning with the most important from the Jury’s perspective. Each recommendation is accompanied by an outline of its anticipated benefits and evidence used by the Jury to form this recommendation.

The below table outlines the recommendations the Jury have made and also the levels of support for these by the Jury.

Recommendation	Jury Support levels (%)
Improve MAIC Transparency & Accountability	96%
Remove Opportunities for profiteering from the scheme	96%
CTP awareness and Navigation of the scheme should be improved	93%
Expand the types of vehicles registered & covered by the scheme	90%
More money available for claimants to access	90%
Scheme design options	88%
Retain Governments’ role in the scheme	88%
Improve the scheme by introducing a minimum level of cover	88%
The scheme should remain compulsory	86%
Independent Advocacy	85%

Improve MAIC accountability and transparency

The Jury recommends that a mandatory legislative requirement is introduced for MAIC to report a complete breakdown of all settlements, including analysis of legal costs which are not transparent at this time - ensuring all data is de-identified.

Benefits to Queenslanders

This mandatory requirement would enable claimants to use this information to make more informed decisions.

Legal fees should be disclosed by all parties (plaintiff and defendant lawyers) to MAIC so that the scheme can be adequately assessed regarding costs. This would identify the true costs of the scheme, thus allowing a greater proportion of payouts to go to claimants.

Evidence which supports this recommendation

The MAIC review in 2016 recommended plaintiff lawyers' fees be disclosed, but this has not been adequately actioned despite a trial which we believe is currently being undertaken.

Outlined in the community survey, is evidence that some claimants within the system feel that the legal profession tends to benefit disproportionately from claim payouts. Other witnesses have also expressed similar sentiments.

Remove opportunities for profiteering from the scheme

The Jury recommends that the funds derived from CTP premiums be used to enable the best results for injured parties. Profits should be capped to reduce profiteering by organisations, private or Government. The ideology of the CTP scheme is to provide medical and support systems for injured parties, and this should be maintained.

Benefits to Queenslanders

A capped profit system would maintain the integrity and funding of the scheme. The additional revenue derived from capped profits should be made available to injured parties and/or policy holders rather than insurance companies, legal firms and medical providers.

Any additional money raised by the government should not go to consolidated revenue and should instead be put into injured party benefits and/or reduced premiums.

Evidence which supports this recommendation

Some evidence suggests that profits to insurance companies may be as high as 19%. MAIC quotes 10% - 12% as an acceptable figure. Evidence received by the jury suggests that the financial interest and viability of insurance companies will be maintained if profits from the scheme are 10% and above. Erosion of injured party benefits needs to be legislatively safeguarded from political pressures, to avoid declining benefits to injured parties over time, specifically evident within the current Workcover scheme.

CTP awareness and navigation of the scheme should be improved

The Jury recommends that CTP awareness & navigation of the scheme be the major improvement undertaken. Unambiguous information needs to be made available everywhere for everyone. Information needs to be sent with license or government ID renewal and regularly, online or in the mail.

Benefits to Queenslanders

Everything we have heard so far points to the fact that victims do not have clear access to the information they need at a time when they are most vulnerable.

We support improving how the system is accessed and navigated due to evidence of a general lack of understanding, how, when and why to commence a claim.

Readily available information on how to navigate the CTP scheme will improve outcomes for claimants. This information needs to be made public and highly visible and easy to understand.

Information gives the everyday person power to make informed decisions on what they need to do, and how it all works.

Evidence which supports this recommendation

A common theme among all of the claimant witnesses that we heard from, was that they didn't know anything about how the system worked, what was needed or what they had to do because there was no information given to them or made available.

The Jury acknowledges that the information sought by injured claimants is currently available on Government and MAIC websites. However, is not easy to find or appropriately accessible by persons newly injured. Further barriers exist to the information, in that a number of jury members were not aware that MAIC existed (prior to undertaking their Jury duties) and the Jury suspect this may be the case with a majority of other Queenslanders. If the information was more readily available, it would make access easier and the claim process simpler to support quicker funding & treatment.

All claimant witnesses stated that they did not know anything about the system, how it worked, how to navigate it and had to initiate their own process. From their statements it was obvious that there needs to be more information made available, easy to find, accessible and timeframes clarified.

Expand the types of vehicles registered & covered by the scheme

The Jury recommends that MAIC consider expanding the types of vehicles that are covered in the CTP scheme. Due to advancements in technology, MAIC must consider the inclusion in the scheme of all motorised vehicles that are able to exceed a minimum speed (including but not limited to electric scooters and bicycles) in accordance with existing registration conditions.

The Jury also recommends that CTP should continue to be incorporated into vehicle registration and renewal as per current arrangement. The Jury recommend that registered owners of autonomous vehicles and other motorised vehicles pay CTP to cover accidents involving these vehicles.

The Jury encourage MAIC to continue to set CTP premiums according to vehicle type.

Benefits to Queenslanders

Expanding the types of vehicles covered in the CTP scheme will capture and benefit a broader range of scenarios where people are injured in registered vehicle accidents.

This will equip the scheme for the future - to allow for all types of vehicles including vehicles which are not currently covered or invented yet.

Evidence which supports this recommendation

MAIC studies acknowledge there are challenges in regard to registering future vehicles. This should be up to MAIC to determine, as future vehicle types change.

More money available for claimants to access

The Jury recommends that the system be designed to achieve the best health outcomes for injured parties.

Injured people must have access to reasonable medical and allied health support, each with a defined schedule of fees appropriate to the service being delivered. This should reduce the burden and cost for injured parties to attend multiple medical practitioners as dictated by insurers. Where appropriate, medical specialists should be utilised for injuries and conditions that fall within their particular domain in the assessment phase.

Legal fees should be defined by a grant system similar to Legal Aid to reduce the costs to claimants either through up-front fees or by reducing payout amounts after common law efforts are made. The insurer must provide equal transparency of their costs during the legal process.

The CTP system needs to take into consideration the additional costs of regional and remote claimants by ensuring there are no out-of-pocket travel and other costs.

Benefits to Queenslanders

Standardisation of fees and profits allows for any potential awarded compensation to be the maximum amount possible, and for all individuals to be fairly treated, regardless of the particular providers that are being utilised.

A greater level of trust can be felt by the claimant if it is known that the medical professional involved, is making judgements of medical conditions free of bias, and not 'under contract' to the legal service, or working to a particular directive.

Evidence which supports this recommendation

A claimant witness involved in a motorcycle accident was advised to self-direct her own claim to try to save on money which would otherwise be lost to her legal fees.

Health professional witnesses stated that costs associated with any medical examinations required for CTP claims, are always more expensive than the charge for typical medical examinations.

Scheme design options

Process note written by DemocracyCo - The potential conflicts between affordability and cover/ benefits were extensively discussed by the Jury. To help jurors explore those tradeoffs, they developed potential scheme design options that they thought might work and meet their needs & values and the needs of Queenslanders. These design options are identified in the table below. These options were developed with the support and advice of Geoff Atkins from Finity.

	OPTION 1	OPTION 2	OPTION 3	OPTION 4
Name of Idea	COMMON LAW – MINOR CHANGE	NO FAULT / HYBRID	COMPROMISE MODEL 1	COMPROMISE MODEL 2 (could be the detail of Option 3)
Change required	Minor change to current scheme	NO Fault / Hybrid	Hybrid scheme	Hybrid with a focus on healthcare
Description	<p>Common Law retained as is</p> <p>Extensions for situations which are just unfair – such as the blameless.</p>	<p>No fault coverage – defined benefits but with access to common law above a certain threshold of injury (serious injuries)</p> <p>Unlimited in its coverage and benefits (excluding people who break the law).</p>	<p>Element of defined benefits up to a certain threshold – which means people with ‘minor’ injuries (including psych) could be covered by a defined benefits component.</p> <p>Defined benefits (to include at fault drivers as long as there is no criminal act or omission) are determined by a combination of insurers, medical practitioners, government and lawyers together (as a way of designing the system).</p> <p>Some type of defined benefits for low level injuries but more extensive injuries would be covered by common law (Hybrid scheme)</p> <p>Statutory benefits were ONLY for people when someone else was at fault.</p>	<p>Medical/ treatment costs everyone should be covered (including rehabilitation / dental etc.) (including costs of travel for treatment) – unlimited access</p> <p>Economic loss – should only cover blameless drivers (ie not at fault) (statutory benefits) (time limit?)</p> <p>Emotional damages/ pain and suffering – dealt with through common law (so available to anyone as long as can prove fault)</p>
Cost implications	Minor increase/	\$100+ additional per annum to current premiums	Can be designed within current premium but challenging	Likely within current premium.

	similar to current			
Comments / more info		This is different from Option 3 – as there are no restrictions on cover and benefits.	Benefits Cost savings in defining benefits at the lower levels	Regulated medical fees would be needed – because lifetime medical may be problematic – may not need it due to NIISQ

Process note written by DemocracyCo - The Jury's support for a common law Option (the current scheme with minor revisions) vs a hybrid based scheme was then tested to give RACQ an understanding of the support for retention of the current scheme versus support for more fundamental change.

Outcome of deliberations on scheme design

29% of the Jury preferred a common law-based scheme, while 71% preferred a hybrid-based scheme.

The Jury recognise that a hybrid scheme does not have to exclude common law. In fact, the jury agree, that any scheme we end up with, should include common law.

What the Jury are hoping to get, as a benefit in improving the scheme in this way, is to provide more cover for all people – children, accidents involving animals, accidents arising from unforeseen circumstances etc.

What the 29% of the Jury like about Option 1:

- The Jury are very keen on improving navigation of the scheme and having an advocate to help through that process is appealing.
- Option 1 might be more realistic - a small change, and more likelihood of getting improvements into the scheme. Making minor changes to the system - not wholesale change.
- Transparency of legal fees - very important.
- Cover included for accidents involving children or animals, accidents arising from unforeseen circumstances (including drivers)
- Access to common law

What the 71% of the Jury like about the other Options 2, 3 and 4:

- We need to get people into the system, paid and medical support provided as soon as possible. There is an increased possibility of injured people being able to quickly receive a defined benefit: the speed of their claim will be enhanced.
- If we present more radical changes, we have more likelihood of some of them getting accepted. The flip side of this is that these options represent significant change.
- The cost savings of Option 3 can be used to expand the scheme to include more people for longer.
- With Option 4 we like that there is a level of base cover for everyone regardless of whether they are at fault or not.
- These options reduce the need for lawyers, and the costs associated with lawyers for matters of minor injury.
- Healthcare focus is very appealing in Option 4 - making sure funds go primarily to injured parties
- Access to legal challenges regarding statutory benefits if you need it.
- Administrative efficiencies would be gained here - opening up more money for claimants.
- Cover included for accidents involving children or animals, accidents arising from unforeseen circumstances (including drivers)
- Cover 'no fault' / blameless drivers.
- Restrictions for people involved with serious illegal activity. (There needs to be a moral boundary to this...)

Process note written by DemocracyCo - Prior to the development of these options the Jury had explored the issues of Cover/Fairness, Defined Benefits, Common Law Availability and Affordability separately - these are detailed below and provided in this final report as a record of their deliberations.

Cover and Fairness

The Jury recommends that the scheme covers all people injured on Queensland roads, and is fairer than the current system.

Benefits to Queenslanders

Broader cover means better outcomes for injured people.

It is important that the scheme is fairer for all Queenslanders, including regional Queenslanders.

This would also take the burden off individuals choosing to seek legal recourse.

This also meets with current expectations of what people think they are covered for - we heard that vast majority of Queenslanders thought they were covered, where in fact they were not covered.

Evidence which supports this recommendation

We have heard about people who have had heart attacks or have been injured by a person who had a heart attack and had an accident. We have also heard about people who have had strokes while driving.

Defined benefits

The Jury believes access to common law is crucial as all injuries are different, and cover may need to be varied to reflect this. Our aim is to ensure all Queenslanders are adequately covered without limiting their access to common law.

71% of the Jury supports the development of statutory 'defined benefits' by a collective of health practitioners, MAIC, CPT insurance companies and the legal profession. Claimants should however have the ability to choose to challenge the defined benefit for an injury and negotiate entitlements with the insurer or pursue the matter through common law.

The aim is to streamline claimant access to appropriate entitlements within Queensland, as specified by the regulator, while maintaining the ability to progress through the common law system where necessary.

Benefits to Queenslanders

The incorporation of defined benefits into the scheme makes the system easier to enter and provides early access to medical assistance and support after an accident which will aid in faster recovery for claimants. This may assist with higher success rates for recovery if treatment is accessed sooner and enable earlier return to activities of daily living.

Defining entitlements for regional and remote claimants will assist with faster coverage of associated costs, such as travel, in order to receive specialist injury support and ensure accessibility for treatment.

Basing statutory payouts for injuries on potential earnings, existing wages and reasonable rehabilitation, as per similar precedents within common law, will allow for support that is timely, affordable, quality and accessible.

Common Law

Common law allows individuals to pursue not only medical costs but future economic losses and pain and suffering costs due to injuries.

If a hybrid model featuring statutory defined benefits were introduced, access to common law could still be accessible by people where fault is proven.

Benefits to Queenslanders

A hybrid model featuring defined benefits would enable clear outcomes for injured parties, providing a level of certainty. Common law allows people to pursue damages beyond the maximum defined benefit if necessary. Statutory defined benefits may lead to faster processing of claims to allow for faster access to recovery mechanisms for the injured party.

Evidence which supports this recommendation

According to Suncorp and observable statistics from the Workcover system, using the current common law system for all CTP claims is not as time efficient as it could be. The current system results in poorer processing times of medical and allied health needs for injured parties.

Affordability

The jury agrees that the current scheme's affordability is reasonable, though it is important to note that most other states have lower "registration" costs to reduce the overall financial strain on the individual.

Cost savings should be made through increased efficiencies and mandated reviews, and potentially remittance of insurance company profits to ensure best value is provided to the population. Removing "super profits" from the insurance, medical and legal entities will allow those monies to be returned to those who pay for the system.

Medical providers should have defined service fees (similar to WorkCover) in order to further reduce the cost on the CTP system.

Benefits to Queenslanders

Registration (and therefore CTP) is a known cost and allows people to budget accordingly.

CTP was not implemented to provide profits for commercial entities; it is a welfare system to ensure injured persons have suitable medical and financial support during their recovery. The distribution of funds should reflect this concept.

Evidence which supports this recommendation

The incidence of road accident injuries has reduced over the previous decades as motor vehicle technology has made advances, and vehicles are becoming safer. As further

improvements are implemented (including automated vehicles) the cost of CTP should be reviewed on a regular basis to reflect these reduced costs.

Queensland has the second most affordable CTP scheme across Australia and the Jury like to maintain or improve that.

The current distribution of funds, with a large percentage going to insurance company profits, inflated medical costs and the legal industry, takes away money that should be available to injured parties. Through greater administrative efficiencies, the implementation of service fee cost structures and their capping of profits should cover the costs of expanding or changing the scheme.

The cost of a CTP policy is currently regulated by MAIC who provide a minimum and maximum amount for insurers to charge, with insurers all charging the upper limit of this amount. We believe that there should be a reasonable maximum amount implemented through the methodology outlined above.

Retain Governments' role in the scheme

The Jury recommends that the Government, through MAIC, remain involved in the delivery of CTP to customers by select insurers. We recommend a price cap for insurance premiums is maintained and MAIC continues to regulate, based on transparent research, in order to reduce premiums where possible.

Benefits to Queenslanders

The Jury supports the need for an independent body to set fair standards that benefit all Queenslanders whilst maintaining fairness and availability for both metro and regional participants.

The regulation of this industry is necessary to keep premiums fairly priced, as there could be price inflation or market failure without regulation.

It is important for Queensland Government / MAIC to continue to understand the needs of Queenslanders now and into the future.

Evidence which supports this recommendation

The benefits of Government / MAIC involvement in the existing CTP scheme are evident as Queensland's current premiums are amongst the lowest in Australia.

Improve the scheme by introducing a minimum level of cover

The Jury recommends a base level of medical treatment (based on the particular condition and its severity) be defined, reviewed and scheduled by health care specialists.

Benefits to Queenslanders

We believe that having a fair and reasonable level of upfront care is beneficial to the wellbeing of those in road accidents and should lead to more efficient health care.

Evidence which supports this recommendation

The evidence given by witnesses and specialists has shown that the adversarial nature of the current system slows the process, hinders recovery and consequently adds to cost of recovery.

The Scheme should remain compulsory

The jury recommends that the scheme should remain compulsory.

The Jury agrees that the current scheme's compulsory nature is valid and fair. There should be no change to the 'compulsory' aspect of CTP.

Benefits to Queenslanders

The jury feels that compulsory CTP should share the cost of the insurance across all road users and provide a safety net for those who are injured by a vehicle.

Evidence which supports this recommendation

We have heard from witnesses who provided testimony that their quality of life was reduced by a motor vehicle accident. Personal injuries carry greater quality of life consequences and state-related costs (employment, rehabilitation, family situations) than property damage, which limits itself to repairable items.

Introduce independent advocacy support for claimants

The Jury recommends the introduction of a two-tiered management system, overseen by MAIC, for the claimant to access as and if needed.

First Tier

Incorporates a case manager that guides and supports claimants through the entire process, including individualised support, dealing with each and every step of the process, including all medical needs. The extent of this service should be tailored to individual needs.

Second Tier

Is an advocacy body for claimants to ensure the rights and needs of users of the CTP system are met. When needs are not met or systemic inadequacies are identified by users of the system, the body would advocate for changes to policies for the end users of this system.

A main focus of independent advocacy is to ensure that claimants can focus on their recovery without the stress and anxiety that can be introduced by moving through the CTP scheme unsupported.

This allows claimants to access the level of support that is right for them.

Benefits to Queenslanders

When you're injured you need to reduce stress to focus on recovering. Our witnesses told how this was challenging, while still managing medical and psychological injuries.

The introduction of an independent advocate, not associated with insurance companies or lawyers, provides claimants with reassurance that their interests are the highest priority.

People shouldn't have to worry about processing the claim and seeking evidence while they are still injured.

The introduction of a health and wellbeing advocacy body and case managers, allows a more direct link between claimants and those responsible for system policies, increasing claimants' empowerment.

Evidence which supports this recommendation

Witnesses told us of their experiences of having to conduct their own investigation relating to their accident without guidance or support from police or insurers. They were required to be a self-advocate / case manager going through a claim after a road accident.

Witnesses described how their experience of having to manage their claim was a traumatic process and hindered their own recovery from injuries and the progress of their claim to CTP.