NEW SOUTH WALES BAR ASSOCIATION

RESPONSE TO QUESTIONS ON NOTICE: STANDING COMMITTEE ON LAW & JUSTICE

TWELFTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE MOTOR ACCIDENTS AUTHORITY; FIFTH REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE LIFETIME CARE AND SUPPORT AUTHORITY

1. ADDITIONAL POWERS FOR MAA TO REGULATE PROFITS

The New South Wales Bar Association ("the Association") was asked to take on notice a question as to whether the transitional powers that were proposed in the 2013 Bill should be given to the Motor Accidents Authority ("the MAA") as permanent or continuing powers to regulate insurer profits.

The Association only sees a small amount of the MAA's regulatory work. Most of it is done behind closed doors in the premium approval process. Whether a premium as initially filed is accepted or rejected and any negotiations over margins are not publicly disclosed.

The question as to what regulatory powers are required to allow the MAA to reign in profits really is best answered by the MAA. The Association encourages the Parliament to give the MAA whatever regulatory powers it needs.

Since the Association representatives gave evidence to the Standing Committee, the MAA has provided to the Standing Committee a report from Ernst & Young, scheme actuaries.

The report is generally supportive of the evidence given by the Association. For example, it is noted that scheme efficiency is on the increase, although Ernst & Young continues to measure overall scheme efficiency by dredging back to early and atypical years in measuring efficiency across 2000 through 2012. On any reasonable actuarial standard, the early years would be discarded and efficiency would be measured over the last 5 to 6 years of operation of the well-stabilised scheme. The scheme has been far more efficient in the last 8 years than it was in its first 5.

Critical to understanding recent excess profits is the analysis on page 8 at 4.1.3. in relation to super-imposed inflation. There was a period of super-imposed inflation from 2004 to 2009, estimated at 6%. The Association believes this is a period where claimants were being awarded larger cushions for future economic loss and future care. No-one should jump to the conclusion that such awards are unmeritorious or undeserved. Rather, over time, plaintiffs' lawyers have become better at obtaining all the necessary evidence to properly prove such claims in order that damages can be recovered. Fair compensation is not wrong!

What is critical is that following that period from 2004 to 2009, the scheme has levelled out. The actuaries advise that over the four years since 2009, there has been 0% super-imposed inflation.

Despite there being no super-imposed inflation over the last four years, premiums are still being filed and written on an assumption of 2% to 3% super-imposed inflation. When the super-imposed inflation does not occur that 2% to 3% becomes pure profit. This is the excessive allowance for "contingencies" referred to by the Bar Association representatives in evidence before the Standing Committee.

Quite why the MAA is still allowing insurers to continue to build in a 2% to 3% allowance for super-imposed inflation when the scheme is performing stably and predictably remains a mystery. Whether there is a need for greater regulatory power to address excess profits is a question best directed to the MAA.

The Association also takes the opportunity to point to a comment of Ernst & Young on page 12 of their report. In addressing super profits made by CTP insurers for the first five years of operation of the new scheme (from 1999), they state that it took time for it to become apparent that the legislative reforms were proving more effective than had been assumed by insurers and thus reducing the need for contingencies to be built into premium rate filings.

Critically, Ernst & Young observed:

> *"This is not unusual as costing of legislative reforms is very difficult and the results are much more uncertain than normal premium rating assessments of an established scheme with considerable past claims experience."*

The lesson to be taken from this comment is that we currently have a stable scheme that is well established with considerable past claims experience. Even with that scheme, insurers get away with super profits because undue allowance is being made for contingencies (super-imposed inflation).

What Ernst & Young never commented upon and what the MAA never conceded in putting forward a radical new no-fault scheme in 2013 is that any costings (and few costings were provided) for such a scheme would be "*very difficult*" and the results would be "*uncertain*".

In short, great care should be exercised before abandoning the current scheme with its stable, well-established patterns in favour of an entirely new scheme where it is anyone's guess as to what the actual effects on claim numbers and premium price and profit will be.

2. SCHEME LEGAL AND INVESTIGATIVE EXPENSES

The Association agrees that legal and investigative expenses have amounted to about 12% (as submitted by the Law Society). The figure comes from data published by the MAA.

If there are additional questions which the Association can answer or additional issues where elucidation would be of assistance to the Standing Committee, the Association would be pleased to assist.

8 April 2014

Deloitte.

The New South Wales Bar Association, The Law Society of NSW, and, Australian Lawyers Alliance

NSW CTP Costing Summary

4 April 2013

Deloitte.

Deloitte Actuaries & Consultants Limited
ACN 092 651 057
AFSL 244576

Grosvenor Place
225 George Street
Sydney NSW 2000
PO Box N250 Grosvenor Place
Sydney NSW 1220 Australia

Tel: +61 (0) 2 9322 7000
Fax: +61 (0) 2 9322 7001
www.deloitte.com.au

Alastair McConnachie
The New South Wales Bar Association
Selbourne Chambers
174 Phillip Street
Sydney NSW 2000

4 April 2013

Dear Alastair,

Re: Costing of specific changes to the NSW CTP Scheme

The New South Wales Bar Association, The Law Society of NSW and Australian Lawyers Alliance, which collectively we will refer to as "The Client," have requested Deloitte Actuaries and Consultants ("Deloitte") cost specific changes The Client is considering for the NSW CTP Scheme.

Details of the scope of the assignment are included in our engagement letter and also in the instruction emails sent by Andrew Stone on Tuesday 19 and Wednesday 20 March 2013.

This summary report sets out the estimated financial impact on average NSW CTP premiums of the specific changes The Client is considering for the NSW CTP Scheme.

Yours sincerely

Rick Shaw
Fellow of the Institute of Actuaries of Australia

Gavin Pearce
Fellow of the Institute of Actuaries of Australia

See the unforeseen.

Deloitte.

Contents

Deloitte.

1 Purpose and scope

The NSW Government on behalf of the Motor Accidents Authority ("MAA"), the regulator of the NSW Motor Accidents Scheme ("the Scheme"), released a discussion paper in February 2013 "*Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme*". The paper sets out proposed changes to the NSW Compulsory Third Party ("CTP") Scheme, which have been costed by Ernst & Young ("EY").

Deloitte has been asked by The Client to cost specific changes The Client is proposing for the NSW CTP Scheme. We understand The Client's considerations may be different to those set out in the NSW Government's discussion paper.

Our scope includes estimating the impact on average NSW CTP premiums, of specific changes to the NSW CTP Scheme that The Client is proposing.

Our scope does not include:

- A full costing of the NSW CTP Scheme.
- A review of Ernst & Young's work on the cost impact of the current NSW Government proposed changes to the NSW CTP Scheme.

The specific changes The Client is considering are detailed in Section 4 of this report.

Deloitte.

2 Reliances and Limitations

We have relied upon a number of publicly available data sources as well as information provided by The Client to perform this analysis. We have not independently verified or audited the data but we have reviewed it for general reasonableness and consistency. It should be noted that if any data or other information are inaccurate or incomplete, our advice may need to be revised.

The data sources described above were insufficient to perform a complete analysis of the costings. Specifically, we did not have access to the full Scheme MAA data or the detailed EY analysis of the NSW Government's proposal. As such, there is significant uncertainty in the costings within this report, and substantial deviations will occur between any estimates we have made and the eventual experience if the NSW Government adopts The Client's proposals as described. Such deviations are usual and to be expected. The costings take a retrospective view (i.e. considering what the saving or cost would have been if these reforms had been applied in previous years). As such, future changes to the Scheme over time including structural changes, changes in claimant behaviour, landmark court cases etc. would impact these costings.

This report should be considered as a whole. Deloitte staff are available to answer any queries, and the reader should seek that advice before drawing conclusions on any issue in doubt.

This report has been prepared for the sole use of The Client, for the purpose stated in Section 1. No other use of, or reference to, this report should be made without prior written consent from Deloitte, nor should the whole or part of this report be disclosed to any other person. However, we understand The Client will use this summary report in its response to the NSW Government's discussion paper on reforms to the NSW CTP scheme, and provide the full Deloitte Report to the Minister and MAA. For such release, we require that:

- All material in this submission which references the Deloitte Report is reviewed by Deloitte prior to The Client's submission to the NSW Government.
- The Client must recognise in its submission that the Deloitte Report provides estimates of the considered changes and specifically, as a result of the uncertainty in the estimates, that the actual financial effects of the considered changes could turn out to be higher or lower than estimated.
- You will not acquire any rights in connection with your access to the Deloitte Report or this summary report. We are not responsible to you or anyone else for any loss you or anyone else may suffer or incur in connection with your access to, or your reliance upon the Deloitte Report or this summary report.

Deloitte.

3 Key Findings

3.1 Costing results

The following table sets out our estimates of the expected savings per policy (inclusive of the flow on savings of claims handling expenses where appropriate as well as GST) on the average premium if The Client's various proposals are adopted by the NSW Government. Some proposals listed in Table 1 have not been costed (indicated by "N/A"), largely due to there not being enough information available for indicative costings. Further details for each proposal are discussed in Section 4.

Table 1: Costing results

Section of this report	Brief Description	Savings per policy (Expected)	Savings per policy (Low)	Savings per policy (High)
4.1	Preserve certain aspects of Scheme	No change	No change	No change
4.2	Cap economic loss	$7.00	$4.00	$11.00
4.3	Cap future loss of earnings	$5.75	$4.50	$7.00
4.4	Restrict access to care payments	$29.50	$23.00	$39.50
4.5	Reduce claim disputes and prescribe common contributory negligence deductions	N/A	N/A	N/A
4.6	Remove Section 89A-E	N/A	N/A	N/A
4.7	Improve the efficiency of MAS and CARS	$1.50	$1.00	$2.25
4.8	Streamline workers' compensation paybacks	N/A	N/A	N/A
4.9	Review the Lifetime Care and Support (LTCS) scheme and the Medical Care and Injury Services (MCIS) Levy Proposal	N/A	N/A	N/A
4.10	Reduce insurer acquisition costs	$4.75	$2.50	$7.25
4.11	Set resolution targets and publish results	N/A	N/A	N/A
4.12	Pointless disputes ascribed to profit rather than operating costs	N/A	N/A	N/A
4.13	At-fault driver premium add-on separated	N/A	N/A	N/A
4.14	Tighter regulation of premiums	No change	No change	Potential saving
4.15	Prohibit referral fees	No change	No change	No change
4.16	MAA oversight of costs	N/A	N/A	N/A
4.17	Introduce the claimant as primary beneficiary rule	No change	No change	No change
4.18	Expand ANF coverage	$4.00	$1.00	$5.50
Total		$52.50	$36.00	$72.50

Deloitte.

Currently the average NSW CTP premium is around $560 (inclusive of levies and GST) as shown in Section 3.3 below. If all the above proposals are adopted by the NSW Government we estimate savings to be in the order of $53 (or 10%) per policy, bringing the average premium back to around $500.

A primary intent behind The Client's suggested reforms is to remove inefficiencies. The suggested reforms, if successfully implemented, may result in savings beyond what we have explicitly set out in the above table. These additional savings are likely to come from a number of The Client's proposals aimed at removing friction points and introducing further efficiencies, and should result in reduced legal costs and lower claims management costs. By example, savings may be achieved in the following areas:

- By removing care costs for the less severely injured (see Section 4.4) and also providing access to higher benefits under the ANF Scheme (see Section 4.18) there should be less need for claimants to seek legal representation or for care cost related disputes to arise.
- Further reductions in the number of disputes (see Section 4.5).
- Potential for a modest saving in legal costs as a result of removing Section 89 A-E (see Section 4.6).
- Some efficiency gains may be achieved if the workers' compensation payback process is streamlined (see Section 4.8).

On a GST exclusive basis, approximately $310m, or $65 per policy, is attributed to legal and investigation costs ($49 per policy) and claim management expenses ($16 per policy). If a 10% saving in these cost areas was achieved this would result in a further premium reduction of $6.50 (excluding GST) per policy, or $7.15 including GST.

3.2 General commentary

Compulsory Third Party insurance is complex. Benefits are not explicitly defined; they vary in accordance with the nature and severity of each claim and the attributes of each claimant (i.e. their living and social situation, pre-injury earnings, etc.). There are also multiple interactions between numerous parties within the system - Scheme agents, medical and service providers and claimant. Therefore, estimating the financial consequences of any changes to a CTP Scheme is inherently difficult. It is not a simple numerical exercise; we need to consider potential behavioural changes of any and all parties involved and interactions between different parts of the Scheme.

If the changes are significant, less certainty can be provided with regards the quantum of any financial consequences. This uncertainty may be built in to the financial estimates of Scheme changes and included in a prudential margin related to projected claims costs. If claims experience is better than expected, profits may arise in excess of anticipated levels. That is, what was a forward looking prudential margin can, in hindsight, turn in to profits if Scheme experience is favourable relative to expectations. The converse can also occur where the financial implications of Scheme changes are significantly underestimated and premiums turn out to be inadequate.

The changes being proposed by the NSW Government represent more significant changes to the Scheme than those being put forward by The Client. For both the NSW Government's proposed Scheme changes and those put forward by The Client, consideration should be given to the nature and significance of the changes. The more significant the changes the less clear we can be about the financial consequences of the changes.

Deloitte.

The administrative burden of any Scheme changes also need to be factored in to the decision making process. Likewise, the effects of Scheme changes on the parties within the system should be considered. For example, are the Scheme changes likely to have any effect on the Scheme agents or service providers?

In this engagement, two further complications are the lack of available information on which to base our analysis and the short timeframe in which to respond to the NSW Government's discussion paper. In particular, there is very little publically available Scheme performance data or any details of the analysis behind the estimated financial implications of the NSW Government's proposed Scheme changes. We have therefore had to base some of our assumptions on whatever collateral information we could source in the time available. This necessarily adds a great deal of uncertainty to our analysis, and the costings in this report should be considered indicative only.

3.3 Premium Breakdown

Currently the average NSW CTP premium is $518 excluding GST as shown in the NSW Government's discussion paper. The average NSW CTP premium is $559 including GST. Our best estimate of the breakdown of this premium into the various components of costs, expenses, levies and profit is as follows.

Table 2: NSW CTP Premium breakdown

Component	Cost per policy
Claim Payments:	$237
Non-Economic Loss	$36
Economic Loss	$95
Treatment	$49
Care	$45
Other	$12
Insurer costs (incl. acquisition and claim handling costs)	$65
Legal and investigation costs	$49
Profit	$45
Premium (excluding GST and MAA)	$396
GST	$41*
MCIS (LTCS) levy and MAA operating expenses	$122
Total Premium	$559

* Note: GST is payable on the "Premium (excluding GST and MAA)" as well as the MAA operating expenses (being $12 of the $122 figure above).

Deloitte.

4 Proposed Changes

Section 4 sets out the financial cost implications of The Client's proposed changes to the NSW CTP Scheme.

4.1 Preserve certain aspects of Scheme

4.1.1 Proposal

"Preserve current benefits for pain and suffering (for those who get over 10% Whole Person Impairment ("WPI")), past treatment expenses and future treatment expenses.

Preserve payments for future treatment expenses and future loss of earnings for all innocent victims of motor vehicle accidents. Do not cut off wage loss payments after an arbitrary 3 or 5 years."

4.1.2 Costing

There are no cost implications as this continues the existing benefit structure.

4.2 Cap economic loss

4.2.1 Proposal

"Cap past and future economic loss at $2,000 net per week on the basis that those on higher incomes can and should take out personal income protection insurance."

4.3 Cap future loss of earnings

4.3.1 Proposal

"Cap future loss of earnings to the retirement age (currently age 67)."

4.4 Restrict access to care payments

4.4.1 Proposal

"Restrict access to past and future paid and voluntary care payments to those who exceed the 10% WPI threshold.

We note that payments for voluntary care have been the primary driver in claims costs growth over the past decade and have also seen a substantial growth in the value of small claims and the delay in the resolution of those claims. This proposal not only significantly reduces access to this head of damage, but will also significantly improve the speed of resolution of small claims.

Deloitte.

It is recognised that this saving disproportionately impacts on retirees with injuries under 10% WPI who have no lost earnings. Despite suffering significant and disabling injuries, retirees will receive nothing more than their treatment expenses."

4.5 Reduce claim disputes and prescribe common contributory negligence deductions

4.5.1 Proposal

"Over 80% of claims are lodged within six months. Access to payments for treatment and lost wages is incentive enough to get claim forms lodged promptly. Insurers currently lose 90% of late claim disputes which are a disproportionately expensive drag on claims resolution.

Section 81 of the Motor Accidents Compensation Act 1999 requires insurers to give a determination on liability within three months. This part of the current system is not operating properly, with technical disputes over distinctions between "liability", "fault" and "breach of duty of care". If this Section was clarified needless disputes would be avoided.

Insurers are currently required to hand over a copy of the police report, but no other material in relation to liability or contributory negligence. If the insurer wants to dispute liability or allege contributory negligence then they should hand over all relevant materials including their driver's statement, witness statements and accident investigations. If this information is provided to the claimant then disputes will be reduced. This requirement is part of the reason the Queensland scheme currently works more efficiently than the New South Wales scheme.

Currently there is unnecessary disputation due to insurers making allegations of contributory negligence. Allegations of 100% contributory negligence are commonly made, but never proven. The discussion paper proposes trying to prescribe some fixed levels of contributory negligence. Subject to maintaining a requirement that the contributory negligence causally relate to the circumstances of accident and injuries, this proposal is supported.

For example, UK courts have traditionally held that where a failure to wear a seatbelt is involved, there is no contributory negligence if the failure did not contribute to injuries, 15% reduction if the failure partially contributed to injuries and 30% reduction if injuries were entirely caused by the failure to wear a seatbelt. Disputation in this area can be significantly reduced if fixed percentages along these lines are introduced.

Currently the Motor Accidents Compensation Act 1999 provides for insurers to make advance payments pending final resolution of a claim. On some occasions, insurers do so willingly. In other cases, there are extensive and expensive disputes over modest advance payments. Provided the amount being sought by way of hardship payment does not exceed the total value of the claim, insurers should not object to making an interim payment. The only reason for an insurer to oppose an interim payment would be to keep an accident victim in difficult financial circumstances, in the hope that they would then settle their claim more cheaply out of desperation.

The current hardship payment system does not work because the process is bureaucratic and insurers are allowed to generate needless disputes over what should be straightforward interim payments.

Efficiency of the system can be improved by:

Deloitte.

- *Reversing the onus so as the insurer has to show why an interim payment should not be made; and*
- *Legislating for a presumption in favour of quarterly interim payments for those with loss of earnings as a consequence of an accident. (Quarterly payments avoid the tax complications that the weekly payment regime proposed by the discussion paper would involve).”*

4.6 Remove Section 89A-E

4.6.1 Proposal

“Insurers and claimants want to settle cases without overly elaborate preparation for what should be a straightforward process. These legislative provisions require extensive preparations, add to costs, and create delay.”

4.7 Improve the efficiency of MAS and CARS

4.7.1 Proposal

“The Medical Assessment Service (MAS) and the 10% WPI threshold are at the heart of most claims delays. Unnecessary MAS assessments and repeated MAS assessments are the bane of the current system and must be a key target of reform. The efficiency of MAS can be streamlined by:

i. Requiring claimants to apply to MAS within two years of the accident.

ii. Preventing claimants from applying to MAS unless they have substantive evidence that injuries will be over the 10% WPI threshold;

iii. Not permitting insurers to dispute the 10% WPI threshold where they hold evidence that injuries are over that threshold; and

iv. Allowing insurers and claimants to agree the nature and extent of injuries that are not in dispute and their percentage WPI, so that only injuries where there is a dispute are assessed at MAS (currently MAS assesses all injuries, even those about which the parties agree).

v. Restrict reviews and further assessments to only looking at injuries in dispute, not re-assessing all injuries.

vi. Limit further assessments at MAS by only permitting each side to apply for one such assessment (whilst maintaining the current requirement that there can only be a further assessment if the Proper Officer says there has been a material change in circumstances). There would still be the safety valve of a court or CARS having the capacity to refer again if an exceptional circumstance arose in a particular case.

With respect to CARS:

i. Reduce exemptions from CARS. The CARS system is a form of alternative dispute resolution that is cheaper and more efficient than court proceedings. Currently cases where greater than 25% contributory negligence is alleged are exempted from the CARS process. This should be changed so that CARS has the capacity to assess

Deloitte.

all cases involving contributory negligence allegations (subject to the safety valve of a discretionary exemption for clearly unsuitable cases).

ii. *Impose a limitation period for CARS. Currently delays are caused by the fact that there is no time restriction on applying to CARS for assessment of the claim. We propose the same three year limitation period that applies in relation to court proceedings.*

iii. *Restrict CARS re-hearings. The re-design of the system in 1999 had two dominant features:*

   a. *Excluding pain and suffering payments for 90% of accident victims (the 10% WPI threshold); and*

   b. *Compelling insurers to accept the result of a CARS assessors' award.*

The latter part of the system is not functioning properly. The legislation should be amended to prevent all insurer re-hearings of CARS assessors' awards."

4.8 Streamline workers' compensation paybacks

4.8.1 Proposal

"Currently there is the anomalous situation where an injured accident victim's substantive rights can be determined in a CARS assessment whilst there can still be a litigated court dispute between a workers' compensation insurer seeking recovery of payments and a CTP insurer defending that action. These claims under s 151Z of the Workers' Compensation Act involve unnecessary disputation and should be resolved by a bulk billing agreement between the workers' compensation and CTP insurers. Such an agreement has been talked about for a decade. Implementation is overdue and will result in a significant scheme benefit."

4.8.2 Costing

There is insufficient information to cost the implications of this proposal. However, we agree that it should reduce unnecessary disputation costs.

4.9 Review the Lifetime Care and Support (LTCS) scheme and the Medical Care and Injury Services (MCIS) Levy Proposal

4.9.1 Proposal

"Over 20% of the CTP premium currently goes to support the LTCS scheme, which cares for the most catastrophically injured. Every motorist pays over $100 per year in premium to provide care and treatment for less than 200 people per year. Whilst recognising the need to provide proper care for the most catastrophically injured, there are serious concerns about the efficiency of the LTCS scheme. It appears to be collecting far more in premium than the level of benefits being paid out would justify, so a comprehensive review of the Scheme is warranted."

Deloitte.

4.10 Reduce insurer acquisition costs

4.10.1 Proposal

"Currently about 15% of the premium goes to cover insurer claims handling and acquisition costs. This is the case even though there is minimal-price based advertising in CTP, and insurers only use generic advertising that rarely mentions CTP. It is generally conceded that this advertising is really targeted at the comprehensive insurance market. We contend that the green slip is a compulsory insurance for vehicle owners who should not be subsidising the costs of generic advertising and corporate sponsorship. The only allowance that should be permitted in the premium cost for insurer advertising is where such advertising makes specific reference to CTP price."

4.11 Set resolution targets and publish results

4.11.1 Proposal

"The MAA sets no targets for the resolution of claims and publishes no data on the relative performance of insurers in speed of resolution. Setting targets and publishing the results (identifying individual insurers) would create a positive incentive for insurers to push the rapid resolution of claims."

4.12 Pointless disputes ascribed to profit rather than operating costs

4.12.1 Proposal

"The discussion paper proposes that costs associated with pointless disputes should come from the profit component of the premium rather than operating costs. This is supported."

4.13 At-fault driver premium add-on separated

4.13.1 Proposal

"Some insurers currently offer "driver at fault" insurance as part of the CTP premium. This makes comparison of price problematic. If an insurer wants to offer additional benefits then they should be separately costed as an add-on to premium, rather than inflating the base premium price."

4.14 Tighter regulation of premiums

4.14.1 Proposal

"For the past decade, premiums have been set on the basis that insurers keep 8% of the premium written as profit. They have in fact averaged 19%. There is currently no capacity to claw back the 'super profits'. The Government should introduce and enforce a super profit tax such as 50% on all the realised profits over 12% of premium written.

Deloitte.

The nature of the scheme means that these super profits would not be known and recoverable until some year's post-premium collection, but if the tax super profits were paid to the MAA, then over time, such payments could be used to reduce the MCIS Levy and cover the MAA's operating expenses. If there were consistent super profits then the income stream would ultimately be paid back to motorists through a reduction in the MCIS Levy."

4.15 Prohibit referral fees

4.15.1 Proposal

"Doctors and agents should not be recovering spotter's fees for referrals."

4.16 MAA oversight of costs

4.16.1 Proposal

"Give the MAA power to review solicitor/client bills and, in suspected cases of overcharging, make referrals to the Legal Services Commissioner."

4.17 Introduce the claimant as primary beneficiary rule

4.17.1 Proposal

"In the vast majority of cases, the claimant receives the bulk of the settlement. However, to prevent any abuse, introduce a rule in similar terms to Section 347 of the Queensland Legal Profession Act."

4.18 Expand ANF Scheme

4.18.1 Proposal

"One further proposal that could be considered in revising scheme design would be to expand the current Accident Notification Form system and expand no fault benefits.

The legal profession has significant concerns about expanding the no fault element of the scheme:

(i) The propensity to claim increases.

(ii) Claims handling expenses increases as claims numbers increase.

(iii) The incidence of fraud increases.

(iv) Pure no fault schemes reduce incentives to make roads, motor vehicles and drivers safer.

(v) The risk grows of insurers leaving the scheme and decreasing competition, leading to increased premiums.

Deloitte.

However, if there is to be an expansion in no fault benefits then it is suggested that this be done in a much more restricted fashion than the comprehensive model set out in the discussion paper. For example, the current no fault ANF could be expanded from $5,000 up to $20,000 on the basis that this would reduce disputation and speed up the resolution of small claims. No costs are payable by the insurer on ANF only claims, so expanding the ANF does significantly increase the claims resolution rate and drive down costs in small claims..

To further improve efficiency and speed of resolution, remove party/party legal costs for settlements or awards under $20,000 and restrict the recovery of solicitor/client legal fees and disbursements to a maximum of $2,000 for any settlement or award under $20,000."

Deloitte.

5 Addendum

5.1 Victorian premium breakdown

In addition to the scope described in Section 1, The Client has asked Deloitte to provide a high level estimate of what the equivalent third party personal injury insurance premium level would be in Victoria, which is currently managed through the Transport Accident Commission (TAC), if Victorian policies were privately underwritten as they are in NSW.

This sort of "comparative" analysis is extremely difficult due to the differences between a Government run, no-fault scheme and a privately underwritten scheme.

Below, we have attempted to quantify the following:

- The difference in acquisition costs between the two schemes, and the impact of applying acquisition costs incurred by NSW insurers to the Victorian Scheme,
- Any difference in the profit/dividend component of each scheme's average premium, and
- Potential premium increases in response to the current deficit in the Victorian Scheme.

According to a CTP newsletter published by Finity in August 2012, the CTP premium rate effective from 1 July 2012 for a standard metropolitan car is approximately $475 excluding GST ($522.50 including GST) in Victoria and just under $500 excluding GST ($550 including GST) in NSW. The Australian Bureau of Statistics ("ABS") reported that there were 4.3m registered motor vehicles in Victoria in 2012. Based on these two sources, the expected premium income for the Victorian Scheme in 2012 should be around $2.0bn (i.e. $475 per vehicle * 4.3m vehicles) excluding GST.

In the Victorian Scheme, according to the 2012 TAC annual report :

- The Cash Flow Statement shows premiums received of $1.6bn, which excludes GST and stamp duty. We have not been able to reconcile the difference between this figure and the estimate of $2.0bn discussed above.
- There are acquisition costs of around $34.6m or $8 per policy (based on 4.3m registered vehicles / policies in Victoria).
- A dividend of $140m was paid from the Victorian Scheme in the 2012 financial year. Based on the lower premium income figure of $1.6bn reported by TAC (i.e. being conservative), this is equivalent to a profit margin of just over 8%.
- As at 30 June 2012, the scheme had a deficit of $1.4bn; this is a $1.2bn worsening of the financial position since 30 June 2011.

In the NSW CTP Scheme, based on our estimate of the current premium breakdown (refer Section 3.3):

- Acquisition costs per policy contribute around $49 per policy to the overall average premium.
- Insurers include a profit margin of approximately 8% of the overall average premium.

Deloitte.

Without consideration of any scheme differences, the following adjustments can be made to the standard metropolitan car premium in the Victorian Scheme to estimate the premium in the Victorian Scheme if it was privately underwritten:

- Allowing for similar acquisition costs to the extent observed in the NSW Scheme, we need to allow for an additional $41 per policy ($49 less $8) in the Victorian Scheme.
- No adjustment for profit is required.
- Adding one fifth of the 2012 financial loss (i.e. one fifth of $1.2bn) to Victoria's premium income requirement, which equates to an additional $54 per policy.

With these adjustments, if the Victorian Scheme were privately underwritten the standard metropolitan car premium would be as follows:

Component	**Cost per policy**
Current premium (excl. GST)	$475
Plus: Extra Acquisition costs	$41
Plus: Extra Profits	$0
Plus: Deficit Recoupment	$54
GST	$57
Total new premium	$627