

Ms Karen Doran
Executive Director
Investment and Economics Division
ACT Treasury
Nara Centre, 1 Constitution Avenue
Canberra ACT 2601

16th March, 2016

Re: section 275 review

Dear Ms Doran,

Please find attached, my review of the ACT Compulsory Third Party (CTP) Insurance scheme. The report is intended to meet the requirements of section 275 of the Road Transport (Third-Party Insurance) Act 2008.

Yours sincerely,



David Heath
Fellow of the Institute of Actuaries of Australia
Director, Cumpston Sarjeant Pty Ltd

**Section 275 Review of the Road Transport (Third-Party Insurance) Act 2008 to be presented
to the Legislative Assembly by 31 March 2016**

Executive Summary

This report is intended to fulfil the requirements of the Section 275 review, and responds to the Terms of Reference (provided at Attachment A). In particular it deals with quantitative aspects of the ACT CTP scheme, and claims & premiums experience over the three years to 31 December 2015.

This report has been prepared by David Heath, FIAA, of Cumpston Sarjeant Pty Ltd, in his role as actuary advising the Scheme Regulator.

It includes comparison of the ACT CTP system with other Australian jurisdictions. The ACT scheme is primarily a Common Law system with few qualifying thresholds, and no caps on some heads of damage. The scheme structure has a strong effect on the claim costs of the scheme, and in turn on the premiums charged to ACT motorists. The scheme covers almost 300,000 registered vehicles in the ACT.

The most significant event over the last three years in the ACT CTP scheme is the introduction of competition, in practice from July 2013.

Three Suncorp brands (GIO, AAMI, APIA) began writing CTP in the ACT from 15 July 2013. Prior to that ACT motorists did not have a choice of insurer, with NRMA the only provider.

As an incentive to adopt their brands in CTP, Suncorp offered discounts in non-CTP insurance classes such as Comprehensive Motor. Initially, the market share of the three Suncorp brands was around 10%. From January 2015, GIO's premiums fell below those of NRMA. The market share for the Suncorp brands increased to about 45% of CTP premiums written. During 2015 NRMA adopted lower premiums than GIO, regaining market share. The premium rates for GIO and AAMI were lowered further from September 2015, resulting in increases in market share for these brands.

Further premium reductions have been approved for GIO, AAMI, and APIA for policies commencing from 1 April 2016. NRMA's current premium rates have been approved until 1 July 2016. It is expected that the effects of competition can only deliver further premium reductions to a limited extent.

Competition has delivered a greater choice in product offerings and reduced premiums to motorists. The ACT CTP market has exhibited considerable price sensitivity with relatively small reductions leading to increased market share for respective brands.

Despite the recent decreases in premium rates, the affordability of ACT CTP policies compares unfavourably with other jurisdictions. A large part of the relatively high premium rates can be attributed to the scheme design of the ACT scheme. Unlike comparable schemes in other jurisdictions, the ACT has no threshold for eligibility for Non-Economic Loss, nor caps on benefits. This generous scheme design, relative to other Common Law schemes, limits the potential for further future premium reductions. Reform of the scheme design will be required in order to deliver further significant premium reductions in the future.

Another notable feature of the last three years is the introduction of a Life Time Care & Support Scheme (LTCS) from July 2014.

The LTCS provides treatment and attendant care to those receiving catastrophic injuries (severe spinal and brain injuries) through a motor accident, regardless of fault. It represents an expansion of benefits as it covers drivers at fault, as well as providing ongoing medical, treatment and attendant care. The LTCS is funded by a \$34 levy on each CTP policy.

With the introduction of the LTCS, claim size within the CTP scheme, and in turn premiums, have reduced, as treatment and care costs for catastrophic injuries are transferred to the LTCS.

Claims experience of the CTP scheme has been relatively benign over the three years to December 2015. Claim frequency has been flat, as has average claim size. The use of Motor Accident Notification Form (MANF) claims has increased; in 2009, the year after MANF claims was introduced, they formed about 6% of claims, whereas in 2015, they represent about 13% of claims. MANF claims allow "fast track" access to medical and treatment costs for lower cost claims, without the need for formal claim lodgement and without the requirement for legal representation. The higher frequency of MANF claims and their lower average cost has contributed to the ability for insurers to lower premium rates.

A breakdown of the components of payments is made, reflecting data from the CTP Regulator's Personal Injury Register of motor accident claims (PIR). Over three years the Regulator has established and refined its PIR, and in a competitive market, has been able to improve data available on the scheme (refer to Annual Reports of the CTP Regulator). This breakdown shows a relatively high proportion of Non-Economic Loss (General Damages or Pain & Suffering) and Legal Costs in comparison to similar schemes in Queensland and New South Wales. The high level of such costs are to the detriment of treatment and care costs to injured parties, and/or to scheme premiums levels. These relatively high costs are partly attributable to the ACT Scheme Design.

The Office of the Nominal Defendant administers claims where unregistered or unidentified vehicles are at fault. The claim experience of the Nominal Defendant has also been benign, with claim costs increasing at a rate close to inflation. The Nominal Defendant is funded primarily by a percentage levy on CTP policies written by the private insurers. The claims costs of the Nominal Defendant have been increasing reflecting inflation, but the premiums which are subject to levy has been falling. Accordingly, an increase in the Nominal Defendant levy from 3.3% to 4.0% is to be applied from 1 July 2016.

Section 275 Review of the Road Transport (Third-Party Insurance) Act 2008 to be presented to the Legislative Assembly by 31 March 2016

Terms of Reference

Under section 275 of the Road Transport (Third-Party Insurance) Act 2008 [CTP Act]:

"(1) The Minister must review the operation of this Act every 3 years after the commencement of the Road Transport (Third-Party Insurance) Amendment Act 2012.

(2) The Minister must present a report on the review to the Legislative Assembly within 3 months after the review is started."

The terms of reference are:

Review the operation of the Act over the three years to 31 December 2015 and report on the extent to which the more quantitative related CTP Scheme objectives have been achieved.

In responding to:

Objective 5A (a) 'To continue and improve the system of compulsory third-party insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in the ACT' - review refinements in the regulatory framework, including in response to competition and scope for further improvement;

a1 Introduction of competition

The most significant change in the ACT CTP environment over the last three years is the introduction of competition. While there were no specific barriers for suitably qualified insurers to enter the CTP market, and several had made enquiries, it was only from 15th July, 2013, that ACT motorists were able to choose their CTP insurer.

At that date, three brands owned by Suncorp, being AAMI, GIO, and APIA, each commenced writing CTP insurance policies as a separate brand in the ACT, having each been granted a separate licence, and having their proposed premiums approved by the Regulator.

Prior to that date, NRMA (an insurance brand of Insurance Australia Limited) was the sole choice for ACT motorists. NRMA continues to write this business within the ACT.

Upon entering the ACT CTP market, the Suncorp entities offered discounts to non-CTP premiums if the policy holder packaged this insurance with a CTP policy. At the request of the Regulator, Suncorp provided details of these discounts.

The encouragement of competition and favourable refinements to the regulatory framework has led to a greater choice in product offerings and reduced premiums to motorists.

a2 Introduction of Life Time Care and Support Scheme

Another notable change to the CTP environment was the introduction of the Life Time Care and Support Scheme (LTCS). The LTCS represents an expansion of available benefits for motorists, particularly given the inclusion of at fault drivers that incur catastrophic injuries. The LTCS also provides long term medical, treatment and attendant care to participants. While the LTCS is funded by a levy on all CTP premiums, the underlying premiums charged by insurers have been able to be lowered, as some costs have been transferred from the primary scheme to the LTCS.

a3 *MANF claims*

A significant part of the 2008 legislative reforms was the introduction of Motor Accident Notification Form (MANF) claims. MANF claims allow "fast track" access to medical and treatment costs, without the need for formal claim lodgement and without the requirement for legal representation.

Over the last three years, the adoption of MANF claims by those injured in motor vehicle accidents has increased. It may have taken some time for stakeholders to be fully cognisant of MANF claims. MANF claims now make up about 13% of claims.

a4 *Nominal Defendant*

The Office of the Nominal Defendant (administered by the ACT Insurance Authority) continues to act as the insurer where a motor vehicle injury is caused by an uninsured or unidentified vehicle.

The Office is predominantly funded by a levy on all CTP premiums (presently 3.3%, due to rise to 4% from 1 July 2016). The Office also receives other income from fines, including those for motorists found to be driving an unregistered vehicle.

a5 *Context of ACT scheme*

With respect to potential further improvements to the ACT CTP scheme, it is useful to compare the structure and design of the scheme compared to other Australian jurisdictions.

While all jurisdictions' systems differ, it is possible to group states and territories with similar systems. The CTP schemes in Victoria, Tasmania and the Northern Territory are largely No Fault schemes, where statutory benefits are available to those injured in a transport accident regardless of fault. Statutory payments for hospital, medical, treatment, economic loss, and impairment are paid as necessary.

In Victoria and Tasmania, Common Law damages are also available for those not at fault, but subject to conditions. Only Economic Loss and General Damages are paid to eligible claimants. Medical, hospital and treatment benefits, as well as Life Time Care benefits are not paid in a lump sum, rather as incurred as statutory benefits.

Tasmania has thresholds for general damages, and limits economic loss to 3 times the average weekly wage. There are no caps on general damages.

In Victoria, Common Law is only available to those deemed to have a serious injury (exceeds 30% whole person impairment or via a narrative test). This acts as a significant threshold for Common Law access. Both economic loss and general damages have floors and caps.

The ACT, Western Australia, Queensland and New South Wales are primarily Common Law based systems. These schemes can offer Common Law settlement of treatment and rehabilitation costs in addition to economic loss and general damages.

In Western Australia, there are significantly higher deductibles than in other states and territories. This has the effect of making lower severity injuries ineligible for some payments, and reduces the payment for others. General Damages have a minimum and maximum (cap). While economic loss is not capped, it cannot be accessed where the plaintiff earns more than three times average weekly earnings.

In Queensland, general damages are based on a scale value of injury, so are effectively capped. While economic loss is not capped, it cannot be assessed on the basis that the plaintiff earns more than three times average weekly earnings.

In New South Wales, as in the ACT, Accident Notification Form (ANF) claims provide fast track access to limited medical and treatment costs. In NSW there are greater benefits to at fault drivers than in the ACT.

NSW has a LTCS, with eligibility and benefits similar to the ACT.

In NSW, for Common Law, claimants must have at least 10% whole body impairment to be eligible for general damages, and the amount is capped. While economic loss is not capped, it cannot be assessed on the basis that the plaintiff earns more than about \$4,000 per week.

In the ACT, access to Common Law is unrestricted, with no thresholds required to access benefits, nor any caps operating.

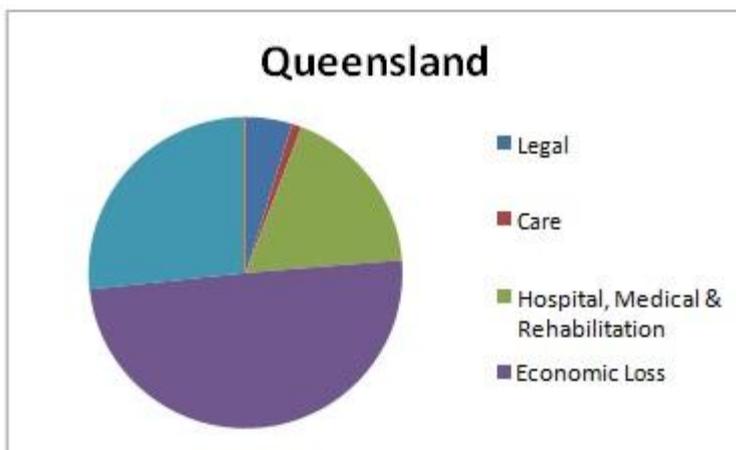
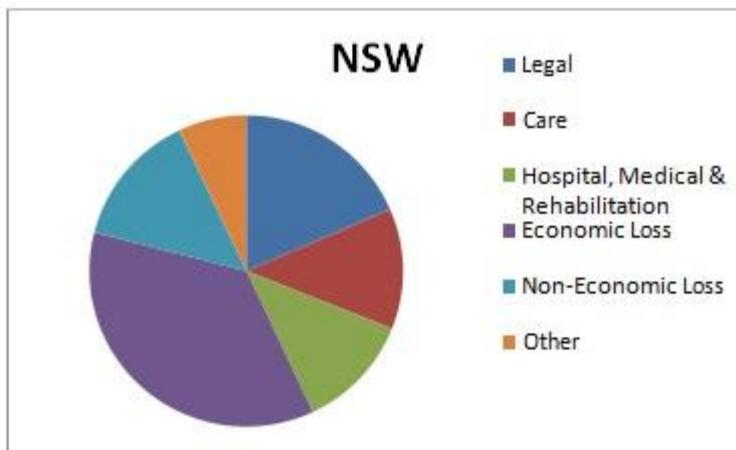
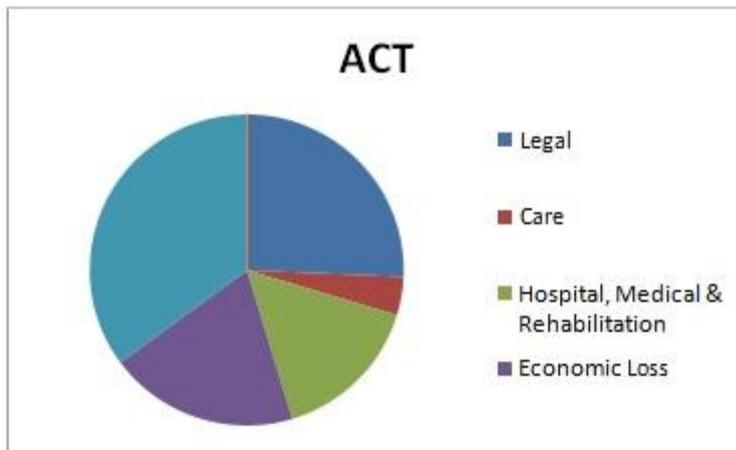
Given the ACT is a Common Law scheme, it may be broadly grouped with Western Australia, Queensland and New South Wales; it offers significantly more generous benefits than those schemes. This is a result of the absence of restrictions or thresholds to general damages, and the absence of caps.

In addition, the applicable discount rate for calculation in ACT Common Law is 3%, whereas other jurisdictions adopt 5% or 6% per annum. This has the effect of increasing the present value of awards, particularly for economic loss.

a6 Payment split across jurisdictions

The following table shows the split of heads of damage for the ACT, and for NSW and Queensland. These schemes are the most comparable to ACT, although as noted above, important differences remain. In particular, unlike Queensland and New South Wales, the ACT scheme does not have any thresholds for access to Common Law. This allows a higher number of claimants to access Common Law, and in turn a higher proportion to utilise plaintiff legal costs.

Costs	NSW	Qld	ACT
Legal	18.5%	4.8%	26%
Care	12.5%	1%	4%
Hospital, Medical & Rehabilitation	12.0%	17.9%	16%
Economic Loss	36.0%	49.6%	20%
Non-Economic Loss	14.0%	26.7%	35%
Other	7.0%	0.0%	0.0%



The most marked difference in the schemes is the high proportion of general damages (non-economic loss) paid by the ACT scheme. It is reasonable to expect this observation, reflecting the unrestricted access to this benefit in the ACT. The thresholds imposed in Queensland and New South Wales may exclude over half of claimants from being able to access general damages.

As a likely consequence of the unfettered access to Common Law, the proportion of claim payments on Legal Costs are also higher than in Queensland and NSW.

The high proportion of costs for general damages and legal, also means a lower proportion applied to treatment and care costs, to the detriment of the recovery of injured motorists, passengers, cyclists, and pedestrians.

It is also reasonable to expect this lack of a threshold to Common Law also affects economic loss; presumably those claimants with short time off work due to an accident are much more likely to claim in the ACT relative to NSW and Queensland, reflecting the unrestricted nature of ACT CTP. This could lead to more payments of a lower average amount.

a7 Attempts at scheme reform

In an attempt to enact significant reforms to the scheme, the *CTP Amendment Bill 2011*, proposed two key matters:

- (i) Consistent with past ACT attempts at reform, apply a Whole Person Impairment (WPI) threshold set at 15 percent for Non-Economic Loss payments (and caps), to focus claims costs on treatment, rehabilitation and care; and
- (ii) Introduction of a statutory based entitlement process for injured persons to receive set payments of medical expenses, rather than requiring court proceedings.

The ACT's Legislative Assembly's Standing Committee on Public Accounts (PAC) inquiry into the Road Transport (Third Party Insurance) Amendment Bill 2011 published the report of its Inquiry into the Bill in May 2012. The PAC chose not to support the reform Bill.

The Government response was *'Disagree. The Government is disappointed at the Committee's recommendation that the Bill should not be supported in its existing form. The Government remains concerned about the broader cost impacts on households and motorists.*

So the changes to the scheme design, as well as a proposed increase in discount rate to 5%, did not pass. As shall be seen below, the introduction of competition has led to lower premiums for motorists in the ACT. However, premiums in the ACT remain near the highest in Australia. The relatively expensive premiums reflect the generous nature of the scheme relative to other jurisdictions. Further reductions in premium are limited should there be little or no future scheme reform.

The proposed amendments would have brought aspects of the ACT scheme into line with comparable schemes such as New South Wales and Queensland. The failure to provide significant scheme reform results in higher premiums than would apply if the scheme reforms had passed.

The PAC also made additional recommendations that highlight the need to analyse ACT CTP in the context of other jurisdictions' CTP schemes. This includes the consideration and possibility of bringing forward reform in response to this section 275 review.

a8 Additional PAC recommendations

In addition to its choice not to support the reform bill, and its recommendation to retain the discount rate at 3%, the PAC chose to make other recommendations.

These included recommendations that the ACT Government continue to consult with other Australian CTP schemes, and to monitor scheme changes made in other jurisdictions. In particular, any significant changes in CTP in New South Wales, should automatically trigger an internal government review of ACT CTP legislation.

The PAC also recommended the Government consult with appropriate experts to propose alternatives in (i) compensatory mechanisms for injured parties other than non-economic loss, and (ii) mechanisms to control premium costs other than the limitation of common law.

Notwithstanding their recommendation not to support the reform Bill, the PAC recommends that after consideration of (i) any changes in NSW CTP, (ii) this section 275 review, and (iii) the PAC recommendations, the Government may propose or bring forward other scheme reform.

a9 Reform in response to competition

The CTP Regulator has undertaken a range of initiatives and refinements in the regulatory framework following the introduction of competition. During 2013-14 and 2014-15 the CTP regulator met regularly with the Insurance Council of Australia and the CTP insurers operating in the ACT to discuss issues relevant to the scheme. The following enhancements to the CTP Scheme were made to improve the system of CTP insurance, some of which directly relate to competition:

- Creating a new market share report which provides monthly statistics;
- Revision of the CTP premium guidelines, including amongst other things:
 - The inclusion of Guiding Principles;
 - Clarification of definitions of Risk Premium and Gross Premium;
 - Clarification of Acquisition and administration costs;
 - Clarification of the treatment of ancillary benefits;
 - Wording to capture the effect of the LTCS; and
 - Requirement of inclusion of CTP marketing information to the Regulator.
- Streamlining the premium filings process.
- Revising the CTP claims forms to reduce duplication and complexity;
- Beginning work on revising the Sharing Guidelines for the industry Deed;

These improvements have resulted in a more efficient and transparent administrative process to facilitate competition in the ACT. The CTP regulator will continue to support other CTP insurers to enter the ACT market to build on the competition achieved to date.

a10 *Other reform*

The CTP Regulator also included two technical amendments to the CTP Act 2008 as part of the *Statute Law Amendment Bill (SLAB) 2015 (No 2)* which addressed known complications or vagaries in the Act which have arisen over time.

Section 150 of the Act was amended, in the case where a court has already allowed proceedings to be filed, to clarify that the court can stay the proceedings and order a mandatory conference and offer of compromise to occur before further action.

Section 102 was amended to ensure that surveillance film is a required document, and that parties are required to hand over surveillance regarding a motor accident claim.

a11 *Potential future scheme reform*

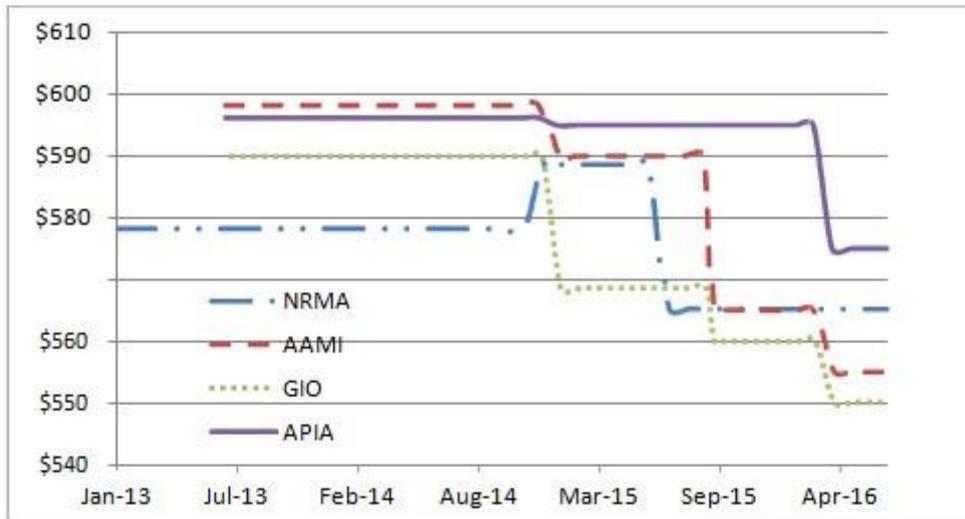
As shall be discussed below, the introduction of competition with the ACT CTP environment has resulted in more frequent submission of premium filings by insurers. The assessment of premium filings imposes costs upon the Regulator, and in turn upon motorists.

The Regulator has advised it intends to review the frequency of filings, the associated administration costs, with potential to establish criteria regarding the frequency and timing of premium revisions.

Objective 5A (b) 'To promote competition in setting premiums for compulsory third-party insurance policies' - review the establishment of introduction of competition and its impact on premiums (including after-market discounts); the changes in market share (movement in the number of customers seeking lower prices); and the change in product offerings;

b1 Premiums

The following graph shows the history of average premiums charged by insurers since 1 January, 2013, and includes proposed premiums that have been approved by the Regulator, but will not commence until 1 April, 2016.



These are the premiums for private passenger vehicles. The premiums shown are unadjusted for inflation (i.e. actual premiums). They include GST, and are relevant for motorists that are unable to claim an Input Tax Credit (i.e. non-business).

I note that the policies for GIO and APIA include "Driver Cover Plus", whereby at-fault drivers receive lump sum benefits for specified injuries. The inclusion of this ancillary benefit, in addition to benefits under the Act, adds about \$3 to the premiums. I understand this feature is not included in policies issued by AAMI.

NRMA has a similar feature in its policies, with potentially larger payments for specified injuries.

Consistent with their strategies to establish market share, and attract lower risk customers, the Suncorp brands offered discounts for customers to package a CTP policy with Comprehensive or Third Party Property Damage (TPPD) cover. The discount is applied to the Comprehensive or TPPD policy rather than the CTP policy.

The discounts were from \$20 to \$75, and were targeted at drivers without recent claims, and in age groups expecting lower claims costs.

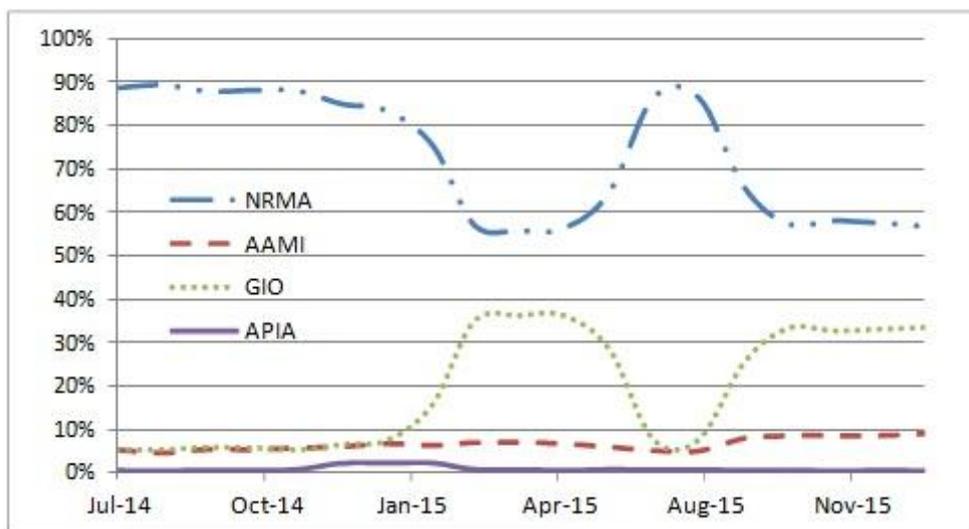
GIO also entered an arrangement to be the preferred supplier with several motor dealers in the ACT.

The NRMA premiums were unchanged from September 2012 to December 2014. The premiums approved in mid 2012 included allowance for inflation and superimposed inflation (being an allowance for increases in excess of wage inflation which are typically observed within long tailed insurance portfolios, particularly those which provide Common Law benefits). Even if nothing was to change regarding the underlying claim experience, it would be reasonable to expect that the premiums would increase over time to incorporate inflation.

Accordingly, the request by NRMA to retain their premium rates over the relevant period reflects the relatively benign claims experience underlying their portfolio.

b2 Market share

Since the entry of the Suncorp entities, and particularly since the CTP premiums of GIO fell below those of NRMA, there has been considerable volatility in market share. The graph below shows the share of each brand (share of policies written in each month):



It may be observed that upon the entry of GIO, AAMI, and APIA, the market shares were relatively small, with NRMA continuing to dominate the ACT CTP market, albeit with some decline in market share. However, following the reduction in GIO's premium rates to below those of NRMA in January 2015, GIO's market share began to climb. In response, NRMA issued revised premium rates from July 2015, being below those of GIO. This led to a recovery in the market share of NRMA at the expense of GIO.

From mid September 2015, GIO again cut premium rates, and saw a restoration of market share at the expense of NRMA.

As the preceding graph shows, reductions in premiums have been approved for all three Suncorp entities from 1 April 2016. NRMA has not yet applied to alter its base premium rates. The volatility in market share indicates significant price sensitivity. As such, the lower upcoming premium rates are likely to lead to a lower market share for NRMA, or a reduction in premiums in an attempt to retain market share.

b3 *Premium considerations*

All insurers must seek regulator approval for their premiums. This process is designed to ensure that premiums are fully-funded (that is the premiums are sufficient to fund the expected claims costs and expenses, allowing for uncertainty) and the premiums are not excessive (that is the insurer is not expected to make profit that is considered excessive relative to the risks that the insurer is assuming). Consequently, in the assessment of premiums, there is a range of acceptable premiums.

In assessing the reasonableness of premiums within a range, there may be a tendency for an effective monopoly provider to submit premiums that are towards the high end of a reasonable range. While the premiums cannot be regarded as excessive, nevertheless the interpretation of trends in claim experience may be such that there is some implicit conservatism within the claims cost estimates, and in turn within the final premiums.

As the ACT CTP market has seen the introduction of competition, insurers are now subject to potential fall in their market share. Being cognisant of this, there may be a tendency for premium estimates to contain less implicit conservatism. Put another way, for an effective monopolist, the regulator was the primary source of putting a ceiling on proposed premium rates. With competition, there are additional sources of downward pressure, being competitive forces and the protection of market share.

In broad terms the best indications of future claims cost (claims frequency x claim size) are based on recent experience. However it must be realised that the nature of CTP, particularly in a common law based system such as the ACT, means that for a given cohort of claims, it may take 5-7 years before the insurer has sufficient reliable information to estimate claim experience for those claims.

Prior to 2008, data from the main scheme (with the exception of claims administered by the Office of Nominal Defendant) were effectively considered as the property of NRMA, so was not publicly available. Since that time, claim data has been released via the Personal injury Register (PIR) database. As noted above, it may take 7 or more years before claims experience for a particular accident year is at or near completion. Accordingly, in their earliest premium submissions, the Suncorp entities (AAMI, GIO, APIA) had to rely on broad estimates of scheme parameters, including information from the CTP Regulator's annual report such as average premiums, and claims information from the annual reports of the Office of Nominal Defendant.

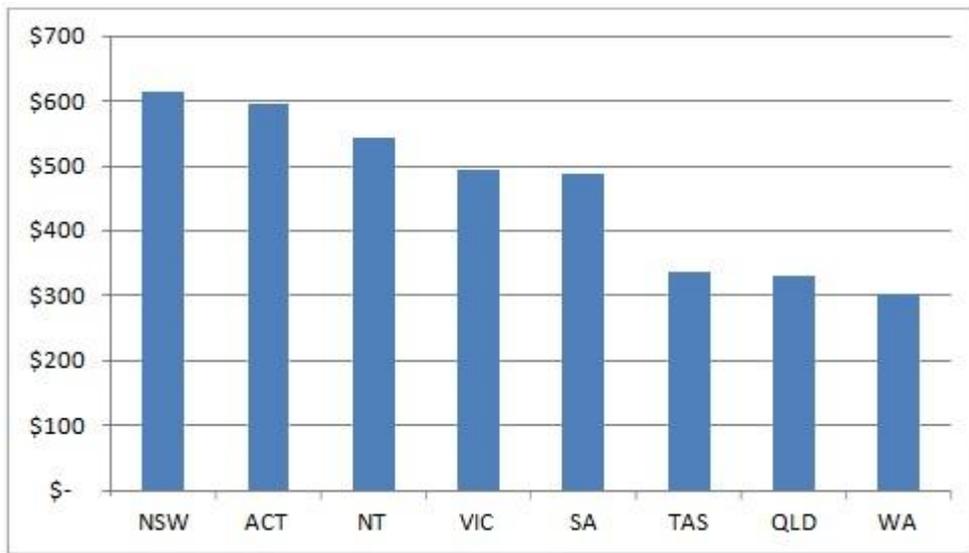
In their most recent filings, submitted in late 2015, the Suncorp entities were able to take a more comprehensive approach, whereby the history of PIR data was used to assist in the estimation of claims costs. In future, Suncorp will be able to incorporate the experience of their own portfolio, while still relying on data from the PIR.

It should be remembered that the Regulator must approve changes in premiums, and that one important criterion is that the premiums meet the "fully funded test". Given recent claim experience of the ACT CTP scheme, this test can be reasonably expected to be met even if there should be further limited reductions in premiums.

Objective 5A (c) 'To keep the costs for insurance at an affordable level' - review the changes in premiums and benchmark against other schemes; review the driver of premiums and the potential in the current scheme for further premium reductions; and review the impact of the Lifetime Care and Support (LTCS) Scheme;

c1 Affordability

The following graph shows total CTP premiums by jurisdiction in 2015. In each case the premiums are all inclusive premiums that would be paid by passenger car driver, including all levies and GST.



The usual way to compare the affordability of CTP premiums across jurisdictions is to show the premiums as a proportion of average weekly earnings. This graph shows the CTP premium as a proportion of full time ordinary weekly earnings for each jurisdiction.



CTP or motor bodily injury policies vary by jurisdiction in Australia, with different benefits available to injured motorists in different states and territories. The schemes which are closest to the ACT are those in New South Wales and Queensland, as those schemes are primarily Common Law based, with only limited benefits available to at fault drivers.

Over the three years to December 2015, the premium rates for ACT CTP have remained around 34-35% of average weekly earnings, even with the inclusion of the \$34 LTCS levy from 1 July 2014.

c2 Premium drivers

With respect to the drivers of CTP premiums within the ACT, there are several factors which have been significant over the past three years:

- Historically low interest rates. In formulating premiums, insurers allow for investment return on the premiums by discounting future cash flows. The very low interest rates result in higher premiums than there would otherwise be.
- Benign claim experience. Claim frequency exhibits some volatility and seasonality, however overall, the frequency has been flat. This experience follows significant reductions in claim frequency over the preceding decade. This phenomenon has been observed across most CTP jurisdictions in Australia. Further, claim sizes have not shown significant movement, other than for expected inflation.
- Competition. As outlined above, a portion of the ACT motorists will readily change insurers to gain lower premium rates. To date, insurers have adjusted their premiums in order to gain market share, and this has produced downward pressure on premiums.
- Life Time Care and Support Scheme. The scheme represents an expansion of available benefits for motorists, particularly given the inclusion of at fault drivers that incur catastrophic injuries. While the LTCS is funded by a levy on all CTP premiums, the underlying premiums charged by insurers had a one-off reduction, as some costs have been transferred from the primary scheme to the LTCS.

Further premium reductions may be driven by competitive forces, as insurers attempt to gain or protect market share. However, as noted above, premiums must be regarded as fully funded in order to be approved by the regulator. Without scheme reform, there is limited scope for reductions as a result of competition, even if more insurers were to enter the ACT CTP market. The nature of the unrestricted and uncapped Common Law benefits offered in the ACT is a major driver of the relative affordability of ACT CTP premiums.

c3 Effect of LTCS

Vehicle owners have paid a \$34 LTCS levy per policy since 1 July 2014. The levy is subject to periodic review, but is set with a long term focus. Given the nature of the participants in such a scheme, there are only a few expected in each year. Further, the size of the ACT CTP scheme means there will be considerable volatility in the number of eligible participants in each year.

In its first year of operation to June 30 2015, there were five interim participants to the LTCS. While this number was broadly in line with expectation, the severity profile and in turn the claim size of the five participants was significantly higher than expected. At the time of writing of this report no qualifying participants have been identified in 2015/16.

Objective 5A (d) 'To encourage the speedy resolution of personal injury claims resulting from motor accidents' - review the trends in claim frequency and claim size, including for the recent settlement of older (pre 2008) claims and the trend in time to settlement; and

d1 *Claims experience*

As noted earlier, claim experience within the ACT CTP scheme has been relatively benign over the last three years. Given the size of the ACT CTP scheme, some volatility is expected in both frequency and claim size. Even if crash rates, and claim numbers do not change, it would be expected that claim sizes would increase by inflation over time. Further, a phenomenon often observed in accident compensation schemes is superimposed inflation, whereby factors such as increased propensity to claim, the effect of Court awards, and escalation of treatment costs, lead to claims inflation rates in excess of price or wage inflation.

Similar to the experience of other Australian CTP jurisdictions, the trend in frequency for ACT CTP claims was steadily downwards in the years to 2008. Following the scheme reforms in 2008, which included the introduction of MANF claims, there was a further step down in frequency. While there have been further modest reductions since that time, frequency has been steady over the three year period 2013 to 2015.

While there has been some volatility, as is expected, the frequency has been in the order of 34 claims per 10,000 vehicles (i.e. 0.34%).

For claim size, payments made in a period will be made for claims on accidents that happened recently, and also those which occurred many years prior. Typically, simpler and less severe claims are paid earlier, with more complex claims are subject to greater legal and Court processes, so tend to settle later and for higher amounts.

While claim payments have been increasing over the last three years, part of the increase reflects the mix of claims settled (older vs more recent accidents). When the pattern of settlements is considered, it would seem that for recent accident years, there has been no significant upward trend in size.

Overall claim size is in the order of \$150,000 per claim in today's dollars.

As with the overall ACT CTP scheme, the claim experience of the Office of the Nominal Defendant has been relatively benign, but volatile. Claim frequency has not shown any marked upward or downward trend. Average claim size over the past three years has been relatively flat in real terms, but subject to inflation over the longer term.

Underlying premiums charged by the CTP insurers have fallen in nominal dollars, and fallen to a greater extent in real values. So in calculating the levy, being the percentage applied to each CTP premium, the numerator is increasing by inflation, whereas the denominator is falling. Accordingly the recommended increase in the levy from 3.3% to 4% from 1 July 2016 is a result of falling CTP premiums, rather than any particular adverse experience of the Office of Nominal Defendant.

d2 *Pre 2008 claims*

The nature of CTP, particularly within a primarily Common Law system such as the ACT is that claims take many years to settle. Accordingly, while it is now over seven years since the enactment of the 2008 legislative reforms, there are claims still being finalised that arose from accidents prior to that legislation.

Further, claims that take longer to settle are often the most expensive claims; in part reflecting their complexity and the legal process. The table below shows the recent finalisation activity of claims with accident dates prior to 1 October 2008:

Year of finalisation	2013	2014	2015
Number of finalised claims	74	50	20
Average settlement size (\$)	430,209	862,184	542,335

Not surprisingly, the number of pre-2008 claims settled each year is diminishing.

There are about twenty known claims remaining to be finalised. Many have already had significant payments made, with high estimates of payments remaining. This includes two very large claims of over \$5 million. Less severe claims are generally settled earlier, even in the pre-2008 environment where MANF claims were not a option. It is to be expected that some severe and/or complex claims will take many years after accident before finalisation.

Objective 5A (e) 'To promote and encourage, as far as practicable, the rehabilitation of people who sustain personal injury because of motor accidents' - review the claim amounts, and numbers of injured persons taking up the early payment for medical expenses via the Motor Accident Notification Form (MANF); and for non-MANF claims, review the trend in time to settlement and components of claim payments (treatment and care etc.).

e1 MANF claims

A significant part of the 2008 legislative reforms was the introduction of Motor Accident Notification Form (MANF) claims. MANF claims allow "fast track" access to medical and treatment costs, without the need for formal claim lodgement and without the requirement for legal representation.

The number and frequency of MANF claims has continued to grow over the past three years, reflecting increased usage of MANF claims by injured parties. Of all claims, around 13% are now MANF claims, whereas in 2009 (about a year after their introduction) only about 6% of all claims were MANF claims. These proportions translate to about 120 MANF claims per annum, whereas the number was 70 per annum in 2009.

The growth in utilisation of these claims was to be expected; as those injured in a motor vehicle accident become aware of this possibility, rather than automatically seeking legal assistance.

For comparison, the NSW scheme now has about 25% of its overall claims being MANF claims. There are several factors, of which we should be aware in making comparisons in the ratio of MANF claims between the two schemes:

- NSW has greater scope for at-fault drivers to access MANF claims, although more than 80% of claimants that access MANF claims in NSW are not at fault.
- NSW has thresholds whereby general damages (non-economic loss) are only paid to claimants that have a Whole Person Impairment of more than 10%, whereas the ACT has no such threshold. Accordingly it might be expected that a greater proportion of minor severity claims in ACT shall seek legal advice and other heads of damage beyond those within the MANF claims.
- NSW has had MANF claims in place for a longer period (2005) than ACT, with greater opportunity for awareness among potential claimants.

The proportion of MANF claims has grown over the last three years, and it is reasonable to interpret recent experience as a continuation of an upward trend. It is plausible, although uncertain, that a higher proportion of claimants will continue to take up this option.

Over the past three years, MANF claims have averaged about \$2,000 per claim.

e2 Finalisation

With respect to finalisation, there is evidence that claims of lower severity (these include MANF claims) are being finalised more quickly than previously. For a given accident year, claims of lower severity and thus lower cost tend to be settled earlier. This is particularly the case for MANF claims, and others that have no legal involvement.

For a period of accidents, say a year, there are observable patterns whereby the earliest claims to settle are those with lower severity. As time passes, the moderate claims are settled, with the most severe and/or complex claims settled later. Accordingly, when comparing finalisation rates and associated settlement sizes, it is useful to consider bands of settlements. The table below shows how settlement sizes for selected bands have changed over the three years since 2012. It may be observed that for the first 10% of finalisations associated with an accident year, finalisation has become faster over the three years. The effect is less pronounced if the first 25% of finalisations is considered.

Finalisation cohort	Average days to finalisation in year			
	2012	2013	2014	2015
First 10%	160	120	119	86
First 20%	191	135	134	133
First 25%	203	152	150	147

So the earliest claims continue to be finalised faster, consistent with the increased use of MANF claims. The improvement in finalisation rates is less marked as more claims are considered. This would indicate little improvement in the rate of finalisation of those claims seeking Common Law benefits.

e3 Payment split

The split of payments by the various Heads of Damage, and a comparison with other jurisdictions is made in section a6, above.

The most marked difference in the schemes is the high proportion of general damages (non-economic loss) paid by the ACT scheme. It is reasonable to expect this observation, reflecting the unrestricted access to this benefit in the ACT. The thresholds imposed in Queensland and New South Wales may exclude over half of claimants from being able to access general damages.

As a consequence of the unfettered access to Common Law, the proportion of claim payments on Legal Costs are also higher than in Queensland and NSW.

The high proportion of costs for general damages and legal, also means a lower proportion applied to treatment and care costs and/or higher premiums, to the detriment of the recovery of injured motorists, passengers, cyclists, and pedestrians.

It is also reasonable to expect this lack of a threshold to Common Law also affects economic loss; presumably those claimants with short time off work due to an accident are much more likely to claim in the ACT relative to NSW and Queensland, reflecting the unrestricted nature of ACT CTP. This could lead to more payments of a lower average amount.

Attachment A

Section 275 Review of the Road Transport (Third-Party Insurance) Act 2008 to be presented to the Legislative Assembly by 31 March 2016

Terms of Reference

Under section 275 of the Road Transport (Third-Party Insurance) Act 2008 [CTP Act]:

"(1) The Minister must review the operation of this Act every 3 years after the commencement of the Road Transport (Third-Party Insurance) Amendment Act 2012.

(2) The Minister must present a report on the review to the Legislative Assembly within 3 months after the review is started."

The terms of reference are:

Review the operation of the Act over the three years to 31 December 2015 and report on the extent to which the more quantitative related CTP Scheme objectives have been achieved.

In responding to:

Objective 5A (a) 'To continue and improve the system of compulsory third-party insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in the ACT' - review refinements in the regulatory framework, including in response to competition and scope for further improvement;

Objective 5A (b) 'To promote competition in setting premiums for compulsory third-party insurance policies' - review the establishment of introduction of competition and its impact on premiums (including after-market discounts); the changes in market share (movement in the number of customers seeking lower prices); and the change in product offerings;

Objective 5A (c) 'To keep the costs for insurance at an affordable level' - review the changes in premiums and benchmark against other schemes; review the driver of premiums and the potential in the current scheme for further premium reductions; and review the impact of the Lifetime Care and Support (LTCS) Scheme;

Objective 5A (d) 'To encourage the speedy resolution of personal injury claims resulting from motor accidents' - review the trends in claim frequency and claim size, including for the recent settlement of older (pre 2008) claims and the trend in time to settlement; and

Objective 5A (e) 'To promote and encourage, as far as practicable, the rehabilitation of people who sustain personal injury because of motor accidents' - review the claim amounts, and numbers of injured persons taking up the early payment for medical expenses via the Motor Accident Notification Form (MANF); and for non-MANF claims, review the trend in time to settlement and components of claim payments (treatment and care etc.).