

# Insurance insights

**BEYOND FAULT**

**Progressing to universal no-fault insurance  
for catastrophic motor injuries**

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# Introduction

When the nightly news reports a traffic accident, the story is often focused on the congestion caused. Images of hundreds of cars at a standstill and motorists exasperated by the inconvenience tend to dominate our television sets.

For the people injured in the accident, the consequences are far from an inconvenience. They can bring a permanent transformation, and it's not a change for the better.

Those involved in a serious motor accident might initially count themselves lucky they managed to avoid death.<sup>1</sup> But depending on where in Australia the accident occurred, this feeling of relief may be short-lived once they realise what sort of an ordeal they have ahead of them.

Compulsory Third Party (CTP) insurance is universally required to register a motor vehicle in Australia. However, the breadth of cover provided to the driver of that vehicle varies dramatically between the States and Territories.

In 'no-fault' schemes, injuries to the driver are compensated by their vehicle's CTP insurance policy. In 'at-fault' schemes, the driver's injuries are not covered by their vehicle's policy.<sup>2</sup>

Whilst this is of minimal consequence for minor injuries, the distinction is profound for those who suffer catastrophic injuries.

The National Injury Insurance Scheme (NIIS) aims to address this inequity by requiring all Australian jurisdictions to provide no-fault cover for catastrophic injuries.<sup>3</sup>

The intent is that each jurisdiction will deliver this coverage via a lifetime care scheme, providing catastrophically injured people with attendant care and other necessary support for as long as they live.

Meeting the NIIS requirements will entail significant change for some CTP schemes, bringing challenges, risks and opportunities.

This paper examines the issue of no-fault insurance cover for catastrophic injuries from motor accidents and the implications for governments, motorists, insurers and the broader community.

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<sup>1</sup> In 2010 there were 1367 road traffic fatalities in Australia. Source: [ABS](#).

<sup>2</sup> A driver's injuries in at-fault schemes can only be covered by another driver's CTP policy if that other driver is deemed responsible for causing the accident.

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<sup>3</sup> The NIIS seeks to ensure no-fault cover is provided for all catastrophic injuries regardless of where they occur. This paper is restricted to those injuries caused by motor accidents that relate directly to CTP schemes. The National Disability Insurance Scheme (NDIS) is designed to primarily cater for disabilities that are not the result of accidents, but are the result of medical conditions that are acquired or present at birth.

# Background

Driving across the border into a different State or Territory might be seen as something of little consequence. If you have an accident, that is not the case.

There are clear distinctions between Australia's States and Territories when it comes to the extent to which a vehicle's CTP policy provides cover for injuries sustained by the driver of that vehicle.<sup>4</sup>

Victoria, Tasmania and the Northern Territory have no-fault CTP schemes which provide cover for all injuries from motor vehicle accidents regardless of who is responsible. These three jurisdictions offer lifetime care for those who suffer catastrophic injuries.<sup>5</sup>

All other States and Territories have at-fault CTP schemes, meaning injuries to the driver responsible for causing the accident are not covered.

However, some of these jurisdictions do have no-fault cover for catastrophic injuries.<sup>6</sup>

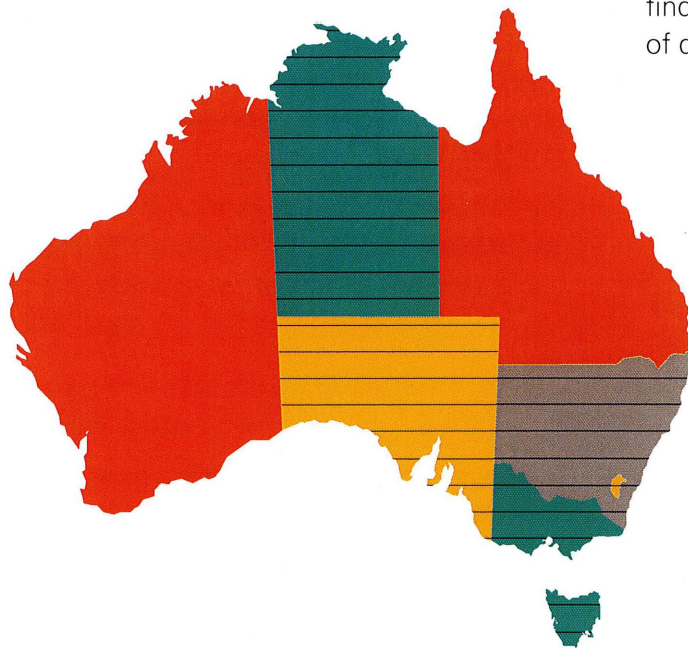
New South Wales (NSW) introduced no-fault cover for catastrophic injuries in 2006, administered by the NSW Lifetime Care and Support Authority (LTCSA).<sup>7</sup>

South Australia and the Australian Capital Territory (ACT) have legislated for the introduction of no-fault coverage for catastrophic injuries, delivered by lifetime care schemes, commencing 1 July 2014.<sup>8</sup>

Western Australia and Queensland have at-fault CTP schemes and do not operate lifetime care for people who suffer catastrophic injuries from motor accidents.

These distinctions have profound implications.

Someone in Tweed Heads (NSW) who decides to drive to Coolangatta (QLD) for lunch could find that meal ultimately costs them millions of dollars.



## CTP scheme design and Lifetime Care

- No-fault schemes (VIC, NT, TAS)
- No-fault for catastrophic injuries (NSW)
- No-fault for catastrophic injuries from 1 July 2014 (ACT, SA)
- At-fault schemes (QLD, WA)
- ≡ Lifetime care (from 1 July 2014 for SA and ACT)

<sup>4</sup> The deciding factor is where an accident occurs, not where the vehicle is registered. Claims will be managed and compensation paid according to the rules of the CTP scheme of the State or Territory where the accident took place.

<sup>5</sup> The Northern Territory (NT) scheme has [caps on the level of attendant care](#) it provides which are in the process of being reviewed in order to comply with National Injury Insurance Scheme benchmarks. Tasmania's CTP scheme does not match the NIIS benchmarks. People who suffer catastrophic injuries from a motor accident in Tasmania that meet the NIIS benchmarks but do not qualify for the Tasmanian lifetime care scheme (Daily Care) are expected to enter the NDIS and the Tasmanian Government will reimburse the NDIS for all expenses. This is detailed in the [Heads of Agreement between the Commonwealth and Tasmanian Governments on the National Disability Insurance Scheme](#).

<sup>6</sup> In addition to some jurisdictions having no-fault cover for catastrophic injuries, there are other instances of schemes having some degree of no-fault cover. For example, NSW provides all people injured in NSW, including at-fault drivers, up to \$5000 in compensation on a no-fault basis. Drivers deemed at-fault are not compensated for their injuries beyond \$5000.

<sup>7</sup> The NSW Lifetime Care and Support Scheme began for children under the age of 16 injured in motor accidents from 1 October 2006 and began for adults from 1 October 2007.

<sup>8</sup> South Australia passed legislation in May 2013. The ACT Government passed legislation in April 2014 and is considering buying-in to the NSW Lifetime Care and Support Authority who would administer the care for people injured in the ACT.



## Mind the gap

A product disclosure statement (PDS) describes in detail what an insurance policy covers, although it's fair to say that very few customers actually read them.

Unlike many other forms of insurance, CTP customers are not sent a PDS by their insurer.

In order to understand exactly what their policy does and does not cover, the customer would need to read and understand the relevant Act of Parliament.

It is perhaps unsurprising then, that it's often after an accident that motorists first become familiar with precisely what they were buying when they purchased their CTP policy.

The majority of motorists are unaware of the gap in driver cover present in at-fault CTP schemes, and the potential implications for them if they have an accident.

In hospitals throughout the States and Territories with at-fault schemes, medical staff have the unenviable task of explaining to many catastrophically injured people and their families the reality they face; their CTP insurer will pay them nothing.<sup>9</sup>

Unless these injured people have purchased alternative insurance or have substantial private wealth, they can expect to survive on public health and welfare support for the rest of their lives.

The proportion of those with catastrophic motor injuries who fall into the category of being 'at-fault' is significant.

<sup>9</sup> Drivers in at-fault schemes will only be compensated if it is deemed that another insured driver has caused the accident. Drivers who, for example, hit a kangaroo or collide with a concealed object on the road will automatically be deemed at-fault because no other insured driver is to blame.

The NSW Lifetime Care and Support (LTCS) scheme estimates approximately 50 per cent of those admitted to their care scheme are entirely at-fault, whilst a large proportion of the remaining 50 per cent are partially at-fault.<sup>10</sup> This translates into scores of people a year in NSW alone.<sup>11</sup>

In an at-fault scheme, those entirely at fault get nothing from their CTP insurer, while those partially at-fault receive less compensation than they require to meet their future care needs.<sup>12</sup>

In response to the tragic social consequences of this situation, no-fault coverage for catastrophic injuries and lifetime care schemes have been established.

## NSW Lifetime Care and Support Authority

Broadly defined, New South Wales has an at-fault CTP scheme.<sup>13</sup> However, the NSW Lifetime Care and Support scheme provides care and rehabilitation to all people catastrophically injured in a motor accident on a no-fault basis.

It is funded by a levy on all NSW CTP policies, calculated as a percentage of the premium.<sup>14</sup>

<sup>10</sup> Information provided by Mr Neil Mackinnon, Manager Service Coordination, Lifetime Care and Support Authority.

<sup>11</sup> Approximately 160 people are provisionally accepted into NSW LTSC each year. Approximately 120 people are permanently accepted into NSW LTCS each year. The [Lifetime Care Support Authority of NSW Annual Report 2012-13](#) (page 11) notes that the number of lifetime participants (permanent) increased by 134 to 438. The number of total participants (permanent and provisional) was 796.

<sup>12</sup> To illustrate, if a driver is deemed to have 40 per cent contributory negligence, their compensation payout will be ~40% less than the amount deemed necessary to meet their future care needs. Other 'heads-of-damage' such as economic and non-economic loss will also be cut by ~40 per cent (assuming they are eligible for these heads-of-damage).

<sup>13</sup> All injured people in NSW, including drivers, are entitled to up to \$5000 in compensation on a no-fault basis. Drivers deemed at-fault are not compensated for their injuries beyond \$5000.

<sup>14</sup> The [percentage of the Medical Care and Injury Services levy](#) varies with the class of vehicle and geographic location, reflecting to a degree, the risk. For example, motorcycles pay a higher percentage reflecting the large proportion of riders who suffer catastrophic injuries.



The LTCS scheme is 'fully funded', which means that the amount of money collected each year is calculated as being sufficient to pay for the care of all people injured in that year for the rest of their lives.<sup>15</sup>

Following their accident, participants are assessed for provisional acceptance into the LTCS scheme.

After two years as provisional participants, they are assessed for permanent acceptance into the scheme.

The two-year period of provisional acceptance provides time for the injuries to stabilise and their permanent impact to become apparent.

Whilst spinal cord damage that results in paraplegia or quadriplegia is the image that often arises when one thinks of catastrophic injuries, the majority of LTCS participants have brain injuries.<sup>16</sup>

Someone does not necessarily have to be bed-ridden or unable to perform daily household tasks to be eligible to enter the LTCS scheme.

The criteria for acceptance includes those who may be able to get themselves up, out of bed and off to work, but are simply unable to perform at the same level that they were prior to the injury.

### Scope of the Lifetime Care and Support Authority

Anyone who suffers a catastrophic injury from a motor accident in NSW is eligible to apply, regardless of where their vehicle is registered and how the accident happened.<sup>17</sup>

Participants will have all "reasonable and necessary" medical treatment, care and rehabilitation provided for the remainder of their life.<sup>18</sup>

Apart from carers and home modifications, it may also include employment assistance and support to engage in recreational activities.

All costs are borne by the LTCS scheme.

It is important to note that LTCS is not a compensation scheme and does not provide income.

At-fault drivers without income protection insurance or existing private wealth often rely on Centrelink's Disability Support Pension to meet daily expenses.<sup>19</sup>

Further, the LTCS scheme does not provide monetary compensation for non-economic loss (pain and suffering).<sup>20</sup> At-fault drivers who have purchased Trauma insurance from a Life insurance provider may be eligible for a pay-out from their insurer when they are injured.

### Cost impact

The Chairman of the National Disability Insurance Agency (NDIA), Bruce Bonyhady, has made the point that, while welfare schemes seek to minimise costs in a particular year, insurance schemes seek to minimise the cost of supporting a person over their lifetime.

Therefore, an insurance scheme invests in early intervention, it invests in families to sustain them in their supporting roles, and it encourages people to maximise their contribution to society.<sup>21</sup>

<sup>15</sup> The LTCS reserves (funds to pay future claims) are managed by NSW Treasury Corp according to strategic asset allocation set by the NSW Safety, Return to Work and Support Board. [Lifetime Care Support Authority of NSW Annual Report 2012-13](#) page 12.

<sup>16</sup> 93% of child participants and 74% of adult LTCS participants have traumatic brain injuries ([Lifetime Care Support Authority of NSW Annual Report 2012-13](#) page 11). Motor vehicle accidents are a leading cause of brain injuries in the community.

<sup>17</sup> People injured in NSW-registered vehicles that have accidents in States and Territories other than NSW will be entitled to the benefits prescribed by the scheme of that jurisdiction. They are not eligible to be participants in the NSW LTCS scheme.

<sup>18</sup> Treatment, rehabilitation and care includes medical (including pharmaceuticals), dental, rehabilitation, ambulance transportation, respite care, attendant care, domestic assistance, aids and appliances, artificial members (limbs), eyes and teeth, educational and vocational training, home and transport modification, workplace and educational facility modifications.

<sup>19</sup> The Disability Support Pension is \$766 per fortnight at a base rate for single people over 21 without children.

<sup>20</sup> People injured in a motor accident who are deemed not at-fault are eligible for compensation for economic loss (loss of income) and may be eligible for non-economic loss (pain and suffering) compensation. This will be paid by the insurer of the vehicle of the driver at-fault.

<sup>21</sup> Saturday Extra, ABC Radio National, Interview with [Bruce Bonyhady by Geraldine Dooque](#), 22 February 2014.



The advantage of a publicly underwritten and administered lifetime care scheme is that, due to its assured longevity, the public sector is well placed to pay the actual costs of care as they arise.

A private insurer<sup>22</sup> undertaking the same task will pay the injured person a lump sum for the future cost of care.<sup>23</sup>

These lump sums are based on an estimate of how long the person will live and what their care needs will be for the remainder of their life.

The injured person must then invest and manage their lump sum to ensure it lasts their entire lifetime.

Predicting complex health issues and their associated costs decades into the future is an extremely difficult task.

Inevitably, many catastrophically injured people ultimately find their lump sum to be insufficient or inappropriate.

The LTCS scheme is able to pay the actual costs of care as they arise, avoiding the inaccuracy and inefficiency of large lump sums and removing any incentive for the injured person to delay their recovery.<sup>24</sup>

If an injured person's capability improves or deteriorates, the level of care provided is adjusted to meet these changing demands.

As Mr Bonyhady articulates, a lifetime care scheme is incentivised to invest in rehabilitation and increasing an injured person's independence, as this will reduce future costs to the scheme.

There is also the opportunity to realise cost advantages from the economies of scale provided by having care for all catastrophic motor claims administered by a single organisation.<sup>25</sup>

The relatively small number of catastrophic claims means it is inefficient to divide this task between multiple insurers, creating unnecessary duplication.

### State Governments

The introduction of a lifetime care scheme where one does not currently exist, requires political will on the part of the State or Territory Government.

If no other reforms of the broader CTP scheme are simultaneously undertaken, the net effect will be an increase in cost for motorists because of the increase in breadth of cover; filling the gap is not free.

The process of legislating to introduce lifetime care does provide an opportunity for State Governments to implement broader reforms of their CTP schemes that will increase efficiency and offset these increased costs.<sup>26</sup>

When formulating a lifetime care scheme, it is important that insurance principles<sup>27</sup> are utilised to ensure it is financially sustainable and operates efficiently.

Legislation that clearly defines the threshold for eligibility for entry into the scheme and precisely what support will be provided to participants is essential.

Further, strict adherence to the care guidelines should be maintained to avoid cost blowouts that can threaten sustainability and lead to questions of inconsistency.

22 Publicly underwritten schemes also opt to pay lump sums rather than fund lifetime care.

23 Paying a lump sum eliminates the need to hold capital and reduces the administration costs associated with keeping an insurance claim 'open'. Injured people will typically engage a lawyer to negotiate their lump sum payment. Removing lump sums for the care component extinguishes common law actions for this component of damages claims, which can reduce the amount of assistance an injured person would typically require from their lawyer.

24 During the process of determining the amount of the lump sum, an injured person has an incentive not to recover in order to maximise the amount they will be paid.

25 There is an argument for having lifetime care for all catastrophic injuries, including workplace accidents, administered by a single, publicly underwritten and administered organisation.

26 By adopting broader CTP scheme reforms, South Australia's legislation introduced no-fault lifetime care whilst reducing costs to motorists. For more scheme reform information see *The Mechanics of Motor Injury Schemes*.

27 Insurance principles articulated by the NDIS ([National Disability Insurance Agency - 2013-2016 Strategic Plan](#) - page 10) include being fully funded, investing in maximising a person's opportunities to reduce support costs over their lifetime, conducting research and encouraging innovation, and building community capability to maximise social and economic participation.



A robust and non-adversarial dispute resolution process is important to manage issues in a timely and efficient manner.

Reserving and management of funds to cover future costs must diligently adhere to insurance principles to avoid the risk of taxpayers having to cover unfunded liabilities – liabilities that can be measured in billions of dollars.

The process of introducing a lifetime care scheme is a significant undertaking, involving change for motorists, insurers, medical, legal and care professionals.

Its successful implementation requires a program that engages and coordinates a wide range of stakeholders in order to communicate the changes and set clear expectations.

### **Public vs private sector underwriting**

Suncorp has consistently stated that the public sector is best placed to underwrite catastrophic injury care.

This is because of the large amounts of capital required, the long period of time the capital must be held and the cost volatility funding the care entails.

A single participant can cost a lifetime care scheme millions of dollars over a period of decades.

Accurately predicting the total amount is difficult because future care needs and costs can change significantly over time.

The Australian Prudential and Regulatory Authority (APRA) requires private insurers to hold sufficient capital to pay future claims costs with adequate buffers.<sup>28</sup>

The amount of capital required to cover high-cost, long-term, volatile risks is substantial.

The shareholders of a private-sector insurer require an adequate return on this capital to maintain profitability, which accordingly puts upward pressure on the premiums motorists would be required pay.

The public sector is not subject to the same APRA requirements and, due to the strength of a State Government's balance sheet, is better placed to underwrite high-cost, long-term, volatile risks of this sort.<sup>29</sup>

Put simply, it is generally more expensive for motorists to have their catastrophic care underwritten by private insurers.

Further, it is better for injured people and more cost effective for the scheme to have care provided for life as it is required, rather than paying a lump sum that may or may not suffice in the long term.

Underwriting and administering a scheme that delivers care for a lifetime is a role appropriate for the public sector.

### **Private sector insurers**

The underwriting and care of catastrophic injuries by the public sector reduces the need for private sector insurers to retain capital.

The impact on private sector capital retention requirements is substantial.

To illustrate, in Queensland the most serious injuries only represent approximately 0.2% of all claims but account for around 10% of total claims costs.

<sup>28</sup> APRA requires private insurers to maintain minimum capital provisioning of 75%, which means that there is a 75% probability that the amount of money put aside to pay future claims will be sufficient. Suncorp elects to maintain capital provisioning of 90%.

<sup>29</sup> A important factor in the rationale for this particular risk being publically underwritten is that it covers an activity (driving a motor vehicle) that is undertaken by a very large proportion of the community and is an important enabler of the economy. Indeed, mobility is regarded as a fundamental human right.



Care is generally the largest component of a catastrophic injury claim. An individual might be paid approximately \$900,000 in lost income, \$300,000 in pain and suffering compensation and \$4.5 million in care.<sup>30</sup>

Removing the care component from these types of claims dramatically reduces the risk for private insurers, allowing them to reduce premiums accordingly.

Further, the no-fault aspect of a lifetime care scheme removes this substantial care component from any negotiations between insurers and injured people regarding who is at-fault, which simplifies these negotiations.<sup>31</sup>

In NSW, private insurers retain responsibility for the initial care of catastrophically injured people.

Insurers are liable for all costs up to the point that the patient is accepted into the LTCS scheme, which presents the risk that gaps or delays will occur in treatment and care if insurers are not vigilant.

An insurer must provide timely and appropriate care in the period immediately following the accident, and work closely with the lifetime care scheme to ensure a seamless transition for the injured person.

Insurers require specialised expertise, robust processes and a close working relationship with the medical staff in trauma units in order to avoid delays and the inadequate provision of care.<sup>32</sup>

If, as is the case in NSW, the lifetime care scheme provisionally accepts participants prior to assessing them for permanent acceptance

two years later, insurers must also be well prepared as the end of the provisional period approaches.

If a provisional participant is not permanently accepted into the lifetime care scheme, the insurer may reassume responsibility for the injured person's care.

Legislation that clearly defines the roles, responsibilities and liabilities of all stakeholders is essential in order to provide the best possible care and rehabilitation for people with catastrophic injuries.

### **Motorists and the community**

No-fault lifetime care schemes provide cover for something that, for many people, is their most dangerous everyday activity – driving a car.

A catastrophically injured person without this protection will often draw on their family and their community for support, placing a tremendous burden on these family members and restricting their ability to contribute fully to their community and the economy.

A lifetime care scheme provides assurance to everyone in the community that, if they are catastrophically injured in a car accident, they will be adequately looked after for the remainder of their life.

This reduces the burden placed on their family and charities that would otherwise attempt to fill this gap.

The annual cost paid by motorists for this level of assurance is minimised when provided by an efficient lifetime care scheme.

<sup>30</sup> This compensation might be paid to a person in their mid-20s earning approximately \$1000/week who suffered a catastrophic brain injury from a motor accident in Queensland in which they were not at-fault and, as a result, required 24-hour care. Payments for lost income (economic loss) and pain and suffering (non-economic loss) are generally paid to catastrophically injured people who are not at-fault in CTP schemes.

<sup>31</sup> If the injured person is deemed partially at-fault (contributory negligence) this will generally reduce the amount paid for economic and non-economic loss. This reduction will generally be proportional to the degree of contributory negligence. To illustrate, if the injured person is deemed 20% at fault, the compensation amount will be reduced by ~20%.

<sup>32</sup> The medical staff that provide emergency care for catastrophically injured people are important stakeholders in the operation of a lifetime care scheme. Their early diagnosis and communication with the insurer can facilitate care after the injured person is discharged from hospital and ensure admission into the lifetime care scheme at the earliest opportunity.



# Conclusion

The purpose of personal injury insurance is to help those who are unfortunate enough to be injured in an accident.

The greater the injury, the greater the negative consequences of not having insurance.

Every week, millions of Australian motorists risk finding themselves without cover if they have a serious accident.

This represents a large gap in the insurance landscape, a gap that the National Injury Insurance Scheme admirably seeks to fill.

The best way to correct the current situation is for all jurisdictions to establish no-fault lifetime care schemes for people catastrophically injured in motor accidents, underwritten and administered by the public sector.

These lifetime care schemes are able to comprehensively meet the needs of injured people by investing in building their long-term capacity, independence and quality of life.

In doing so, they reduce the ultimate cost of care, which brings down the cost to motorists who fund the scheme.

The inefficiencies and negative consequences of paying lumps sums to individuals are eliminated, and consistent, high-quality care is provided.

Implementing a lifetime care scheme requires legislation that clearly defines the eligibility and benefit parameters to minimise misunderstandings and disputes.

Scheme management must occur in a manner consistent with insurance principles or risk becoming financially unsustainable.

If implemented in conjunction with broader CTP scheme reforms that improve efficiency, the cost impact on motorists can be entirely offset.

Private insurers, care providers, legal and medical professionals all have important roles to play to make the scheme run well and deliver the best possible results for injured people.

Co-ordination and role clarity is required to avoid any unnecessary delays or inadequate care that would be to the detriment of those catastrophically injured.

Introducing universal no-fault catastrophic care in Australia is unquestionably a positive step forward. It is a step that should be taken as quickly as possible.

Every day that at-fault schemes continue to exist is another day that people in the community face the real risk of a lifetime of inadequate care.

When this important reform is fully implemented it will mean that, whatever side of the border you crash, you will be properly looked after.

# The Suncorp Group

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