



Eleventh Review of the Exercise of the Functions of the Motor Accidents Authority and the Motor Accidents Council

Supplementary Submission by Insurance Council of Australia

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Introduction

The Insurance Council of Australia (ICA) is pleased to contribute further to the Standing Committee on Law and Justice's (Committee) Eleventh Review of the exercise of the functions of the Motor Accidents Authority (MAA) and the Motor Accidents Council (MAC) following our attendance at the Committee's hearing on 10 October 2011.

We would like to refer to one of the issues raised at the hearing on 10 October 2011 in relation to the differences between the various personal injury schemes in New South Wales. We submit that these differences are longstanding in nature and represent clear government policy. To assist the Committee's deliberations we have prepared a document comparing various personal injury schemes across Australia which is annexed for your perusal. We submit that this document shows that governments across Australia including NSW have put in place different schemes to deal with various forms of personal injury to address the particular public policy needs of each scheme.

We would like to take this opportunity to make some specific comments on the issue of late claims which was discussed by various witnesses on both hearing dates before the Committee. We will then address the supplementary questions posed by the Committee before providing additional information on the matters taken on notice by the ICA's representatives at the Committee's hearing.

Late Claims

The ICA submits that enshrining the principles of early notification and early intervention into the design of a compensation scheme ensures that appropriate treatment and rehabilitation services are provided to the injured person when they will receive the most benefit. The benefits of early notification also include assistance with financial hardship, access to accident witnesses and more certainty in setting premiums. In general, this has been the direction of public policy over recent years as exemplified by the recent release of the Productivity Commission Disability Care & Support Review.¹

The requirement that claims be made in accordance with time limits allows injured persons to have early access to treatment. In order to encourage claimant behaviour in this regard we submit that the penalties in place for late claims under section 73 should be maintained.

The High Court (in *Brisbane South Regional Health Authority v Taylor*²) confirmed that there are 4 reasons why limitations periods are set:

- As time goes by relevant evidence is likely to be lost.
- It is oppressive to a defendant to allow an action to be brought long after the circumstances of the claim occurred.
- It is desirable for people to be able to arrange their affairs and utilise their resources on the basis that claims cannot be made against them after a certain time.
- The public interest requires that disputes be settled as quickly as possible.

The Australian Lawyers Alliance (ALA) submits that 95% of claims are lodged within 6 months of the accident and that 90% of the late claims are ultimately allowed to proceed.³

Industry data available to our members indicates that some 16% of claims apart from

¹ Productivity Commission Disability Care and support Inquiry report No.54 31 July 2011, volume 2, chapter 13

² [1996] HCA 25

³ Australian Lawyers Alliance Submissions To The Legislative Council Committee Review Of The MAA, Submission No 5 at page 8

workers compensation recoveries are lodged after the 6 month time limit for claims under section 72. Of these approximately 1% of claims are received outside of 3 years in breach of the section 109 time limitations for the commencement of court proceedings.

Table 1 - Summary of Late Reported Claims - Excluding S151z Claims
Number of Claims Reported

Report Year ending 30 June	Within 6 months of accident	6 months to 3 years since accident	3 to 3.5 years since accident	More than 3.5 years since accident	Total
2003	7,373	1,398	31	1	8,803
2004	7,164	1,328	36	25	8,553
2005	6,997	1,232	36	36	8,301
2006	6,576	1,129	35	53	7,793
2007	6,465	1,052	35	35	7,587
2008	6,401	1,103	22	42	7,568
2009	6,434	1,223	28	75	7,760
2010	6,942	1,349	31	69	8,391

Proportion of Claims Reported

Report Year ending 30 June	Within 6 months of accident	6 months to 3 years since accident	3 to 3.5 years since accident	More than 3.5 years since accident	Total
2003	83.8%	15.9%	0.4%	0.0%	100.0%
2004	83.8%	15.5%	0.4%	0.3%	100.0%
2005	84.3%	14.8%	0.4%	0.4%	100.0%
2006	84.4%	14.5%	0.4%	0.7%	100.0%
2007	85.2%	13.9%	0.5%	0.5%	100.0%
2008	84.6%	14.6%	0.3%	0.6%	100.0%
2009	82.9%	15.8%	0.4%	1.0%	100.0%
2010	82.7%	16.1%	0.4%	0.8%	100.0%

Source: Insurance industry data using information obtained from licensed insurers

Table 2 indicates that, of the claims reported 3 years or more post accident; approximately 37% are discontinued by the claimant within a range of 25%-48%. The remaining claims then proceed to be either disputed or settled.

Table 2 - Claims Reported more than Three Years Since Accident - Excluding S151z Claims

Current Liability Status	Report Year	Discontinued/Lapsed	Liability Rejected	Closed	Settled	CARS	Court	Still Open	Total
Proportion of Total	2003	25%	9%	0%	59%	3%	3%	0%	100%
	2004	46%	0%	0%	48%	3%	3%	0%	100%
	2005	38%	4%	0%	51%	0%	4%	3%	100%
	2006	48%	1%	0%	43%	0%	1%	7%	100%
	2007	44%	4%	0%	41%	1%	3%	6%	100%
	2008	31%	3%	0%	36%	2%	5%	23%	100%
	2009	42%	4%	0%	21%	0%	0%	33%	100%
	2010	26%	2%	1%	17%	0%	1%	53%	100%

Source: Insurance industry data using information obtained from licensed insurers

ICA submits that the information above does not accord with the estimates provided by the ALA. We consider that further analysis is required before any action is taken by the MAA on this issue.

Clearly many late claims are accepted by insurers as the explanation for the late lodgement is considered satisfactory in terms of the legislation. It is ICA's submission that the section is working as expected and does promote the early lodgement of claims. To suggest that there is no prejudice in the lodgement of late claims as submitted by the ALA is difficult to follow given the benefits of early notification correctly pointed out in their submissions.

It is submitted by ALA that CARS Assessors may have the final say in determining a late dispute. The ICA considers that this submission has merit particularly for matters under 3 years and is likely to reduce the need for costly litigation when determining such issues.

ICA submits that the option of reducing damages as a penalty for late lodgement is unlikely to be successful in encouraging the early notification of claims. Insurers need some certainty when setting premiums and early access to investigate and manage claims is required. This certainty is one of the principles highlighted by the High Court in *Taylor's* case.

It is ICA's submission that, without the certainty provided by time limits, insurers will have difficulty in pricing the scheme to comply with the full funding requirements. Claims theoretically could be received many years from the accident date and this would significantly hamper the insurer's ability to adequately reserve their cost.

Three Year Time Limit to Commence Proceedings

As noted above, there is no time limit in which a matter is to be lodged at CARS although applications to court must be made within 3 years under section 109 MACA. As a matter of broad principle the insurance industry submits that the CARS process should be consistent with the laws across Australia in accordance with the principles in *Taylor's* case.

The ICA submits that CARS matters should be prosecuted expeditiously and we submit that the scheme incorporates the provisions in sections 55 to 60 of the Civil Procedure Act, to apply for matters going to CARS. Additionally a mandatory exemption from the CARS process could be provided so that the matter can be dealt with by a court given that the issues are likely to be substantive given the significant time delay.

Law & Justice Committee's Supplementary Questions to the Insurance Council

The impact of the global financial crisis on insurers and CTP premiums

1. Is there a lingering impact of the global financial crisis on insurers, and what impact has this had on CTP premiums?

The ICA notes that the global financial crisis (GFC) has affected investment returns, primarily through interest rates. As such we submit that the GFC is one of the factors that have led to an increase in premiums in 2009 and 2010. Insurers pay claims partly from the premiums they collect and partly from the interest income they derive on those premiums. In the absence of interest income, insurers needed to increase premiums to ensure that claims could be paid.

Market interest rates had increased in 2010 from their lowest levels reached during the GFC, although not to the levels seen before the GFC. However during the last month or two there has been a significant increase in market volatility and uncertainty, and interest rates have once again reduced significantly. Current filings for 1 January 2012 will be based on the low interest rates now available on government bonds.

The ICA submits that the real premium (that is, after taking into account inflation which has increased by 37.9% since September 1999) has in fact fallen by 28.2% over that period. Put another way, had CTP premiums kept pace with inflation over that time, the average premium in the June quarter of 2010 would be \$596 which represents 39.3% more than the actual rate.

We also believe that the relative shift in premiums and average earnings has resulted in a marked improvement in the affordability of CTP insurance measured against the growth in average earnings. The average CTP premium (Metro Class 1) as a proportion of average earnings has fallen from just under 55.0% in the September quarter 1999 to just under 34.0% in the June quarter 2010 - representing a 38.4% improvement in affordability.

Previous MAA Reviews

2. The Insurance Council submission stated:

The ICA refers to its detailed submissions made to the Committee's Tenth Review of the MAA and the Third Review of the LTCSA. Following the completion of those reviews in October 2010 the ICA and our members have been continuing to work collaboratively with the MAA on the range of issues highlighted in the review.⁴

- a) What areas in particular have you been working on with the MAA?
- b) Has this work been done via submissions to the MAA, or through other practices such as working parties?

The ICA has a multi-level consultation process with the MAA which involves regular meetings with insurance industry executives and claims managers. We have also been involved in specific working parties on different issues and regularly respond by written submissions to requests for feedback. Some of the issues raised in this consultation

⁴ Insurance Council of Australia, MAA Submission 7, p 2.

process include:

- The MACA Amendment Bill 2010 (concerning practical issues arising from proposed changes after the Zotti case)
- Legal Costs Regulation Review
- The National Heavy Vehicle Registration Project
- Personal Injury Register
- Car share vehicles
- Resetting of geographic relativities
- Motor cycle review
- Regulatory enforcement policy
- Health Outcome Workshops to review available tools for monitoring health outcomes
- Health Outcome Workshops to explore innovative approaches in other jurisdictions and schemes and to develop pilot programs for NSW
- Training for Basic (Introductory) Rehabilitation Service Providers
- CARS Workshop with all stakeholders - Review of CARS
- Whiplash training on use of Whiplash Guidelines including use of Claimant Brochure and DVD on recovering from whiplash injuries
- How to accommodate Health Outcomes into TRAC (Treatment, Rehabilitation and Attendant Care) insurer audits

State of insurer market

3. How would you describe the state of the NSW CTP insurer market? Are there likely to be any new entrants – or companies leaving the field, in the near future?

The ICA as an industry body is not in a position to comment directly on the commercial intentions of our members as it may have trade practices ramifications. Generally speaking however the ICA believes that an open and competitive CTP insurance market continues to operate in New South Wales for the benefit of motor vehicle owners. Owners have a choice of insurer, each of which offers a range of prices depending on the insurer's assessment of the price required to fund the risk exposure provided by the CTP policies they underwrite. At all times, insurers offer prices in accordance with the Motor Accidents Compensation Act 1999 (the MAC Act), and the MAA's Premium Determination Guidelines.

We submit that the objectives of the scheme are being met. There is strong competition between the insurers with meaningful price variations between the segments and shifting market shares, indicative of competitive forces.⁵

In addition we also refer to Pre-Hearing Questions on Notice directed to the MAA. Specifically we note the MAA's response to Question 30 where they estimate that in the last financial year 22% of CTP policies were not renewed with their current insurer.⁶

⁵ Motor Accidents Authority Annual Report 2009-2010, page 57

⁶ Standing Committee on Law & Justice Eleventh Review of the exercise of the functions of the MAA and MAC Pre-Hearing Questions on Notice to MAA, p17

Matters Taken on Notice from Hearing on 10 October 2011**Section 89 A Conferences****4. Mr DAVID SHOEBRIDGE: That sounded nice in a second reading speech, but how has it turned out in practice?**

The ICA supports the use of settlement conferences and believes that they will reduce unnecessary litigation costs and facilitate settlement of claims in a timely manner. As section 89A conferences only apply to accidents occurring after 1 October 2008 our members have not experienced a significant number of conferences to date. However, we submit that the requirements provide all parties with a significant incentive to resolve matters at an earlier stage and provide injured claimants with greater certainty.

We submit the early exchange of relevant information by the parties also encourages early resolution of claims. Our members' early experience with the regime indicates a significant increase in settlements prior to the holding of a conference. In this regard we submit that the objectives of the changes appear to be met.

The ICA and our member insurers are keen to work with the MAA to support initiatives which are designed to streamline the settlement process and provide injured motorists with timely access to injury management and compensation that is focussed on optimal health and work outcomes.

Discount Rates**5. Mr DAVID SHOEBRIDGE: When you do that could you cast an eye back on your historical assumptions of the capital returns you have been factoring in and see if they accord with a 5 per cent real return rate? I rather suspect the scheme operates such that the assumptions you feed in on the profits you will derive from invested premiums would be at a far lower rate than the assumed profits that would be derived from injured person's payouts. Do you follow that?****6. Mr DAVID SHOEBRIDGE: I understand that. I assume part of your assumption is that when you take a premium you are going to invest it and get a certain return on that premium over time. In your answers could you review your assumptions over the last 10 years on your investments and compare that with the 5 per cent that has been assumed for injured persons?**

In general terms the discount rate set by legislation to reflect the present value of a claimant's assessment of future damages does not correlate directly with the rate of investment returns used by insurers when filing their proposed premium rates with the MAA. The discount rate is however factored in a global sense into the insurer's estimate of claims costs.

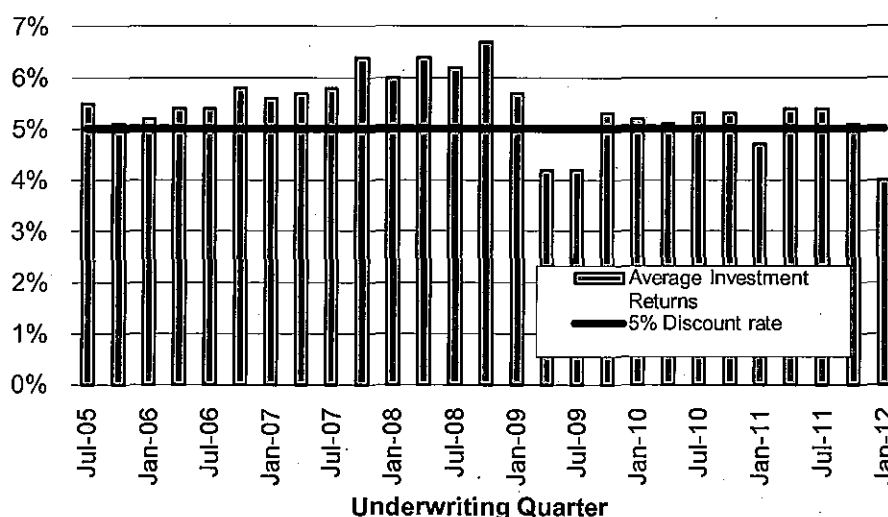
We would also like to take this opportunity to comment on the arguments raised by the Bar association concerning the level of the discount rate at 5%. The ICA refers to annexure A which indicates that many different types of personal injury schemes in Australia have legislated specifically to mandate the discount rate at 5%. We submit that this consistency should remain in the CTP scheme in NSW. Further we submit that changes in discount rates which impact claims costs may put pressure on overall scheme costs.

In relation to the assumptions used by insurers (including their assumed rate of investment return) when calculating premium filings, these are provided to the MAA on a commercial in confidence basis and are not reported on publicly by the MAA. In general terms however a

number of relevant Commonwealth government bonds⁷ are averaged to give a particular yield curve rate for each underwriting quarter.

In a similar approach Graph 1 below shows the level of investment returns on claim reserves calculated as above compared to the 5% discount rate legislated for claimant lump sums from July 2005 to January 2012. The ICA submits that for most of the period from July 2005 to January 2009 the investment returns were higher than the 5% used for claimants' damages which reflects the lower premium rates during this period. Since the advent of the GFC the investment returns were similar to the discount rate. We submit that the immediate future remains volatile and dependent on international market forces which may impact on premium pricing.

Graph 1 – Investment Returns / Discount Rate



Source: InsuranceCouncil of Australia

Prudential Frameworks

7. The Hon. SCOT MacDONALD: For my clarification, what would be the timing of a serious risk to your capitalisation? How quickly would that come to the attention of APRA or government?

The general insurance industry in Australia is subject to a strong regulatory regime through the Insurance Act 1973, Insurance Contracts Act 1984, Corporations Act 2001 and the ASIC Act 1999. An example of this is section 49A of the Insurance Act 1973 which specifically provides that an insurer's auditor or actuary is obliged to immediately notify the Australian Prudential Regulation Authority (APRA) in writing if the person has reasonable grounds for believing that:

- the insurer is insolvent, or
- there is a significant risk that it will become insolvent; or
- it is aware of an existing or proposed state of affairs which may materially prejudice the interests of policy holders.

⁷ Such as Treasury Bonds, Treasury Capital Indexed Bonds and treasury Notes

Under APRA Reporting Standard GRS 301, general insurers are required to report to APRA, generally on a quarterly and annual basis, on their:

- Premium revenue and reinsurance expense;
- Claims expense and reinsurance recoveries;
- Investment and operating income and expenses; and
- Financial and operational performance.

If an APRA regulated institution becomes aware that it has breached (or will breach) a prudential requirement and that breach is 'significant', it must give APRA a written report about the breach. If the breach relates to the general insurer's sound financial position or financial obligations, it immediately notifies APRA in writing. In relation to other breaches of the prudential requirements a breach must be notified within 10 business days after the institution becomes aware a breach has occurred. Failure to notify APRA of a breach of a prudential requirement is a strict liability offence and a penalty may apply.

Insurer Profits

8. **CHAIR: Mr Mobbs, for a number of years there have been greater than expected profit levels. I think you agreed that one way to deal with that is to reduce premiums. I think you said that is one way that insurance companies respond. Is not the truth of the matter that over the past 10 years premium levels have remained roughly the same percentage level of average weekly earnings? When you compare it to average weekly earnings, there has not been any real drop in premium levels? Would that be the situation?**

Despite the recent increases in premiums the MAA Report continues to illustrate that the market share weighted best price for greenslips at below 33% of average weekly earnings as at June 2010 compares very favourably to the situation in 1999 before the introduction of the MAC Act. At that time the market share weighted best price for greenslips was 50% of average weekly earnings.⁸

The ICA submits that this affordability of CTP premiums has been sustained despite:

- ongoing community wage inflation averaging 3.5% p.a. over the two quarters to June 2010⁹
- ongoing consumer price inflation averaging 2.4% p.a. for the period December 2009 to June 2010 (inclusive)¹⁰
- ongoing growth in health expenditure averaging 4.8% over inflation rate for the period 1995 to 2010¹¹

The ICA submits that the real premium (that is, after taking into account inflation which has increased prices by 37.9% since September 1999) has in fact fallen by 28.2% over that period. Put another way, had CTP premiums kept pace with inflation over that time, the average premium in the June quarter of 2010 would be \$596 which represents 39.3% more than the actual rate.

We also believe that the relative shift in premiums and average earnings has resulted in a marked improvement in the affordability of CTP insurance measured against the growth in

⁸ Motor Accidents Authority Annual Report 2009-2010, page 57

⁹ Australian Bureau of Statistics catalogue no.6302.0. Average Weekly Earnings, Australia

¹⁰ Australian Bureau of Statistics catalogue number 6401.0 Consumer Price Index Australia

¹¹ Australian Bureau of Statistics National Accounts catalogue number 5206

average earnings. The average CTP premium (Metro Class 1) as a proportion of average earnings has fallen from just under 55.0% in the September quarter 1999 to just under 34.0% in the June quarter 2010 - representing a 38.4% improvement in affordability.

Effect of Frequency on Future Greenslip Prices

9. **The Hon. PETER PRIMROSE:** This may also be a question on notice. If the trend in claims frequency continues for, say, the next five years, can you project forward as to what you expect an average compulsory third party [CTP] green slip may cost in New South Wales over that period?

The ICA submits that it is difficult to anticipate what the future trends of claims frequency will be. While there were reductions in claim frequency between 2000 and 2007 their cause was not clear and so could not be predicted. These reductions in frequency did not continue into 2008 and reversed in 2009 and 2010.

Further, claims frequency is only one of the factors which insurers must take into account when calculating the filed premium for approval by the MAA. Insurers lodge a very comprehensive submission, and in accordance with the MAA's Premium Determination Guidelines, which in addition to the claims frequency of their company and the industry generally, also calculates the average cost of claims, the risk-free rate of Commonwealth bonds, inflation in the scheme and inflation in the economy before reaching an estimate of the requisite premium for the next period. The MAA PDG's also require insurers to submit material in regards to the capital requirements of the insurer.

The MAA Annual Report indicates that the average premium price for all vehicles in June 2010 was \$404¹². Assuming that there is no change to any other of the assumptions referred to above to impact the pricing apart from frequency, a 10% reduction in frequency may result in a premium of \$373, while a 10% increase in frequency may result in a premium of \$435. Accordingly, we submit that changes in frequency may have a significant effect on greenslip prices despite the fact that they are very difficult to predict.

¹² MAA Annual Report, 57

Comparison of Personal Injury Compensation Schemes across Australia

ACT CTP Scheme

1. **Legislation:** *Road Transport (Third-Party Insurance) Act 2007*
<http://www.legislation.act.gov.au/a/2008-1/default.asp>
2. **Scheme Authority:** ACT Department of Treasury,
<http://www.treasury.act.gov.au/compulsorytpi/index.shtml> .
3. **Description:** Fault based compulsory scheme apart from small claims for medical expenses up to \$5,000 which are no fault. Premium noted on registration form payable to Roads & Traffic Authority (RTA). Scheme privately underwritten by one insurer.
4. **Proposed amendments:** Road Transport (Third-Party Insurance) Amendment Bill 2011 has been referred to the Standing Committee on Public Accounts who are reviewing the Bill and will report by the first sitting week in March 2012.
5. **Access to damages for pain and suffering:** Currently full common law access. Amendment Bill proposes a 15% Whole Person Impairment Threshold for access to damages for pain and suffering.
6. **Independent medical assessment of issues:** Currently medical panels established by the legislation for disputes concerning medical issues. Amendment Bill envisages independent medical assessment of WPI.
7. **Provisions for early exchange of documents:** Part 4.3 of Act deals with exchange of documents by both parties to aid settlement. Compulsory conferences set up under Part 4.7.
8. **Discount rates for damages:** Currently 3%. Amendment Bill proposes 5%.

ACT Civil Liability Scheme

1. **Legislation:** *Civil Law (Wrongs) Act 2002*
<http://www.legislation.act.gov.au/a/2002-40/current/pdf/2002-40.pdf>
2. **Scheme Authority:** Not applicable but insurer reporting requirements to Minister.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Full common law access.
6. **Independent medical assessment of issues:** Section 85 provides that the parties can agree on a single medical expert. Section 86 provides that a single medical expert can be appointed by the court on application by a party.
7. **Provisions for early exchange of documents:** Chapter 5 of Act deals with exchange of documents by both parties to aid settlement.
8. **Discount rates for damages:** 3%.

NSW CTP Scheme

1. **Legislation:** *Motor Accidents Compensation Act 1999*
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+41+1999+cd+0+N>
2. **Scheme Authority:** Motor Accidents Authority (MAA) www.maa.nsw.gov.au
3. **Description:** Hybrid fault/No-fault based compulsory scheme privately underwritten. Small claims for medical treatment and loss of wages up to \$5,000 are no fault. Catastrophic claims are no fault for care and treatment costs under Lifetime Care and Support Scheme.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** 10% threshold to obtaining awards of non economic loss (general damages) - Section 131.
6. **Independent medical assessment of issues:** Whole Person Impairment (WPI) of over 10% as assessed by the Medical Assessment Service (MAS) is the threshold to non economic loss damages.
7. **Provisions for early exchange of documents:** Part 4.4 Division 1A of Act deals with exchange of documents by both parties and settlement conferences to aid settlement.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 127

NSW Civil Liability Scheme

1. **Legislation:** *Civil Liability Act 2002*.
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+22+2002+cd+0+N>
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** No access to general damages below 15% of 'a most extreme case'. For general damages equalling or above 15% and up to 24%, a fixed percentage of the maximum to be awarded is payable.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 14 of *Civil Liability Act 2002*.

NT CTP Scheme

1. **Legislation:** *Motor Accidents (Compensation) Act*
http://www.austlii.edu.au/au/legis/nt/consol_act/maa298/
2. **Scheme Authority:** Territory Insurance Office administers the Motor Accidents Compensation Scheme <http://www.tiofi.com.au/wps/wcm/connect/tio/website/mac/>
3. **Description:** No fault benefits for medical and rehabilitation costs, loss of earning capacity publicly underwritten. Lump sum benefits for permanent Impairment available for WPI of 5% or more.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Not applicable.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Not applicable

NT Civil Liability Scheme

1. **Legislation:** *Personal Injuries (Liabilities and Damages) Act*
http://www.austlii.edu.au/au/legis/nt/consol_act/piada365/
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Access to general damages after exceeding threshold 5% WPI - Section 27 up to a cap.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 22 of *Personal Injuries (Liabilities and Damages) Act*.

Queensland CTP Scheme

1. **Legislation:** *Motor Accidents Insurance Act 1994*
<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/M/MotorAccInsA94.pdf>
Civil Liability Act 2003
<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilLiabA03.pdf>
2. **Scheme Authority:** Motor Accidents Insurance Commission (MAIC)
www.maic.qld.gov.au
3. **Description:** Fault based compulsory privately underwritten scheme.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** No Thresholds however there are barriers to the recovery of costs for smaller claims (less than \$30,000) and assessment of general damages is in accordance with an Injury Scale Value (ISV) from 1 to 100 under the *Civil Liability Act 2003*.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Claims are subject to pre-litigation procedures including exchange of information, compulsory settlement conference and certificates of readiness prior to proceeding to court.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 57 of *Civil Liability Act 2003*.

Queensland Civil Liability Scheme

1. **Legislation:** *Civil Liability Act 2003*.
<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilLiabA03.pdf>
Personal Injuries Proceedings Act 2002
<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PersonInjProA02.pdf>
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Some restrictions based on an injury rating scale but access available to all up to a cap. The injury scale values also have an effect on the level of legal costs which can be recovered.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Detailed notices of claim, exchange of documents and compulsory settlement conference provisions in *Personal Injuries Proceedings Act 2002*.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 57 of *Civil Liability Act 2003*.

South Australian CTP Scheme

1. **Legislation:** *Motor Vehicles Act 1959*
http://www.mac.sa.gov.au/about_mac/legislation
Civil Liability Act 1936
<http://www.legislation.sa.gov.au/LZ/C/A/CIVIL%20LIABILITY%20ACT%201936/CURRENT/1936.2267.UN.PDF>
2. **Scheme Authority:** Motor Accident Commission (MAC) www.mac.sa.gov.au
3. **Description:** Fault based compulsory scheme publicly underwritten by MAC as sole insurer.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** To claim non-economic loss, the injured person must show they were significantly impaired for at least seven days and they incurred medical expenses above a certain threshold. If the threshold is reached, the amount of damages is assessed on a scale of 0 – 60, according to the severity of the injury under the *Civil Liability Act 1936*.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Once legal proceedings are commenced, the courts require that all parties hold a settlement conference to discuss and attempt to resolve the claim.
8. **Discount rates for damages:** Prescribed 5% discount rate under sections 3 and 55 of *Civil Liability Act 1936*.

South Australian Civil Liability Scheme

1. **Legislation:** *Civil Liability Act 1936*
<http://legislation.sa.gov.au/LZ/C/A/CIVIL%20LIABILITY%20ACT%201936.aspx>
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Full access although damages are calculated by reference to a scale value reflecting gradations up to a cap.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed 5% discount rate under sections 3 and 55 of *Civil Liability Act 1936*.

Tasmanian CTP Scheme

1. **Legislation:** *Motor Accidents (Liabilities and Compensation) Act 1973*
http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=all;doc_id=71++1973+at@en+20071108000000;histon=:prompt=:rec=:term=motor%20accidents
Civil Liability Act 2002 http://www.austlii.edu.au/au/legis/tas/consol_act/cla2002161/
2. **Scheme Authority:** Motor Accidents Insurance Board (MAIB)
www.maib.tas.gov.au
3. **Description:** Combined common law/no fault scheme. No fault compensation publicly operated paying medical and income benefits with access to common law where negligence can be established.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Restrictions on the common law damages under the *Civil Liability Act 2002* with a small threshold and formulas applying up to a further limit which is 5 times the smaller limit. Current information on the limits available at
http://www.justice.tas.gov.au/legislationreview/value_of_indexed_units_in_legislation#Civil
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** *Civil Liability Act 2002* – Section 28A: 5%

Tasmanian Civil Liability Scheme

1. **Legislation:** *Civil Liability Act 2002*
http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=:doc_id=54%2B%2B2002%2BAT%40EN%2B20101124100000:hison=:prompt=:rec=:term=
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Restrictions on the common law damages under the *Civil Liability Act 2002* with a small threshold and formulas applying up to a further limit which is 5 times the smaller limit. Current information on the limits available at
http://www.justice.tas.gov.au/legislationreview/value_of_indexed_units_in_legislation#Civil
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed 5% under section 28A of the *Civil Liability Act 2002*.

Victorian CTP Scheme

1. **Legislation:** *Transport Accident Act 1986*
<http://www.tac.vic.gov.au/upload/TAA1986.pdf>
2. **Scheme Authority:** Transport Accident Commission (TAC) www.tac.vic.gov.au
3. **Description:** Largely no fault with limited access to common law benefits publicly underwritten by TAC.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Access to common law benefits for serious injuries which are either over 30% WPI or meet the narrative test.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** 6% under section 93(13)

Victorian Civil Liability Scheme

1. **Legislation:** *Wrongs Act 1958*
http://www.legislation.vic.gov.au/domino/Web_notes/LDMS/PubLawToday.nsf/95c43dd4eac71a68ca256dde00056e7b/f23cea6c31112b26ca2571b7000903b6!OpenDocument
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Access only recoverable where a claimant has sustained a 'significant injury' measured over 5% WPI for physical injuries and 10% WPI for psychiatric injuries under section 28LB up to a cap
6. **Independent medical assessment of issues:** Assessment of WPI can be referred to a Medical Panel for determination.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed at 5% under section 28I

West Australian CTP Scheme

1. **Legislation:** *Motor Vehicle (Third Party) Insurance Act 1943*
http://www.austlii.edu.au/au/legis/wa/consol_act/mvpia1943378/
2. **Scheme Authority:** Insurance Commission of Western Australia (ICWA)
www.icwa.wa.gov.au
3. **Description:** Fault based compulsory scheme publicly underwritten by ICWA as sole insurer.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** A threshold of 5% of the maximum allowed, then a specific deductible to 15% of the maximum allowed with a sliding scale of deductibles to 20% of the maximum allowed. Thereafter a percentage of the maximum allowed to 100%. Current information on the thresholds are available at http://www.icwa.wa.gov.au/mvpi/pdf/mvpi_threshold_schedule.pdf
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Once legal proceedings are commenced, the courts require that all parties hold a settlement conference to discuss and attempt to resolve the claim.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 5 *Law Reform (Miscellaneous Provisions) Act 1941*.

West Australian Civil Liability Scheme

1. **Legislation:** *Civil Liability Act 2002*
[http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:20983P/\\$FILE/CivilLiabtyAct2002_03-q0-00.pdf?OpenElement](http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:20983P/$FILE/CivilLiabtyAct2002_03-q0-00.pdf?OpenElement)
2. **Scheme Authority:** Not applicable but data provided to APRA.
3. **Description:** Fault based scheme privately underwritten by the general insurance industry.
4. **Proposed amendments:** Not applicable.
5. **Access to damages for pain and suffering:** Minimum threshold for general damages calculated on prescribed amounts under sections 9 and 10.
6. **Independent medical assessment of issues:** Not applicable.
7. **Provisions for early exchange of documents:** Not applicable.
8. **Discount rates for damages:** Prescribed 5% discount rate under section 5 *Law Reform (Miscellaneous Provisions) Act 1941*