

*National Injury
Insurance Scheme:
Motor Vehicle
Accidents*

*Consultation
Regulation*

Impact Statement

April 2014

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1 About this regulation impact statement

1.1 Purpose of this Consultation RIS

PwC has been engaged by the Treasury, on behalf of the Council on Federal Financial Relations, to prepare this Consultation Regulation Impact Statement (RIS) examining the motor vehicle accident component of the National Injury Insurance Scheme (NIIS).

The purpose of a Consultation RIS is ‘to canvass the regulatory options under consideration, in order to determine the relative costs and benefits of those options.’² As motor vehicle insurance and accident compensation schemes are the responsibility of State and Territory governments, this RIS contributes to jurisdictions’ consideration of the possible impact of changes to their motor vehicle accidents schemes in the context of the proposed NIIS and the requirement for minimum benchmarks for the provision of lifetime care and support in the event of sustaining a catastrophic injury from a motor vehicle accident. States and Territories may obtain legal and actuarial advice and undertake public consultation before enacting any changes.

Specifically, the focus of this Consultation RIS is on identifying the best way of providing *lifetime care and support* for all newly acquired catastrophic injuries due to motor vehicle accidents;³ this RIS does not consider compensation for pain and suffering, or any loss of income that may also be due to motor vehicle accidents where catastrophic injury results.

Following consultation, PwC will prepare a Decision RIS; the purpose of which is ‘to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process.’⁴

This Consultation RIS follows the COAG *Best Practice Regulation guidelines for regulatory proposals made by Ministerial Councils and National Standards* (the Guidelines). This Consultation RIS:

- establishes the problem that governments are seeking to address
- identifies a set of policy options to address the identified problem
- assesses the costs and benefits of these options in addressing the problem, and on the basis of the analysis, establishes a preferred option for action.

The Guidelines require that a Consultation RIS canvass both regulatory and non-regulatory approaches, and include a status quo or ‘no change’ option (recognising that not all problems have a cost effective solution through government action).

The Consultation RIS is provided to stakeholders for comment. Particular stakeholder input is sought on those areas where further data is needed and/or where assumptions made in the

² COAG (2007), *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, Canberra.

³ The care and support needs of people with *existing* catastrophic injuries, and not covered under any of the present no-fault arrangements, would be met through the National Disability Insurance Scheme – the NDIS.

⁴ COAG (2007), *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, Canberra.

analysis need to be verified and agreed. The Consultation RIS provides a valuable means through which governments and stakeholders can consider policy and regulatory options in a focused way.

1.2 Report structure

This Consultation RIS is structured as follows:

- Chapter 1 provides policy context for the RIS
- Chapter 2 describes the problem that governments are seeking to address
- Chapter 3 establishes the objective of government action
- Chapter 4 describes the policy options being considered in this RIS
- Chapter 5 assesses the impacts (costs and benefits) of each option
- Chapter 6 outlines the approach to consultation that informed this RIS
- Chapter 7 summarises the anticipated findings
- Chapter 8 details implementation, monitoring and review options for the preferred option.

1.3 Opportunities to comment on this Consultation RIS

The Treasury now seeks input from stakeholders on the proposals outlined in this Consultation RIS. The Consultation RIS is subject to a consultation period and Treasury welcomes any further general comment you might have on data, information or recommendations in this Consultation RIS.

To the extent possible, all submissions will be made available on the Treasury website – www.treasury.gov.au. All personal details other than your name and the State or Territory in which you reside will be removed before publishing. If any information contained in your submission should be treated as confidential, you should clearly identify the sensitive information and provide your reasons for treating it in-confidence on the submission cover sheet. Submissions received by post will be available in PDF on the website. The Treasury does not intend to formally reply to each submission.

The closing date for submissions is **23 May 2014**.

The Consultation RIS and proposed measures are available electronically at www.treasury.gov.au. If you are unable to access the website to obtain a copy of these documents, you can contact Leesa Croke at niisris@treasury.gov.au.

Responses to the Consultation RIS can be provided as follows:

By email (preferred)

niisris@treasury.gov.au

In writing

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2 *Nature of the problem*

This chapter provides a statement of the problem that is the focus of this Consultation RIS. It draws on a number of instances from the Productivity Commission's report.

2.1 *Catastrophic injury*

There are many accidents resulting in injury each year in Australia, with over 50,000 transport accidents alone. Some injuries are 'catastrophic', resulting in substantial and permanent disability, such as severe brain or spinal cord injury, amputation and permanent blindness. Catastrophic injuries are distinctive in that they result in particularly high and sustained costs. These enduring costs can be indicated by awards for lifetime care which, in 2011, the Productivity Commission found to be an average of \$1-2 million,⁵ although projected costs of different catastrophic injuries can vary greatly.

As in other areas of disability, data on the incidence and prevalence of catastrophic injury is limited. Using the best available data, it is estimated that there are over 20,000 people with a 'catastrophic level' injury in Australia, with up to 1,000 newly injured people joining this category each year. The main causes of catastrophic injury can be categorised into four areas:

- motor vehicle accidents (approximately 50 per cent of all catastrophic injuries)
- general accidents (32 per cent), typically associated with sport and recreational activities, criminal assault and catastrophic falls
- medical accidents (11 per cent)
- workplace accidents (8 per cent).⁶

In 2013, there were 17.2 million registered motor vehicles in Australia, which is approximately 0.75 vehicles per head of population.⁷ With this many vehicles on the road, there were approximately two motor vehicle accidents per 1000 people and 0.02 catastrophic motor vehicle accidents injuries per 1000 people.

2.2 *Pre-existing support for catastrophic injuries*

Existing support for people with catastrophic injury varies across the States and Territories depending on the type of accident, its location and exact circumstances. Only about half of people injured catastrophically have access to some form of insurance — usually compulsory third party motor vehicle cover. The other half rely on what the Productivity Commission regarded as generally inadequate taxpayer-funded health and disability services, including for lifetime care and support.

⁵ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, available at <http://www.pc.gov.au/projects/inquiry/disability-support/report>. Page 795.

⁶ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 793.

⁷ Australian Bureau of Statistics (2013) *Motor Vehicle Census*, cat no 939.0, available at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/o/268932501A477446CA257BB00011A2FF/\\$File/93090_31%20jan%202013.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/o/268932501A477446CA257BB00011A2FF/$File/93090_31%20jan%202013.pdf).

The Productivity Commission determined that the adequacy of care should be defined by certainty, timeliness and quality of access.⁸ The Productivity Commission concluded, that based on this objective definition, fault-based schemes were falling short in terms of certainty (because of the need to prove an at-fault party) and timeliness (because of the lengthy court process before compensation can be awarded). Senior Official representatives from States and Territories have agreed that adequacy of care should include access to medical treatment, injury rehabilitation treatments, aids and equipment, home and vehicle modifications, and attendant care services.

The Productivity Commission Report summarised the pre-existing State and Territory arrangements for insuring people for catastrophic injury. It found that arrangements broadly aligned with the cause of injury and include:

- workers' compensation schemes throughout Australia
- limited provision for people suffering disability because of violent crime
- no-fault third-party motor vehicle insurance arrangements in New South Wales, Victoria, Tasmania, and the Northern Territory, and fault-based arrangements in the other States and Territories
- fault-based medical indemnity and public liability insurance.

PwC undertook an actuarial analysis in 2005 which estimated the proportion of catastrophically-injured individuals that were able to obtain compensation across the four causes as follows:

- motor accidents – 60 per cent
- workplace accidents – 100 per cent
- medical accidents – 50 per cent
- general accidents – 20 per cent.⁹

The Productivity Commission found that there is little rationale for the differences between schemes. The practical consequence for people who have been injured resulting in a disability is that the amount, nature and timeliness of support will depend on the type of accident, its exact circumstances and location. This can have long-lasting impacts for people with catastrophic injury.

2.3 Motor vehicle insurance arrangements

No-fault third party motor vehicle insurance is available to differing extents in New South Wales, Victoria, South Australia, Tasmania and the Northern Territory. In New South Wales, South Australia (from 1 July 2014) and the Australian Capital Territory (from 1 July 2014, through legislation passed in April 2014) the no-fault lifetime care and support is only for catastrophic injuries, while the other jurisdictions are for all injuries, both catastrophic and not (though there are some specific limitations in Tasmania and the Northern Territory). Details on State and Territory motor vehicle accident compensation systems are provided in Appendix A.

⁸ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 796.

⁹ PwC (2005) *Long Term Care: Actuarial Analysis on Long-Term Care for the Catastrophically Injured*, page 2.

This no-fault insurance provides for lifetime care and support needs, regardless of whether an at-fault first party (defendant) is responsible for causing the accident and, hence, may otherwise be liable to pay. There is no requirement that there be a negligent party nor is it an issue if the injured party contributed to the accident (as a result, single car accidents and at-fault parties are also covered). The Productivity Commission found that these schemes tend to provide predictable care and support over a person's lifetime, and do not adversely affect an individual's incentives to improve their functioning following an injury.

This RIS focuses on the insurance arrangements in the other jurisdictions. From 1 July 2014, in Queensland and Western Australia, people will still rely on the common law to claim compensation from the at-fault driver's compulsory third party insurance, which will only succeed if they can identify a negligent and solvent first party as the cause of the accident ('fault-based' arrangements). How much compensation they get depends on the presence of insurance,¹⁰ the circumstances of the accident, the severity of their injury, the extent of their disability and future needs, judicial interpretation of liability, the brinkmanship of the out of court settlement process, and the process for assessing damages.

Compensation outcomes from litigation typically fall well short of meeting an individual's lifetime needs. This reflects that:

- court outcomes are uncertain and, by far, most people settle out of court
- the individual's future needs are unpredictable, so that damages awarded at a given time may underestimate or overestimate people's future needs, which on a personal level can mean that sufficient care is not available for the period of time that it is needed
- compensation is often delayed and, particularly if liability is disputed, access to early treatments and appropriate discharge from hospital to medical and social rehabilitation can be delayed and poorly coordinated
- assumptions about discount rates play an important role in determining lump sum compensation, especially for payouts intended to last many decades, and while it is generally agreed that rates applied are too high, agreement is lacking about the 'right' discount rate
- lump sums may not be managed appropriately to meet long term needs, and there are inherent difficulties in managing preclusion periods for access to safety-net services, especially when it may be unrealistic to refuse essential care and support needs.¹¹

In addition, adversarial fault-based systems may reduce the scope for improvements to an individual's health and functioning following an injury (and might sometimes exacerbate problems). For example, the size of an individual's award for compensation under the common law is dependent on the severity of the injury. The usual strong incentives for people to maximise recovery could potentially be undermined for some people by an awareness that the greater the recovery, the lower the potential level of compensation. Litigation processes also take time, are stressful, and accentuate an individual's

¹⁰ Insurance may not be available if the car is not registered (although there are schemes such as the Queensland Nominal Defendant which provides personal injury insurance to people injured by uninsured or unidentified drivers. Another potential gap relates to at-fault drivers - although limited cover (in the form of a lump sum payment) can be purchased from some insurers in these jurisdictions as an additional feature of CTP cover, it is subject to caps and various other restrictions. The Productivity Commission concluded that people at fault who are not covered by insurance rarely have a capacity to pay compensation, significantly weakening any deterrent effects of the common law in personal injury for such people (who often tend to have the highest risks).

¹¹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

preoccupation with the disabling aspects of an injury (psychosocial factors play a significant role in recovery).¹²

In some instances, an individual may simply be unable to pursue a common law claim. This includes cases where:

- the accident was purely a matter of chance without any other party's involvement
- a person may make a mistake that anyone might make, but which results in their own catastrophic injury
- another person causes the accident but has nevertheless taken 'reasonable' care
- the injury arose out of a single vehicle accident and the injured driver was at fault.¹³

In such cases, those catastrophically injured must rely either on their personal resources or on publicly-funded health and disability services, which are often comparatively inadequate in certainty, timeliness and quality of care.

While the Productivity Commission concluded that no-fault schemes tend to lead to better outcomes, it was recognised in their report that common law has merits for injured individuals.¹⁴

- Lump sum compensation was described as the 'ultimate' in self-directed funding. It is left completely to the individual and those they choose to trust to manage and spend. While this allows the highest degree of tailoring to personal needs, it does leave the sum open to mismanagement through inexperience or by those in positions of trust.
- No-fault systems can extinguish an individual's right to pursue a common law claim while fault schemes do not constrain personal rights. That said, some common law systems have become 'constrained' as they place limits on damages or timeframes.
- Common law systems can give injured individuals a sense of justice that a penalty has been placed on the wrongdoer. However, the at-fault party may not be represented in the court room or paying the damages from their own pocket as they could be represented by their insurer. Other punitive actions, such as criminal offences, remain available in both fault-based and no-fault systems.

2.4 The National Disability Insurance Scheme

In its 2011 inquiry into disability care and support the Productivity Commission found that the Australian disability care and support system was underfunded, unfair, fragmented and inefficient.¹⁵ This shortage of support often means individuals with disability and their families reach a crisis point before they get the help they need. Families in crisis are prioritised by these systems, which in turn bumps other people down the list and increases the likelihood that they too will end up under extreme pressure. This can mean that people spend time in hospitals and nursing homes when they could be living at home and participating or working in the community.

¹² Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

To address issues with the disability care and support system, the Productivity Commission proposed the establishment of the National Disability Insurance Scheme (NDIS) which would provide reasonable and necessary care and support for people with a permanent and significant disability. The Productivity Commission further recommended that a National Injury Insurance Scheme (NIIS) be established; separate from, but complementary to, the NDIS, as a federation of separate, State and Territory based no-fault accident insurance schemes.

The proposed NDIS would insure all Australians, recognising that major disability can happen at any time and that most Australians cannot adequately prepare for that risk. Although private insurance (for personal injury and income protection) is available in the market, it is rarely affordable to those with the highest risk. The probability of catastrophic injury is low, but the potential liability is very high and this is not easy for an individual to assess, which makes premiums seem high and people's willingness to pay is low. This compounds the problem as an insufficient amount of insured individuals does not allow for adequate pooling of risk and increases premiums.

The NDIS was designed so that anyone with, or affected by, a disability could approach the scheme for information while funded support packages would be targeted at people with significant and permanent disability. It has been estimated that around 460,000 Australians will be eligible to access NDIS funded packages.¹⁶

The NDIS will also bring a change of philosophy in the way support is provided to people with disability, with an emphasis on giving individuals more choice and control over their support and providing packages tailored to their individual needs and goals.

From 1 July 2013, the NDIS commenced trials:

- for 15-24 year olds in Tasmania
- for 0-14 year olds in South Australia
- in the Barwon region of Victoria
- in the Hunter region of New South Wales.

From 1 July 2014, the NDIS will commence trials in the Australian Capital Territory, the Barkly region of the Northern Territory and in the Perth Hills region of Western Australia. All States and Territories are preparing for the roll out of the NDIS, with coverage expected to progressively commence from July 2016 with full roll out complete by 2019-20.¹⁷

2.5 NDIS interaction with accident injuries

Existing accident compensation systems provide some cover but are inconsistent across jurisdictions and still rely, in some cases, on fault-based claims and apportionment of liability. The NDIS establishes a no-fault 'safety net' that will provide high quality care and support for all Australians with significant and permanent disability regardless of how or when it was acquired. In the absence of any action on accident compensation schemes, the NDIS will provide support to anyone with a catastrophic injury amounting to disability that

¹⁶ Australian Government (2013) *2013-14 Budget Paper No 2*, page 141.

¹⁷ National Disability Insurance Scheme, *Roll out of the National Disability Insurance Scheme*, available at <http://www.ndis.gov.au/roll-out-national-disability-insurance-scheme>.

is not receiving that support elsewhere. Annually, this would account for approximately 132 new individuals, catastrophically injured in motor vehicle accidents, accessing support.¹⁸

As the NDIS is a significant reform to disability support, it will take a number of years to roll out nationally (as stated in the section above). This means that (in fault-based systems) the existing problems outlined above would continue for some time.

If the NDIS is introduced in the absence of any agreement on motor vehicle accident compensation, the burden of catastrophically injured would fall differently on the NDIS depending on the State or Territory and the nature of how the injury was acquired. In other words, the NDIS will provide support for some catastrophically injured motor vehicle injuries in those jurisdictions that are currently fault-based, but not those in no-fault jurisdictions.

Aside from the issue of who funds the support, there are other issues with using the NDIS to provide support for motor vehicle accident injuries. Namely, if individuals who are catastrophically injured in a motor vehicle accident were supported by the NDIS, it may reduce the price signals that exist to provide incentives for safety through premiums linked to risky activity.

- Risk ratings provide the opportunity for deterring accidents, whereas there would be no easy mechanism to address moral hazard through charging prices in the NDIS.
- Third party premiums reflect the externality risk, that is, the likely cost of an individual causing injury. If premiums force a driver to take greater account of the costs associated with their unsafe driving, choice of vehicle type, or other aspects of transport use that are within an individual's control, injuries can be reduced.
- Premiums are collected at the geographic level where governments have the greatest capacity to reduce risks. State and Territory governments have the capacity to improve policing and the justice system to improve transport safety through laws, regulation, advertising, training, and infrastructure (thereby reducing CTP premiums); and with local government, reducing the risks of general accidents.¹⁹

It should also be noted that in existing no-fault systems, part of this State and Territory capacity to reduce risk can include using a 'community rating' to decrease premiums from a direct risk rated price. This is to keep premiums affordable enough that there is not an incentive to drive an unregistered or uninsured car.²⁰

Another issue with relying on the NDIS is that it does not cover medical and rehabilitation costs immediately resulting from the accident, but rather covers the support costs of living with the catastrophically injured (disability). However, the true cost of an accident includes these medical and rehabilitation costs, therefore individuals will either have to pay these costs themselves, rely on jurisdiction based health systems or not access these early support services to the detriment of their long term outcomes.

¹⁸ Based on State and Territory Government submissions to this RIS, as well as previous actuarial estimates.

¹⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

²⁰ Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf)

Consultation questions

Question 1: Is this chapter a correct statement of the problem?

Question 2: Do you think there were other problems created by the *status quo* as it stood in 2011?

Question 3: Do you have any data of the quantum of these problems, i.e. existing costs?

3 Objectives of government action

The objective of government action in this area is to provide adequate, consistent and tailored lifetime care and support for all individuals who newly acquire catastrophic injuries due to motor vehicle accidents:

- regardless of the jurisdiction in which that person lives or was injured
- in a financially sustainable manner
- in a way that discourages risky behaviour
- in a way that encourages rehabilitation and early intervention to facilitate independence and participation
- is equitable in its impact on each State and Territory and their residents
- is consistent with the implementation of the NDIS.

Consultation questions

Question 4: Do you agree these are the main objectives for government action?

Question 5: Have any important considerations been left out?

4 Options

This chapter outlines the options to be considered in this RIS. Under the base case, the NDIS will provide coverage of catastrophic injuries from motor vehicle accidents in fault-based jurisdictions, with minimal impact in the other, no-fault schemes. Options 1 and 2 both involve fault-based jurisdictions shifting to a no-fault basis, and all jurisdictions signing up to minimum benchmarks. The only difference is that, under Option 2, some jurisdictions may choose to contract out to the NDIS.

4.1 Base case – NDIS as the safety net

The RIS process for catastrophic injuries from motor vehicle accidents is complicated by the fact that some jurisdictions are already in the process of changing their systems, where required, to implement a NIIS. For the purposes of this RIS a base case is needed that acknowledges elements of the Heads of Agreement on the NDIS but still enables alternate options for support for catastrophic injuries to be assessed.

This base case recognises the NDIS has begun to be implemented. It assumes that the NDIS will cover all individuals that are not already covered by their jurisdiction's schemes. However, the base case does not include further agreements on catastrophic injuries, including how the NDIS will be funded for the higher number of participants due to the inclusion of individuals with catastrophic injuries. Therefore, the base case assumes that the additional cost would need to be negotiated between the Commonwealth and those States and Territories where a fault based scheme exists.

Under this base case, the existing fault-based schemes in Queensland and Western Australia continue. Those who are catastrophically injured in a motor vehicle accident, but cannot access lifetime care and support under their local jurisdiction's scheme will be able to access NDIS support as it becomes available (for details of NDIS roll out see section 2.4).

By the end of 2019-20, all people who are catastrophically injured in motor vehicle accidents will be able to access support regardless of fault, as the NDIS acts as a safety net for the differences in State and Territory schemes. Given some catastrophically injured people will be supported through State and Territory motor accident compensation schemes and some will be supported through the NDIS, the funding of support will also vary across jurisdictions, as follows:

- New South Wales, Victoria, South Australia and the Australian Capital Territory²¹ will continue to fund their no-fault schemes through CTP charges
- Tasmania and the Northern Territory²² will fund their no-fault schemes through CTP charges, although the NDIS may pick up some catastrophically injured individuals who are ineligible for the state schemes.
- Queensland and Western Australia will continue their fault based arrangements, with the NDIS providing support to all catastrophically injured people unable to

²¹ The Australian Capital Territory recently passed legislation to establish a lifetime care and support scheme for those catastrophically injured in a motor accidents (Andrew Barr Media Release (10/04/2014) 'Lifetime Care and Support Legislation passed in Legislative Assembly', available http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2014/lifetime-care-and-support-legislation-passed-in-legislative-assembly)

²² The Northern Territory is currently in process of passing legislation that, once enacted, will mean that all catastrophically injured individuals in the NT after 1 July 2014 will be fully supported by the NT's motor vehicle accident compensation scheme.

access support while common law payments will remain for those able to prove a solvent at-fault party.

4.2 Option 1: Federated Model of the NIIS

Option 1 represents the introduction of a federated model of the NIIS where existing jurisdictional schemes are reformed so that a minimum agreed level of support is offered by each State and Territory on a no-fault basis.

Under this option, all State and Territory governments would provide a no-fault scheme for lifetime care and support for all people who sustain a catastrophic injury after the no-fault scheme is established. Catastrophic injury claims would be managed on a social support approach, instead of through a court process. There would be no lump-sum compensation for the future care costs, instead the claimant's care and support costs will be met as they arise, over their lifetime. However, the common law right to sue could still be available for those who are catastrophically injured in a motor accident by someone at fault and in relation to other heads of damage (e.g. economic loss) and non-catastrophic injuries.

Funding can be tailored towards support, optimising rehabilitation and reducing long term cost of care in a similar way to the NDIS.

States and Territories can choose to continue to manage how this scheme is implemented including using the private sector to provide insurance and administrative support as occurs in some States and Territories.

Eligibility to the NIIS would be defined by minimum benchmarks (see Box 1) that each jurisdiction must meet. The benchmarks were developed by State and Territory Senior Official representatives with reference to the coverage of the New South Wales Lifetime Care and Support (LTCS) scheme. It was decided that the agreed minimum benchmarks should not exceed those of LTCS.

Box 1: Minimum benchmarks

These benchmarks define eligibility on three elements: type of injury, circumstances of accident and type of support.

The 'types of injury' are those that are generally grouped together as catastrophic:

- spinal cord injury, with evidence of a permanent neurological deficit
- traumatic brain injury, with evidence of permanent impairment of cognitive, physical or psychosocial functions
- significant amputation
- severe burns, covering 40 per cent of the body or covering the hands, face or genitals or inhalation burns causing long term respiratory impairment
- permanent traumatic blindness.

The circumstances of accidents covered are those that involve at least one registerable vehicle that occur on a public road or other location where registered vehicles are commonly driven. The accidents must result from the driving of the vehicle, the vehicle running out of control, actions taken to avoid collisions with a vehicle or collision with a stationary vehicle. Because this definition requires only one vehicle, it does cover a collision between that vehicle and a pedestrian or cyclist.

The benchmark for type of support is any 'reasonable and necessary' treatment, rehabilitation and care assessed on the following criteria.

- Benefit to the injured person – how the service will help with the person's goals for function and participation in daily life.
- Appropriateness of service – how the service is right for the individual's injury, based on effectiveness, available alternatives and in the context of other services.
- Appropriateness of provider – how the service provider is right for the person and the injury, based on qualification, experience and location.
- Cost-effectiveness – how the service is the most cost-effective option to meet the individual's needs.
- Injury-related – how the service relates to the injury sustained in the motor accident, as opposed to a pre-existing condition.

Examples of these services that may meet the 'reasonable and necessary' criteria are:

- medical treatment such as hospital stays and doctor's appointments
- rehabilitation such as physiotherapy, occupational therapy and speech therapy
- aids and equipment such as wheelchairs
- home and vehicle modifications such as ramps or bathroom rails
- attendant care services, including personal care, domestic services and home nursing
- assistance to return to study or work.

Source: Treasury (2013) *Agreed Minimum Benchmarks for Motor Vehicle Accidents*, available at <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>.

Option 1 does not rely on the NDIS in any way. Once this option is implemented, a person catastrophically injured in a motor vehicle accident would be supported under the NIIS network of State and Territory schemes. The NDIS would not provide support for those injuries.

Under this option, all schemes would likely be funded through CTP charges. This option involves:

- no change in New South Wales and Victoria
- no change in South Australia and the Australian Capital Territory once the legislation that has already been passed comes into effect
- some change in the Northern Territory (from 1 July 2014 legislation is expected to be passed in the Northern Territory to fully meet the benchmarks)
- some change in Tasmania to cover the gap outlined below in Box 2
- significant change in Queensland and Western Australia as they move from fault-based systems to no-fault systems for the lifetime care and support of individuals with catastrophic injuries.

4.3 Option 2: Differential State and Territory systems supported by the NDIS

Option 2 is based on the same premise as option 1, the introduction of the NIIS as recommended by the Productivity Commission. Under this option, State and Territory governments would provide lifetime care and support for all people who are catastrophically injured in motor vehicle accidents on a no-fault basis. Catastrophic injury claims would be managed on a social support approach, instead of through a court process. There would be no lump-sum compensation for the future care costs, instead the claimant's care and support costs will be met as they arise over their lifetime. However, the common law right to sue could still be available for those who are catastrophically-injured in a motor accident by someone at fault and in relation to other heads of damage (e.g. economic loss) and non-catastrophic injuries.

Entitlements would be the same as option 1 as per the minimum benchmarks (see Box 1).

However, under option 2, States and Territories can choose how they meet the minimum benchmarks of support that must be offered. The jurisdictions can either enact or continue a local scheme that covers all the agreed minimum benchmarks (in type of support, injury and accident circumstances) or they can choose to continue to set their own policy that may not fully meet the minimum benchmarks and meet the financial cost of any gap in coverage between their own policy and the benchmarks.

In the case where a jurisdiction does not meet the minimum benchmarks, a resident of that jurisdiction who is injured and meets the minimum benchmarks but is not covered by the local scheme would be supported under the NDIS. However, that jurisdiction will be 100 per cent responsible for the NDIS costs over an individual's lifetime. This means that the State or Territory would allocate additional NDIS funding over and above the current level.

Under option 2 all people catastrophically injured in motor vehicle accidents have access to lifetime care and support funded through State and Territory based mechanisms, but the support may be offered through either a jurisdiction based NIIS or the fallback option of the NDIS.

Box 2 sets out the current arrangements in each of the States and Territories to serve as a basis for the analysis of the impact of option 2.

Box 2: Current arrangements in the States and Territories

Under their Heads of Agreement, New South Wales and Victoria already meet or exceed the minimum benchmarks and as such do not require any changes to their local schemes, and will not be required to contribute additional funding to the NDIS for motor vehicle injuries.

South Australia has passed legislation that will meet the minimum benchmarks when it comes into force on 1 July 2014. The Australian Capital Territory also recently passed legislation that meets the minimum benchmarks and is expected to come into force on 1 July 2014.

Tasmania already has an established no-fault motor vehicle scheme, but it does not fully meet the minimum benchmarks (although it does exceed the benchmarks in terms of standard of care, jurisdictional coverage and off-road coverage). The Tasmanian scheme is designed to provide incentives to law abiding motorists by maintaining exclusions for claimants who were injured while they were committing a serious traffic offence. This exclusion of payments keeps the premiums lower for all law abiding motorists. The Tasmanian scheme will not be expanded to remove this exclusion and meet the minimum benchmarks, so in these circumstances, Tasmania will fund NDIS support costs.

The Northern Territory also already has a no-fault scheme, and currently has a Bill before their Parliament for this scheme to be amended to meet the minimum benchmarks. These amendments include removing the caps on hour for attendant care and adjusting the rate payable to market referenced rates. However, the amendments will mean that drivers and owners of unregistered vehicles, in collisions not involving a registered motor vehicle on public property will not be covered in the Northern Territory, which is narrower than the minimum benchmarks. Passengers and pedestrians injured in motor vehicle accidents on private land involving unregistered and unregistrable motor vehicles on private land will continue to be covered by the scheme, which is wider than the minimum benchmarks.

Queensland still operates a fault-based system and is still reviewing policy and costing of implementing the minimum benchmarks. Currently, Queensland would have to fund NDIS costs for some catastrophically injured participants once the NDIS commences to be rolled out in Queensland from 1 July 2016.

Western Australia has not agreed to the minimum benchmarks, but has committed to consider them.

4.4 Other options not considered further

It is required under the Best Practice Guidelines that a RIS have a non-regulatory option, or explain why a non-regulatory approach is not feasible.²³

4.4.1 Non-regulatory

As established above, the problem that these options aim to address is twofold; to provide the social good of adequate and consistent support for those injured catastrophically and to fix the inequity of the different supports across jurisdictions.

- Problems also arise given the implementation of the NDIS has been agreed which in effect becomes the minimum regulatory approach.

²³ COAG (2007), Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies, Canberra.

Options

- Regardless of what approach is taken, the catastrophically injured person always needs care.

These problems are caused by a regulatory failure; the different jurisdictions' regulatory inconsistencies have led to unequal support dependent on arbitrary factors such as where the accident occurred or whether the vehicle is registered.

As such it is not appropriate to suggest a non-regulatory option to solve a regulatory problem and no non-regulatory options have been further analysed in this RIS.

4.4.2 *Reforms to court processes*

As the identified problem refers to issues with the common law system of fault-based systems, another possible option could be to address these directly by altering the court process to make it quicker, less stressful on individuals, or to alter lump sum payments to negate the issues with estimation and discount rates. However, this was not regarded as a viable option for this RIS for the following reasons.

First, even if the court process is much improved, it would still be out of reach for those injured individuals who cannot identify a solvent at-fault party for their injury. As such these people would access the NDIS for support. This would still require action to address funding arrangements for these new NDIS participants and does not avoid the regulatory problem.

Second, uncertainty is inherent in the court process. In an adversarial system, a decision must be made for one side. Even with an alternate dispute resolution process, the outcome will never be certain. This uncertainty can also lead an individual to agreeing to a settlement which is known to be less than a court award, rather than take the risk of a judgment.

Third, attempts in the past to fix some of the issues with the common law have been unsuccessful. For example, the court's decision on a discount rate can affect the practical sufficiency of a lump sum. A past attempt to mitigate this issue has been to offer structured settlements for lifetime annuities that are tax-exempt and indexed. However, the Productivity Commission could only find one instance of this annuity being taken up in Australia.²⁴

The Productivity Commission concluded that past attempts to reform the court system have shown that 'it *may* be possible to address drawbacks of standard common law processes through specific intervention. However, alternative measures for redress and care and support of injured people would intrinsically avoid such delays and inefficiencies'.²⁵

As such, court reform options have not been explored further in this RIS.

Consultation questions

Question 5: Do you agree with the description of the base case?

Question 6: Are options 1 and 2 reasonable and appropriate?

Question 7: Do you agree that there are no feasible non-regulatory options?

²⁴ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 810.

²⁵ *Ibid*, page 805 (emphasis added).

5 *Impact analysis*

This chapter provides a summary assessment of the costs and benefits of implementing the options described in Chapter 4.

5.1 *Base case – NDIS as the safety net*

5.1.1 *Individuals and households*

Under the base case, the key change will be for those individuals and households in Queensland and Western Australia. In these jurisdictions, when the NDIS becomes fully implemented in all jurisdictions the following is expected:

- ongoing support (not a lump sum payment that may or may not be adequate to meet lifetime care needs) is able to be personally directed by the recipient. This allows them to access much more predictable and coordinated care and support over their lifetime
- more people will be able access support, as there will not be a requirement that there be a negligent party nor is it an issue if the injured party contributed to the accident (such that single car accidents and at-fault parties are also covered)
- where an injured individual would have been able to make a claim under the fault-based system in their jurisdiction (i.e. there was identified solvent at-fault party), this individual may still be required to pursue that common law claim and have that compensation replace part of their NDIS payments. A National Disability Insurance Agency (NDIA) delegate may require an NDIS participant to take required action to recover compensation if they have reasonable prospects of success.²⁶ Additionally, individuals may still litigate for other heads of damage, such as loss of earnings
- the support received by catastrophically injured individuals in the no-fault States and Territories will differ from those that are supported by the NDIS. The NDIS does not provide payments for rehabilitation and medical treatment which is offered by motor vehicle lifetime care and support compensation schemes.

This will benefit approximately 126 people each year when the NDIS is fully implemented (based on recent estimates an additional 76 per year in Queensland and 3 in the Northern Territory and estimates from 2005 of 47 in Western Australia). There may also be a small number of people who benefit in Tasmania.

Motorists (both individuals and businesses that own vehicles) in no-fault jurisdictions will continue to pay CTP charges on the same basis as currently.

Until the NDIS commences in these jurisdictions, people catastrophically injured in Queensland and Western Australia will continue to face all the existing problems with fault-based systems that were discussed in the problem chapter.

All taxpayers will contribute to the funding of the NDIS including through the increase in the Medicare levy of 0.5 per cent of taxable income. To the extent that - under the base case -

²⁶ NDIS (2013) *Operational Guideline – Compensation – Recovery of NDIS Amounts – Action has not Been Commenced to Recover Compensation*, available at http://www.ndis.gov.au/sites/default/files/documents/og_compensation_action_not_commenced.pdf.

shifting fault-based jurisdictions into the NDIS will be funded out of government revenue, then in effect all taxpayers are subsidising some of the cost of the NDIS coverage in Queensland and Western Australia. In agreeing to the NDIS under their Heads of Agreement, New South Wales stated that this may constitute some jurisdictions paying a 'subsidy' to others.²⁷

5.1.2 Governments

As stated, the base case excludes any further agreement on how the NDIS will be funded for the higher number of participants. Therefore, the base case assumes that the additional cost would be negotiated between the Commonwealth and the States and Territories who have fault based schemes.

As a result of affected governments having to make higher contributions to the NDIS, they will run smaller budget surpluses (or larger deficits), reduce spending elsewhere, or increase taxes as a result (or some combination thereof) to meet their share of the cost.

The below table estimates the cost of this option, based on:

- an assumption that the cost of the NDIS providing coverage is equal to the Productivity Commission's estimate of the estimated cost of the NIIS (noting that immediate medical and rehabilitation costs are included in the NIIS and not the NDIS. However, these costs will most likely be funded through jurisdictional health systems and therefore still be a cost to governments)
- no additional payments are made to individuals in a jurisdiction before the NDIS is fully implemented in that jurisdiction
- full implementation dates of June 2019 for Queensland, Western Australia and the Northern Territory.

Table 1 is an estimate of providing support to individuals that would not be compensated under jurisdictional schemes and would require the NDIS as a safety net. These costs are presented in terms of where the injured individuals will be supported by the NDIS.

²⁷ Australian and New South Wales Governments (2012) *Heads of Agreement between the Commonwealth and NSW Governments on the National Disability Insurance Scheme*, available at <http://www.ndis.gov.au/sites/default/files/Agreement-between-Commonwealth-and-NSW-Governments-NDIS-signed.pdf>.

Table 1: Cost estimates to provide lifetime care and support to individuals catastrophically injured in motor vehicle accidents (additional to existing jurisdiction based schemes)

Individuals' resident jurisdiction	Estimate of additional costs (per annum)⁽¹⁾	10 year net present value (June 2014 – July 2024)
New South Wales	-	-
Victoria	-	-
Queensland	\$112,000,000	\$345,902,000
South Australia	-	-
Western Australia	\$70,860,000	\$218,845,000
Tasmania	-	(2)
Australian Capital Territory	-	-
Northern Territory	\$18,200,000 ⁽³⁾	\$54,200,000 ⁽³⁾
Total additional costs to the NDIS to be funded by governments		\$618,947,000

Source: PwC analysis based on Productivity Commission, page 907. The net present value calculation uses a discount rate of 7 per cent. The 2011 figures are grossed up using ABS Consumer Price Index data general inflation data was used, but in should be noted that health specific inflation has historically been at a higher level.

Note: (1) For all jurisdictions, apart from Northern Territory, this is based on the Productivity Commission estimates and is expressed in 2011 dollars. Northern Territory estimates are based on more up to date actuarial advice and are in 2013 dollars. (2) Tasmania has not been assigned a net present value due to lack of data. The Productivity Commission assumed that Tasmania would have no additional costs, but more recent analysis shows that Tasmania's current system does not fully meet the minimum benchmarks and so there would be some 'gap' for the NDIS to cover. Without the Productivity Commission estimates, there was no cost basis to form a net present value. (3) Estimates were provided by the Northern Territory Government in a submission to this RIS.

An issue with having fault-based systems using the NDIS as a safety net is that there is potential risk of individuals being double-compensated. An individual receiving lump sum common law compensation, may find it does not last their full lifetime (as discussed in Chapter 2) because it was an inadequate amount or due to mismanagement of funds. When the individual's lump sum compensation runs out, they may still be able to access NDIS support, meaning that they could effectively be double-compensated.²⁸

5.1.3 *Non-Government and Private Sector*

Queensland, New South Wales and the Australian Capital Territory currently have private insurers that provide CTP insurance and individuals can choose which provider they are

²⁸ It should be noted that the NDIA has capacity to recover some common law compensation amounts received after NDIS support was provided (see *NDIS Operational Guideline – Compensation – Recovery of NDIS Amounts – Compensation Received by a Participant from a Judgement or Settlement*, available at http://www.ndis.gov.au/sites/default/files/documents/og_compensation_received_judgement.pdf) but it is unlikely that a judgement or settlement will exclude NDIS payments being made in the future.

insured with. In all other jurisdictions there is a public CTP provider and is included as a levy charged at the same time as the registration fee for the motor vehicle.²⁹ There is no change expected to this situation under the base case.

With all catastrophically injured people receiving adequate support (as opposed to before the roll out of the NDIS), providers of care and support services will need to meet this increased demand. However, in the context of the NDIS more generally, catastrophic motor vehicle accidents will comprise a very small proportion of supported individuals. The Productivity Commission noted this, saying that because of the small number of people catastrophically injured each year ‘the organisations that coordinate services would not need to be very large and would not be likely to place excessive pressures on an already strained labour market in disability services’.³⁰ This will be more so the case because NDIS implementation will occur over several years.

Consultation questions

Question 8: Is this a correct assessment of the base case?

Question 9: Do you have any data on current impacts such as scheme operating costs, CTP premiums or current NDIS contributions (i.e. prior to 2019-20)?

5.2 Option 1: Federated Model of the NIIS

Option 1 is reform to State and Territory systems so that all catastrophically injured people receive a minimum benchmark of support on a no-fault basis. This option assumes that these benchmarks will be met from 1 July 2014.

5.2.1 Individuals and households

Under this option, consistent coverage will be provided to injured parties according to injury related needs, with much more predictable and coordinated care and support over a person’s lifetime. Moving to a no-fault system should not adversely affect people’s incentives to improve their functioning following an injury (if anything it should improve those incentives), and more broadly no-fault systems are likely to be more efficient than fault-based schemes.

This option ensures that catastrophically injured individuals in fault-based jurisdictions that are unable to prove an at-fault party will be provided care and support much sooner than under the base case (and hence avoid the associated problems with fault-based systems sooner). This is because they would otherwise have to wait until the commencement of the NDIS in their jurisdiction if they cannot find a solvent at-fault party. Even if they can find a solvent at-fault party, support may be delayed until this fault can actually be proven.

Injured individuals will also benefit from medical and rehabilitation costs being covered under this option, which are not provided by the NDIS. Combined with fewer delays as above, this early intervention should lead to better rehabilitation outcomes and in some cases lower longer term care costs, since better supports are available sooner.

Under this option, as opposed to the base case, no catastrophically injured person will be required to pursue a common law case for lifetime care and support (though they may choose to litigate for other heads of damage). This would remove any potential incentive to delay

²⁹ Ty Birkett (2013) *Reinsurance for Injury Schemes*, presentation at the Actuaries Institute 2013 Injury Schemes Seminar, available at <http://www.actuaries.asn.au/Library/Events/ACS/2013/BirkettReinsurance.pdf>.

³⁰ Productivity Commission (2011) *Disability Care and Support Inquiry Report* p. 863.

recovery to ensure injury is provable in a common law case, so rehabilitation outcomes could possibly improve (and workforce participation for both the injured and those supporting them such as family members and/or friends).

The reduction in litigation related to motor vehicle accidents will reduce legal costs for claimants and insurers and lessen the burden on the justice system. The Australian Bureau of Statistics estimated that \$410 million was spent on legal costs for personal injuries caused by motor vehicle accidents in 2006-07,³¹ although only a portion of this will be eliminated when catastrophic accidents become no-fault (as support for non-catastrophic injuries and other heads of damage may remain unchanged).

A key impact on individuals (and businesses who insure work vehicles) is the change in insurance premiums. The Productivity Commission identified four basic costs that insurance premiums must incorporate:

- the costs of lifetime supports for an injured person
- any costs associated with coordination of care and support
- the standard administrative costs of any insurer (including reinsurance, claims management, depreciation and so on)
- any litigation costs (whether explicit in party-party form or implicit as a share of the compensation payouts). These are zero in pure no-fault systems and significant in fault-based systems.³²

Individuals in some jurisdictions will see an increase in their premiums when the NIIS is introduced. This is because there would be more individuals who are eligible to make a claim under the scheme, including those at fault and those not able to prove fault. The fact that lifetime care and support payments, rather than just a lump sum, would need to be paid to individuals who are catastrophically injured may also result in a slight increase in premiums. These additional costs would most likely outweigh any savings from, for example, avoiding litigation that would otherwise take place.

Table 2 shows an estimation made in 2005 of the potential premium changes. It should be noted in examining these that they were undertaken using the best available information at the time and circumstances may have changed in the interim. This data is also presented in 2005 dollars.

The Productivity Commission reasoned that, with the introduction of the NIIS all premiums would now provide cover to the same level (the minimum benchmarks), and so over time premiums will converge and individuals will pay the same for the premiums, all else being equal. However, in reality all else will not be equal, with jurisdictional differences in cost of care and costs of claim management.

Also, it is important to note that there are many factors that may affect CTP premiums being different between jurisdictions which may remain after the introduction of an NIIS, even if the catastrophic part of the premium converges.

³¹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

³² *Ibid* p. 847

Table 2: Estimate of premium change, 2005 estimates

Jurisdiction	Current medium premium	Increased medium premium	% increase on medium premium
Queensland ⁽¹⁾	\$350	\$366	5%
Western Australia ⁽²⁾	\$250	\$287	15%
Northern Territory ⁽³⁾	\$425	\$498	17%

Source: John Walsh, Anna Dayton, Chris Cuff and Peter Martin (2005) *Actuarial Analysis on Long-Term Care for the Catastrophically Injured*.

Notes: (1) Queensland has actuarial analysis from 2012 suggesting they would need an increase of \$81 per vehicle in 2013 dollars to meet the minimum benchmarks.³³ This increase was calculated on the basis that currently only half of people catastrophically injured in Queensland motor vehicle accidents are covered by CTP.³⁴ (2) Recent actuarial estimates from Western Australia suggest that the CTP increase would be \$108, if implemented in 2015.³⁵ (3) Updated information from the Northern Territory indicates that the existing scheme has sufficient capital to absorb the changes without an increase in premiums.³⁶

This option removes the cross subsidisation occurring under the base case, where taxpayers in some jurisdictions are funding a part of the cost of NDIS coverage in other jurisdictions.

Consultation questions

Question 10: Do you agree with the identified impact of option 1 on people with catastrophic injuries?

Question 11: Do you have any data or analysis on the expected change in insurance premiums for individuals under option 1 (including on the level of current premiums)?

Question 12: Do you have any data on any of the other identified impacts on individuals, businesses and the community under option 1?

Question 13: Are there any costs or benefits for individuals, business and the community under option 1 that are not identified here?

5.2.2 Governments

As the Productivity Commission noted, costs are higher in no-fault schemes, compared to fault-based schemes, for two main reasons (outside of any consideration of whether actual support payments are adequate). Firstly, claim numbers are higher because at-fault parties, and parties unable to prove any fault, have the ability to claim. Secondly, staffing and administration is needed to coordinate payments, a function not usually performed in fault-based schemes where lump sum payments are awarded and administered by the

³³ Queensland Government submission to this RIS.

³⁴ Government of South Australia (2012) *South Australia's Compulsory Third Party Insurance Scheme 2012 Green Paper*.

³⁵ Western Australian Government submission to this RIS.

³⁶ Northern Territory Government submission to this RIS.

injured individual over their full lifetime.³⁷ These increase costs will be reflected in the increased premiums to individuals.

Option 1 requires each jurisdiction to offer the same level of support (at least the minimum benchmarks). The magnitude of the impact of this will depend on the current design of each scheme. Broadly, the existing schemes fall into three categories; no-fault schemes that meet the benchmarks, no-fault schemes that do not fully meet the benchmarks and fault-based schemes that do not meet the benchmarks.

- **NSW and Victoria** – These two jurisdictions already operate no-fault schemes that meet the minimum benchmarks. As such, no policy or administrative changes are required. This means the impact on these jurisdictions will be minimal.
- **South Australia and the Australian Capital Territory**– South Australia moved to a no-fault scheme for children in 2013 and will meet the benchmarks for all catastrophic injuries when their legislation comes into effect from 1 July 2014. The Australian Capital Territory will meet the minimum benchmarks when its newly passed legislation also comes into force on 1 July 2014.³⁸
- **Tasmania** - Tasmania already operates a no-fault scheme, which is close to the minimum benchmarks though currently excludes serious offences (see Box 2). They also have an established and funded body to administer the NIIS, which should reduce the additional costs. Including serious offences would mean that Tasmania will have increased support payments.
- **Northern Territory** - the Northern Territory already operates a no-fault scheme, but it does not currently meet the benchmarks in a few key areas (which are currently under a legislative process to change, see Box 2). The Northern Territory already has an established and funded body to administer the NIIS, though it may need to be expanded. The Northern Territory would also expect to pay more in support payments.
- **Queensland and Western Australia** - These jurisdictions currently have fault-based schemes and there would be costs associated with moving to no-fault schemes for the lifetime care and support of catastrophic injuries. By way of example:
 - The Productivity Commission found that evidence from no-fault systems suggested that administration costs would be relatively low. As a ratio of premium income, they found that administration costs in 2009-10 were 3 per cent in NSW, 14.1 per cent in Victoria, 9.9 per cent in New Zealand and 4 per cent in Tasmania.³⁹
 - In New South Wales in 2012-13, the Lifetime Care and Support Authority had 76 staff and had approximately \$125 million in operating expenses (excluding support payments).⁴⁰ This agency only deals with severe injuries, while other jurisdictional agencies also cover minor injuries.

³⁷ Some fault-based schemes involve administration while a common law claim is being processed, but lifetime care and support no-fault systems will require this management and administration for much longer periods.

³⁸ Andrew Barr Media Release (10/04/2014) 'Lifetime Care and Support Legislation passed in Legislative Assembly', available http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2014/lifetime-care-and-support-legislation-passed-in-legislative-assembly.

³⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 839.

⁴⁰ Lifetime Care and Support Authority (2013) *Annual Report 2012-2013*, available at http://www.lifetimecare.nsw.gov.au/Annual_Reports.aspx

- In Victoria in 2013, the Transport Accident Commission had approximately \$149 million in administration costs.⁴¹ It is important to note that Victoria also administers no-fault compensation for non-catastrophic injury, as opposed to the New South Wales and South Australian schemes.

Table 3 shows actuarial estimates produced in 2005 (unless updated numbers have been provided) of the costs and number of claimants for a lifetime care scheme for catastrophic injuries from motor vehicle accidents. While not recent, this does serve to show the comparative cost of such a scheme across jurisdictions. The final column, cost per claim, is not representative of how much each client will receive in support payments, but is included to show the relative expense of each jurisdiction.

Table 3: Actuarial estimates of number of expected claims and expected cost per claim

Jurisdiction	Annual number of claims, 2005 estimate unless updated numbers provided	Cost per claim (million in 2013 dollars), 2005 estimate unless updated number provided
Queensland	76 ⁽¹⁾	2.23
Western Australia	47	4.00 ⁽²⁾
Northern Territory	2.6 ⁽³⁾	7.00 ⁽³⁾

Source: John Walsh, Anna Dayton, Chris Cuff and Peter Martin (2005) *Actuarial Analysis on Long-Term Care for the Catastrophically Injured*, page 53. 2005 estimates inflated using ABS CPI data.

Notes: (1) Revised actuarial estimates provided by Queensland Government for this RIS. (2) Updated actuarial estimates provided by Western Australian government for this RIS, in 2013 terms. (3) Updated actuarial estimates provided by Northern Territory government for this RIS, in 2013 dollars.

Table 4 shows what option 1 would cost in additional lifetime care and support payments over the ten years starting July 2014. This table is calculated using the similar approach taken for Table 1 in the base case. This assumes that from July 2014, all catastrophically injured people will be receiving lifetime care and support payments. This will result in a higher cost than the base case, but it means that support is getting to those who need it earlier rather than waiting for the full roll out of the NDIS.

It bears repeating that this cost is the additional cost in fault-based systems between the time that they sign up to the minimum benchmarks and the time where the NDIS would otherwise be implemented (at which point the yearly cost is allocated to the base case rather than to this option).

⁴¹ Transport Accident Commission (2013) *Annual Report*, available at http://www.tac.vic.gov.au/__data/assets/pdf_file/0003/56064/2013_TAC_Annual_Report_WEB.pdf.

Table 4: Cost estimates to provide lifetime care and support to people catastrophically injured in motor vehicle accidents (additional to existing jurisdiction based schemes) – Option 1

Jurisdiction	Estimate of additional costs (per annum)⁽³⁾	10 year net present value (July 2014 – July 2024)	Additional cost to base case (as shown in Table 1)
NSW	-	-	-
Victoria	-	-	-
Queensland	\$112,000,000	\$831,048,000	\$485,146,000
South Australia	-	-	-
Western Australia	\$70,860,000	\$525,786,000	\$306,941,000
Tasmania	-	(1)	-
ACT	-	-	-
NT	\$18,200,000 ⁽²⁾	\$130,300,000 ⁽²⁾	\$76,000,000 ⁽²⁾
Total additional cost compared to base case			\$868,087,000

Source: Productivity Commission, page 907 and PwC calculations. These estimates include criminal injury, but not “off-road” accidents which would increase the costs by \$2-3 per vehicle. The net present value calculation used a discount rate of 7 per cent. The 2011 figures are grossed up using ABS Consumer Price Index data, general inflation data was used, but it should be noted that health specific inflation has historically been at a higher level.

Note: (1) that Tasmania has not been assigned a net present value due to lack of data. (2) Updated actuarial estimates from the Northern Territory have the annual additional cost as \$18.2 million in 2013 dollars. This would put the 10 year NPV for option 1 as approximately \$130.3 million, or \$76 million more than the base case.⁴² (3) For all jurisdictions, other than the Northern Territory, this is based on Productivity Commission estimates and is expressed in 2011 dollars. Northern Territory is based on updated actuarial advice provided for this RIS and is presented in 2013 dollars.

Option 1 could lead to less people choosing to litigate in the courts because they can receive more timely and adequate care and support through the NIIS and therefore, they may not see the need to also litigate. This could reduce the likelihood of claimants receiving both compensation from an at-fault party and payments from the NIIS. This is a potential cost saving to governments in comparison to the base case.

Potential savings may also arise from option 1 compared to the base case where all rehabilitation and medical costs from the accident causing the individual’s catastrophic injury are covered by the NIIS and individuals will not need to rely on State and Territory funded health systems, removing that additional burden.

⁴² Northern Territory submission to this Consultation RIS.

As discussed in section 2.5, a benefit of keeping the NIIS and NDIS as two separate schemes is that premiums can be adjusted for risk i.e. tailored to a particular individual's risk profile to mitigate the occurrence of accidents. However, it was also noted that some 'community rating' can also be involved in premium setting to keep premiums affordable and avoid creating an incentive to drive an uninsured or unregistered vehicle. It is unsure how much each jurisdiction will balance this targeting of an individual's risk profile and the desire to keep premiums affordable under this option and the impact that this will have on mitigating the occurrence of accidents.

It should be noted that other actions (apart from premium setting) can be taken to address an individual's risk profile. These can include penalties for road offences and public awareness campaigns against dangerous road behaviour such as speeding or drink driving. Because these other risk mitigating strategies are all taken at the State and Territory level, this is another benefit of keeping the NIIS separate from the NDIS and allowing it to be administered by the jurisdictions. Removing the costs of accidents from the States and Territories may reduce the incentives for them to enact such risk mitigating strategies.

Consultation questions

Question 14: Do you have any data on the identified costs on States and Territories of option 1? Specifically, can you provide updates of number of annual expected claims, average size of expected claims and annual expected total costs including administration (see Table 3 and the first column of Table 4 respectively)?

Question 15: Are there any other costs or benefits to States and Territories of option 1 that are not identified here?

Question 16: Do you agree with the impact of option 1 on the Commonwealth Government?

Question 17: Do you expect that jurisdictions will alter insurance premiums to target the risk profile of individual motorists?

5.2.3 Non-Government and Private Sector

As discussed above, the impact and involvement of private insurance providers in the NIIS depends a lot on individual jurisdiction scheme design. In the base case in New South Wales (for non-catastrophic injuries), Queensland and the Australian Capital Territory, CTP is provided by a choice of private insurers, while in the other jurisdictions it is a single public provider. Although CTP amounts may need to change in several jurisdictions (discussed earlier), it is not a necessary conclusion that the party providing this insurance will change.

During the Productivity Commission submissions, a concern was expressed that the NIIS should not 'crowd out' private insurers but work with private providers.⁴³ The Insurance Council of Australia, in their submission, discussed five possible models for the party that provides the insurance under the NIIS, each with their own potential risks and benefits.⁴⁴

- 1 'Managed' private sector underwriting with private insurers underwriting all the financial risks and the jurisdictional government, through their authority, collecting premiums and managing claims.

⁴³ Insurance Council of Australia (2011) *Productivity Commission Inquiry into Disability Care and Support - Insurance Council's Submission to the Draft Report*, available at http://www.pc.gov.au/_data/assets/pdf_file/0016/110257/subdr0986.pdf.

⁴⁴ Ibid.

- 2 Private Sector underwriting with mitigation of risk through premium mechanism. This would operate as the first option, except insurers establish a schedule of prices on which they are allocated a deposit premium based on their market share at the beginning, which is then adjusted at the end of the year to reflect actual claims.
- 3 Private underwriting with capped insurer cover and price adjustment mechanism. This is similar to the second option with a cap on insurer liability per participant.
- 4 Government underwriting with a private case manager. This option has the government as underwriting with private insurers operating as case managers for claimants, which is tendered for and remunerated by the government. This is how the South Australian CTP scheme currently operates.
- 5 Two tier system for catastrophic and non-catastrophic. This option has tier one injuries managed by a statutory agency and tier two privately underwritten through third party premiums. This is how the New South Wales motor vehicle accident scheme currently operates.

It is acknowledged that providing insurance for catastrophic injury can be very capital intensive. This may mean that private insurers may not wish to underwrite such a scheme, and that they may not be as efficient as a government underwriter.⁴⁵ However, as mentioned above, even in a government underwritten scheme, there may be scope for private insurers to provide other services, like claims management.

The impact on private insurers will depend on whether jurisdictions choose to move from one of these options to another. Importantly, this option retains the flexibility for jurisdictions to decide what works best for them.

It is also possible that jurisdictions may choose to use this flexibility and pool their CTP insurance to achieve economies of scale and reduce premiums by widening the range of policyholders. However, this does not seem likely in the current environment as governments are likely to remain the underwriters for schemes that cover catastrophic injuries.⁴⁶

With all catastrophically-injured people receiving adequate support, providers of care and support services will need to meet increased demand in fault-based jurisdictions. However, in the context of the roll out of the NDIS, catastrophic motor vehicle accidents will comprise a very small proportion of supported individuals.

⁴⁵ Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf).

⁴⁶ Based on the evidence that the existing catastrophic lifetime care and support schemes in New South Wales and South Australia are government underwritten and that insurance provider advice suggests this is the best option (Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/o/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf).)

Consultation questions

Question 18: Do you have any information as to what the design of each State and Territory insurance provisions will be?

Question 19: Do you have any data of the impact of option 1 on insurance design or insurance providers?

Question 20: Do you believe this is a correct assessment of the likely impact of option 1?

Question 21: Do you believe that States and Territories could pool their insurance? If so, what impact would this have on premiums and would it be government underwritten or provided by the private sector?

5.3 Option 2: Differential State and Territory systems supported by the NDIS

In practice, depending on the policy decisions of the States and Territories, the impact of this option will be somewhere between the base case and option 1. The jurisdictions are likely to make some changes, but with the flexibility allowed, will not be impacted as much as under option 1. In essence the advantages of this option are that it:

- allows Tasmania and the Northern Territory to keep their particular policies of eligibility to their schemes should they wish
- allows for flexibility about eligibility policies
- allows access to an administrative body if the jurisdiction believes it would be more efficient than setting up their own.

As with option 1, there are also the additional benefits identified by the Productivity Commission of two separate schemes, the NDIS and NIIS, in that it:

- deters high risk behaviour by costing the likelihood of having an accident into the cost of insurance
- allows for the full funding of lifetime liabilities
- can establish best practice clinical treatment and rehabilitation, as it will not just cover lifetime care like the NDIS but also immediate acute care and rehabilitation
- can draw on the existence of well-functioning structures in the no-fault scheme jurisdictions.

However, these benefits only apply to jurisdictions that implement a no-fault scheme. Where a State or Territory chooses to only pay the costs of NIIS clients in the NDIS, these benefits are not realised. This is particularly true for rehabilitation, as this is not covered in the NDIS, and the ability to draw on the existing no-fault structures.

5.3.1 Individuals and households

Every person who has lifetime care and support needs will receive them. Some injured people will receive this support through no-fault schemes in their home jurisdiction, and some will receive it through the NDIS. Both these systems of support will be based on ongoing personalised needs and will be under a scheme set up to be adequate and certain for life. However, individuals receiving support under the NDIS will not receive the same payments for rehabilitation and medical treatment which is offered by the NIIS and not the

NDIS, as in the base case. The true cost of an accident includes these medical and rehabilitation costs, therefore individuals will either have to pay these costs themselves, rely on jurisdiction funded health systems or not access these early support services to the detriment of their long term outcomes. It should also be noted that individuals relying on the NDIS will have to wait until the NDIS rolls out in their jurisdiction to be able to access support.

Motor vehicle owners may see their CTP payments increase with the introduction of this option if their jurisdiction fully adopts the minimum benchmarks. The extent to which their jurisdiction moves towards the minimum benchmarks will affect how large this increase is. The increase will be no more than, and may be less than, the increase outlined for Option 1.

Consultation question

Question 22: Do you believe this is a correct assessment of the impact of option 2 on individuals, businesses and the community?

5.3.2 Governments

The costs to Queensland, Western Australia, Tasmania and the Northern Territory in option 1 acts as an upper bound to the costs of this option. Under option 2 jurisdictions could still choose to fully meet the benchmarks and the impact will be the same as option 1. If they do not meet the benchmarks, the support they pay out for accidents occurring in their jurisdictions should be the same regardless, as they will cover 100 per cent of the associated NDIS costs.

However there are a few factors that may reduce the costs compared to option 2. This is because the jurisdictions have more time to implement the option. Whilst the jurisdictions who do not meet the benchmarks will have to pay the gap filled by the NDIS, there is no deadline for meeting the benchmarks. These jurisdictions can rely on the NDIS and pay for the difference for the foreseeable future, take time to develop their policy and change their scheme as geographically specific circumstances change. Costs are generally reduced if there is extra time to implement as it allows more opportunities to plan for and spread out costs over time.⁴⁷ However, during this time where a jurisdiction may choose to delay, the jurisdiction will incur the long term liabilities of additional NDIS payments for a catastrophically injured person who enters the NDIS because that jurisdiction's scheme does not cover them.

The flexibility this option brings allows each jurisdiction to assess risks particular to their jurisdiction and address particular policy concerns. Jurisdictions being able to influence their own policy can help reduce risk and in the long run lower costs if fewer people are getting injured.

This also means that these jurisdictions will not have to set up an administrative agency if they choose not to, they can essentially pay to outsource this function to the NDIA. This would be done if, in the assessment of the jurisdiction, it would be easier and less costly to do so.

As with the base case, those injured individuals supported through the NDIS and not the NIIS will not have their medical and rehabilitation costs covered. As such, these costs will

⁴⁷ Costs of setting up an administrative body can be delayed. However, in the converse the State or Territory that delays meeting the minimum benchmarks will start incurring the long term liability of funding the NDIS costs for individuals catastrophically injured in motor vehicle accidents in the interim.

either fall on the individual's personal resources, or more likely, State and Territory funded public health systems.

Also as with the base case, there is capacity under this option to have an issue with double compensation where an individual receives lump sum common law compensation, this may not last their full lifetime (as discussed in Chapter 2) either through general inadequacy or mismanagement. This person then may seek NDIS support, despite already having received an amount of funds for care and support.⁴⁸

The Commonwealth will have additional NDIS participants compared to option 1 (possibly up to, but not more than, the amount in the base case), but the home jurisdiction will cover 100 per cent of the costs of accidents occurring there.

Consultation questions

Question 23: Do you believe this is a correct assessment of the impact of option 2 on State and Territory governments?

Question 24: Do you believe this is a correct assessment of the impact of option 2 on the Commonwealth Government?

5.3.3 *Non-Government and Private Sector*

With all catastrophically injured people receiving adequate support (as opposed to before the roll out of the NDIS), providers of care and support services will need to meet this increased demand. However, in the context of the implementation of the NDIS, catastrophic motor vehicle accidents comprise a very small proportion of supported individuals.

Consultation questions

Question 25: Do you believe this is a correct assessment of the impact of option 2 on injured people and service providers?

Question 26: Do you believe this is a correct assessment of the costs and benefits of option 2?

5.4 *Conclusion*

The table below summarises on a high level the analysis of this chapter. Broader conclusions and preferred option can be found in Chapter 7.

⁴⁸ It should be noted that the NDIA does have some capacity to recover some compensation amounts against NDIS payments made in the past (see *NDIS Operational Guideline – Compensation – Recovery of NDIS Amounts – Compensation Received by a Participant from a Judgement or Settlement*, available at http://www.ndis.gov.au/sites/default/files/documents/og_compensation_received_judgement.pdf) but it is unlikely a judgement or settlement will exclude NDIS payments being made in the future.

Table 5: Impact conclusions

	Base case	Option 1	Option 2
Injured individuals	Support will depend on which jurisdiction (and therefore which scheme) an individual is in. Those relying on the NDIS may have to wait for roll out in their jurisdiction and will not receive the same medical and rehabilitation cover.	Fully supported from 1 July 2014, regardless of jurisdiction.	Support will depend on which jurisdiction (and therefore which scheme) an individual is in. Those relying on the NDIS may have to wait for roll out in their jurisdiction, and will not receive the same medical and rehabilitation cover.
Service providers	Must meet demand of supported individuals (full coverage from 2019)	Must meet demand of supported individuals (full coverage from 2014)	Must meet demand of supported individuals (full coverage from 2019)
New South Wales	Supports injured individuals to at least the level of the minimum benchmarks		
Victoria	Supports injured individuals to at least the level of the minimum benchmarks		
South Australia	Supports injured individuals to minimum benchmarks		
Tasmania	Supports most injured individuals and contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring some change to the local scheme	Supports most injured individuals which requires no change to local scheme and contributes additional funding to NDIS on an as needed basis
Northern Territory	Supports most injured individuals and contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring some change to the local scheme	Supports most injured individuals which requires no change to local scheme and contributes additional funding to NDIS on an as needed basis
Western Australia	Does not give no-fault support but contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring considerable change to the local scheme	Can choose to support injured individuals to any level and contributes additional funding to NDIS on an as needed basis
Queensland	Does not give no-fault support but contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring considerable change to the local scheme	Can choose to support injured individuals to any level and contributes additional funding to NDIS on an as needed basis
Australian Capital Territory	Supports injured individuals to minimum benchmarks		
Commonwealth	Additional contribution to the NDIS	No additional contribution to the NDIS as it no longer includes motor vehicle accident injuries	No additional contribution to the NDIS as jurisdictions fully cover the NDIS costs of their own injured individuals
Insurance providers	Offer insurance as previously	Possible cost or lost business due to product changes	Possible cost or lost business due to product changes
Individuals and community	Individuals pay CTP and income tax including the Medicare levy, part of which goes to support catastrophic accidents. Possible other taxation supports jurisdictional NDIS contributions	Individuals pay the same or increased CTP depending on jurisdiction. No part of Medicare levy supports motor accidents.	Individuals pay the same or increased CTP depending on jurisdiction. No part of Medicare levy supports motor accidents. Possible other jurisdiction based taxation supports jurisdictional NDIS contributions

6 Consultation

6.1 Previous consultation

In the development and implementation of the NIIS so far, there has been three main opportunities for consultation and engagement with stakeholders. Initially, submissions to the Productivity Commission report were invited broadly from all stakeholders who wanted to participate. Following the release of the Productivity Commission report and agreement to explore its recommendations, a NIIS Advisory group of experts and stakeholders was established. Also to guide development and implementation at a more detailed level, there is an established meeting of senior officials.

6.1.1 Productivity Commission

In the preparation of its report the Productivity Commission received 1062 submissions (610 initial submissions and 452 post draft report submissions). This allowed stakeholders to provide opinion, feedback, additional data and concerns before the recommendations of the Productivity Commission were confirmed. These submissions included those who are most involved in and concerned with the NIIS.

- South Australian Government⁴⁹
- Western Australian Government⁵⁰
- Motor Accidents Insurance Board (Tasmania)⁵¹
- Tasmanian Government⁵²
- Australian Local Government Association⁵³
- New South Wales Government⁵⁴
- Victorian Government⁵⁵
- Australian Capital Territory Government⁵⁶

⁴⁹ South Australian Government (2011) *SA Government Response to the Productivity Commission Disability Care and Support Draft Report*, available at http://www.pc.gov.au/__data/assets/pdf_file/0005/109445/subdro861.pdf.

⁵⁰ Western Australian Government (2011) *Western Australian Government Submission: Productivity Commission Inquiry on the draft report into disability care and support*, available at http://www.pc.gov.au/__data/assets/pdf_file/0007/108349/subdro683.pdf.

⁵¹ Motor Accident Insurance Board Tasmania (2011) *Submission to the Productivity Commission*, available at http://www.pc.gov.au/__data/assets/pdf_file/0015/109311/subdro687.pdf.

⁵² Tasmanian Government (2011) *Draft Report on Disability Care and Support: the Tasmanian Government's Submission to the Productivity Commission*, available at http://www.pc.gov.au/__data/assets/pdf_file/0014/110381/subdr1032.pdf

⁵³ Australian Local Government Association (2011) *Response of the Australian Local Government Association to the Disability Support and Care report*, available at http://www.pc.gov.au/__data/assets/pdf_file/0019/109450/subdro864.pdf.

⁵⁴ NSW Government (2011) *NSW Government Response to the Draft Report on Disability Care and Support*, available at http://www.pc.gov.au/__data/assets/pdf_file/0007/109852/subdro922.pdf.

⁵⁵ Victorian Government (2011) *Victorian Government Submission in response to the Productivity Commission's draft report on disability care and support*, available at http://www.pc.gov.au/__data/assets/pdf_file/0019/110278/subdro996.pdf.

- Queensland Government ⁵⁷
- Various Australian Law Councils and Associations
- Insurance Council of Australia.

6.1.2 *Advisory Group*

The NIIS Advisory Group was established following the Government's announcement to reform the disability care and support system in response to the Productivity Commission's report into Disability Care and Support. The Advisory Group was established to advise the then Minister for Financial Services and Superannuation on the issues associated with the establishment of a NIIS.

The Advisory Group comprised a diverse range of experts and key stakeholders, including representatives from the insurance, legal, disability and medical sectors, as well as local government and unions.

The Advisory Group principally considered minimum benchmarks for a federated NIIS for catastrophic injury arising from motor vehicle accidents but agreed that it was important to extend the minimum standards beyond eligibility and related issues to potential models of care and support and consumer involvement in service planning.

6.1.3 *Senior Officials*

It can be seen from the discussion of impacts above that State and Territory governments are key stakeholders in this area. They have been involved in the development of policy through the NIIS Senior Officials group.

The NIIS Senior Officials group has considered discussion papers on four topics:

- an initial discussion paper on NIIS issues
- a scoping of NIIS minimum benchmarks for motor vehicles
- NIIS minimum benchmarks for motor vehicles
- interactions between the NIIS and the NDIS.

Senior officials were made aware of the preparation of this Consultation RIS, and asked to contribute any existing information. Each State and Territory government will be a key resource in giving feedback on this RIS and through consultation the development of the Decision RIS.

6.1.4 *Consultations undertaken by the States and Territories*

As each State and Territory has looked towards the implementation of a NIIS, they have engaged in consultation with stakeholders. For example, South Australia released a green paper of their CTP scheme for public comment.⁵⁸

⁵⁶ ACT Government (2011) *ACT Government Submission*, available at http://www.pc.gov.au/__data/assets/pdf_file/0010/110332/subdr1012.pdf.

⁵⁷ Queensland Government (2011) *Queensland Government Submission to the Productivity Commission's draft report: Disability Care and Support*, available at http://www.pc.gov.au/__data/assets/pdf_file/0003/110379/subdr1031.pdf.

⁵⁸ South Australian Government (2012) *South Australia's Compulsory Third Party Insurance Scheme 2012 Green Paper*, available at http://www.treasury.sa.gov.au/CTPgreenpaper/from_the_treasurer.htm.

It is also understood that any State or Territory making changes to their local scheme may conduct future public consultation in the preparation of those changes.

Consultation question

Question 27: Do you have any data from consultation that has been conducted?

6.2 Consultation on this RIS

Treasury is now seeking submissions on this RIS. The RIS is subject to a consultation period, with the closing date for submissions being 23 May 2014. Feedback is sought particularly on the consultation questions highlighted throughout this document, but feedback is welcomed on any of the analysis and findings in this document.

Responses to the Consultation RIS can be provided as follows:

By email (preferred)

niisris@treasury.gov.au

In writing

Leesa Croke
The Treasury
Langton Crescent, Parkes ACT 2600

The closing date for submissions is **23 May 2014**.

Specific targeted consultation will be undertaken on the content of this RIS which the relevant officials in each jurisdiction. This will then influence the preparation of the Decision RIS.

7 *Conclusion and recommendations*

This RIS has qualitatively described the likely impacts on different parties to form the basis for further consultation. As such more information will assist to determine which option has the largest net benefit.

As discussed above, each option aims to ensure that adequate support is given to all people who are catastrophically injured in motor vehicle accidents, but the differences between the options are distributional ones, of who bears the responsibility and risk of this support.

In assessing how each option meets the objectives set out in Chapter 3:

- all options provide certain, timely and quality lifetime care and support to individuals catastrophically injured in motor vehicle accidents
- in the base case and option 2 some individuals will not receive funded medical or rehabilitation services
- option 1 offers support to all individuals immediately, while in the base case and option 2, those individuals that rely on the NDIS may have to wait for it to roll out in their jurisdiction
- option 1 (and to a lesser extent option 2) ensures financial sustainability is achieved through fully funding, rather than pay as you go, and by reducing the cost burden on the NDIS
- the base case lacks equality between the States and Territories in the long run, in their contributions to lifetime care and support
- in the base case (and to a lesser extent option 2), the NDIA may require individuals receiving support through the NDIS to go through the court systems to recoup the costs of support
- option 1 lacks choice for each jurisdiction to set policy that they believe will mitigate risk in their jurisdiction (such as exemptions for serious traffic offences).

These conclusions will be reassessed and quantified to evaluate comparative size of benefits after consultation has occurred on this RIS.

Consultation questions

Question 28: Do you have any comments on how each of the options meet the identified objectives?

8 *Implementation and review*

8.1 *Implementation*

The Commonwealth Government is currently working with States and Territories to develop the NIIS as a federated model of separate, state-based no-fault schemes that provide lifetime care and support for people who have sustained a catastrophic injury.

8.2 *Review*

The Productivity Commission recommended in its report that an independent review be conducted of the NIIS in 2020 to:

- evaluate the performance of the NIIS, and how it might be improved
- consider the case to expand the NIIS to include other heads of damages, examine how the common law interacts with the NIIS in these areas and whether it frustrates the goals of the NIIS to maximise incentives for early rehabilitation and the greatest possible social participation
- consider the case to expand the NIIS to cover significant, non-catastrophic injuries
- examine and evaluate the case for merging the NIIS and NDIS.

The Productivity Commission recommended delaying these issues until the 2020 review because:

- the most urgent change is coverage on a no-fault basis of people's care and support needs for catastrophic injuries
- the shift to the proposed NIIS is a significant one with new agencies, agreements between jurisdictions, the arrangement of new funding sources and coverage of a much wider group of people. The rapid expansion of the NIIS to cover the even larger populations with significant, rather than catastrophic injuries, and coverage of the other heads of damage would involve much more extensive change, much greater costs and many practical obstacles
- the introduction of a no-fault scheme for long-term care and support for catastrophic injuries may address many of the concerns about incentives for early rehabilitation under common law arrangements
- as shown in responses to the Review of the Law of Negligence (chaired by the Hon David Andrew Ipp), there is a wide diversity of views on the desirability and form of changes to litigation arrangements. Given its wider scope, this inquiry cannot address all the complexities associated with changes to common law arrangements for compensation of personal injury. Accordingly, extending the NIIS

(beyond no-fault arrangements for care and support) would desirably be tested in a much more focused inquiry, hence the proposed 2020 review.⁵⁹

In addition to this review of the full system, it has also been proposed that each 5 years, a review be undertaken to assess each jurisdiction's financial burden in relation to liability for services provided to non-residents, and any net transfers between jurisdictions.⁶⁰ This will address any possible issues of inequity between the jurisdictions, as it is possible for them to exceed minimum benchmarks and provide support to non-residents (who were, for example, injured in an accident in their jurisdiction, or by a car registered in their jurisdiction).

To allow effective review, implementation needs to include a system of data collection that will ensure that data is being collected and reported in a robust and consistent way. The minimum benchmarks agree that each jurisdiction will collect and report data in relation to:

- number of entrants to each scheme and their characteristics
- classification of injuries of entrants
- average cost of support of scheme entrants
- average cost of care in each jurisdiction
- amount of care per claim overall and by injury classifications.⁶¹

⁵⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

⁶⁰ <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>

⁶¹ Ibid.

Appendix A State and Territory motor vehicle accident compensation systems

New South Wales

The Lifetime Care and Support (LTCS) Authority is a statutory authority established on 1 July 2006 under the *Motor Accidents (Lifetime Care and Support) Act 2006*. The LTCS Authority is responsible for the administration of the Lifetime Care and Support Scheme (LTCS Scheme) which provides lifelong treatment, rehabilitation and attendant care for people severely injured in a motor vehicle accident in NSW, regardless of who was at fault. The LTCS Scheme does extinguish common law rights for ongoing care and support, but injured people retain the right to pursue common law claims for incomes loss or pain and suffering incurred.

New South Wales also has a fault-based CTP claims system for non-catastrophic injuries.

Victoria

In 1986, the Victorian Parliament passed the *Transport Accident Act 1986* establishing the Transport Accident Commission (TAC) from 1 January 1987. The purpose of the Act was to establish a compensation scheme "in respect of persons who are injured or die as a result of transport accidents." The TAC is a state owned enterprise of the Victorian Government. It operates as a commercial insurer and is funded both by premiums and investment income generated on reserves. The scheme provides no-fault benefits including for lifetime care and support for people who are catastrophically injured, provided they are not convicted of certain driving offences. The scheme also allows injured parties to pursue additional compensation through common law actions.

Tasmania

The Motor Accidents Insurance Board (the MAIB) was established in 1974 under the *Motor Accidents (Liabilities and Compensation) Act 1973*. The Motor Accidents Insurance Board (MAIB) is a Tasmanian Government Business Enterprise which operates a compulsory third party insurance scheme. The purpose of the MAIB is to administer the funding and payment of compulsory third party (CTP) motor accident compensation to eligible people who have been injured in a motor accident.

Tasmania's no-fault system provides benefits including for lifetime care and support, subject to acts of illegality.

Northern Territory

The Territory Insurance Office (TIO) was established under the *Territory Insurance Office Act 1979* and commenced operation on 1 July 1979. TIO is a statutory corporation owned by the Northern Territory Government. The TIO is responsible for administering the Motor Accident Compensation Scheme. While the TIO is "guaranteed" by the Government, the organisation operates on a commercial basis and is fully committed to complying with prudential standards and achieving key industry performance benchmarks.

South Australia

The Motor Accident Commission (MAC) is responsible for the operation and management of the Compulsory Third Party (CTP) Fund. The MAC was established in 1970 under South Australian legislation: *the Motor Vehicles Act 1959*, *Civil Liability Act 1936* and the *Motor Accident Commission Act 1992*. Under the proposed reforms, the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, the *Civil Liability (Motor Vehicle Accidents -- Third Party Insurance) Amendment Bill 2012* and the *Motor Vehicles (Third Party Insurance) Amendment Bill 2012* will govern South Australia's CTP insurance. The Government of South Australia guarantees the liabilities of MAC's CTP Fund.

Western Australia

The Insurance Commission of Western Australia (ICWA) has a statutory function, as defined by the *Insurance Commission of Western Australia Act 1986*, to issue, or cause to be issued, and undertake liability under policies of insurance as required by the *Motor Vehicle (Third Party Insurance) Act 1943*. The ICWA manages and settles the personal and fatal injury claims of those injured or fatally injured by a motorist third party driving a Western Australian registered vehicle.

Queensland

The Motor Accident Insurance Commission (MAIC) is the regulatory authority responsible for the ongoing management of the Compulsory Third Party (CTP) scheme in Queensland. Established under the *Motor Accident Insurance Act 1994*, the Commission commenced operations on 1 September 1994 as a statutory body. The Motor Accident Insurance Commission (MAIC) regulates and monitors the scheme. Queensland's scheme is underwritten by private sector licenced insurers.

Queensland's fault-based system operates on the common law with statutory limitations, and provides a nominal defendant for compensating people who are injured as a result of negligent driving of unidentified or uninsured motor vehicles.

Australian Capital Territory

The Australian Capital Territory Compulsory Third-Party Insurance Regulator (CTP Regulator) is an independent authority established under section 14 of the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act) to regulate compulsory third party (CTP) insurance in the Territory. The CTP Regulator came into effect as an amendment to the *Road Transport (Third-Party Insurance) (Governance) Amendment Act 2010* on 30 September 2010. The CTP Act is administered by Treasury.

There are no restrictions on common law actions in the Australian Capital Territory and a nominal defendant exists for unregistered, unidentified or uninsured motor vehicles.

On 10 April 2014, legislation was passed in the Australian Capital Territory Legislative Assembly to introduce no-fault lifetime care and support for all individuals catastrophically injured in a motor vehicle accident. This legislation was based on the New South Wales scheme and is expected to come in to force from 1 July 2014. This is for catastrophic injuries only, so the existing arrangements for other injuries (as described above) will remain.

