

National Injury Insurance Scheme Issues Discussion Paper

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EXECUTIVE SUMMARY

On 10 August 2011, the Government released the Productivity Commission's (the Commission) report into Disability Care and Support. The Commission found that the Australian disability care and support system was underfunded, unfair and fragmented. For people who acquire a catastrophic injury through an accident, the level of care and support provided has become a lottery based on the type of accident and where it occurs. To address this issue, the Commission proposed the establishment of two schemes: the National Injury Insurance Scheme (NIIS) and the National Disability Insurance Scheme (NDIS).

- The NIIS would provide lifetime care and support for people who are catastrophically injured, including in motor vehicle accidents.
- The NDIS would provide care and support for people with a significant and enduring disability.

Governments have agreed to progress consideration of the proposed NIIS and the NDIS. Consideration of the NIIS is being progressed through the Heads of Treasuries (HoTs). HoTs will report to the Standing Council on Federal Financial Relations (Standing Council) and then an update will be provided to the Council of Australian Governments (COAG). Updates on progress are also provided to the Senior Officials Working Group on Disability Reform, which is responsible for progressing the NDIS at the officials' level, to ensure that development of the NDIS and NIIS are harmonised.

The purpose of this paper, prepared by the Commonwealth and State and Territory Treasuries, is to inform discussion and lay the foundations for the Standing Council to consider the establishment of a NIIS for catastrophic injuries from motor vehicle accidents by the end of 2013.

The paper canvasses the following key issues that need to be considered if a NIIS or similar scheme were to be established.

1. The rationale for national arrangements for insurance for catastrophic injury
2. The Productivity Commission's proposal for a NIIS
3. Coverage
4. Benefits
5. Governance
6. Costs and funding

Some of the key NIIS issues canvassed in this paper include:

- *The Commission's arguments for a NIIS, including that current arrangements for catastrophic injury across jurisdictions are fragmented and variable, which leads to inadequate care and support (see Appendix A for a detailed comparison of schemes).*
- *The development of minimum benchmarks for eligibility, assessment and benefits to be agreed between jurisdictions to maintain the Commission's goal of equity and certainty of care and support.*
- *The interface between a NIIS and the NDIS, including eligibility requirements and benefits provided through the two schemes, and ensuring that the development of common needs assessment tools and workforce development strategies are progressed collaboratively with the NDIS.*
- *The federated structure of the Commission's proposed NIIS, whereby States and Territories retain control over management, operation and financing for motor vehicle accidents. The governance arrangements of the scheme are an important aspect to ensure that the scheme delivers outcomes in a cost effective manner.*
- *The additional costs associated with implementing a NIIS for motor vehicle accidents. Some of the initial costings undertaken by jurisdictions suggest that a NIIS may be more expensive than estimated by the PC.*

If the Standing Council agree to establish a national federated scheme for catastrophic injuries arising from motor vehicle accidents, consideration could then be given to whether such a scheme should be extended to other causes of catastrophic injury, including injury from accidents which occur in the community or at work, assaults or medical accidents.

The paper draws significantly from the Productivity Commission Inquiry Report into Disability Care and Support, in particular *Chapter 17 Insurance arrangements for injury* and *18, A national injury insurance scheme*.

1. THE RATIONALE FOR NATIONAL ARRANGEMENTS FOR INSURANCE FOR CATASTROPHIC INJURY

Key points:

- *The Commission has argued that current arrangements for catastrophic injury across jurisdictions are fragmented and variable, which in many cases leads to inadequate care and support.*
 - *People in jurisdictions without no-fault motor vehicle injury insurance currently need to establish fault of another party to obtain compensation, and court outcomes can be delayed, uncertain, inequitable and inefficient.*
-

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. Each year, up to 1,000 people are catastrophically injured, mostly young men under 30 years old. The main causes of catastrophic injury can be categorised into four areas:

- motor vehicle accidents (approximately 50 per cent of all catastrophic injuries);
- general and criminal injury (32 per cent);
- medical accidents; (11 per cent); and
- workplace accidents (8 per cent).

The process for determining compensation for incurring a catastrophic injury differs across jurisdictions. The Commission found that this variability leads to uncertainty and in many cases inadequate care and support.

The Commission concluded that existing fault-based insurance arrangements for injury do not meet people’s care needs efficiently because:

- legal costs can be substantial;
- court outcomes can be uncertain;
- the level of compensation could be insufficient, particularly in meeting a person’s lifetime needs arising from a catastrophic injury;
- adversarial processes and delay may hamper effective recovery and health outcomes;
- they provide little incentive for prudent behaviour by motorists and other parties; and
- compensation payments are often made in a one-off lump sum, which may not adequately provide for future needs, payment is often delayed and claimants and their families may not have the skills to manage a lump sum over the claimant’s lifetime.

Current arrangements also mean that those who cannot prove fault (or are not covered by no-fault schemes such as workers compensation schemes and motor vehicle accident schemes in some jurisdictions) are not compensated, and as such must rely on support from family and friends and publicly funded health and welfare systems.

Motor vehicle accidents

For motor vehicle injury schemes the level of care and support that is available to a person who is catastrophically injured depends on the location of the accident and in which jurisdiction the motor vehicle(s) involved is registered. [Appendix A](#) provides a comparison of each state and territory motor vehicle injury insurance scheme.

The Northern Territory, Victoria, Tasmania, and New South Wales (for catastrophic injuries only) have no-fault third-party motor vehicle insurance arrangements. Box 1 illustrates the beneficial nature of coordinated care and support available under no-fault schemes. However, there are differences in the coverage and entitlement between these jurisdictions which can lead to considerably different outcomes.

The remaining States and Territories do not have no-fault third party motor vehicle injury insurance arrangements. People who do not have access to no-fault catastrophic insurance schemes and are unable to prove fault of another party, have to rely on the public health and disability systems and their own private resources, including support from family members, to provide for their ongoing care and support.

Motor vehicle injury insurance schemes across jurisdictions also differ in their interaction with common law arrangements. For example, in Victoria, the Transport Accident Commission (TAC) scheme for motor vehicle accidents provides lifetime care and support services and statutory income payments on a no-fault basis, but also enables common law access for economic loss (above no-fault income entitlements) and pain and suffering. In comparison, the Tasmanian Motor Accident Insurance Board (MAIB) provides no-fault lifetime care and support, but allows full access to common law damages.

Past COAG consideration of a national scheme

In April 2005, HoTs considered a national injury insurance scheme in the context of a report on long-term care for the catastrophically injured. It was recognised that there were potential benefits in nationally consistent State and Territory based long-term care arrangements, but that further development of long-term care models was a matter for each jurisdiction to decide having regard to their own circumstances and existing arrangements. Ministers agreed then that any long-term care scheme should be implemented on the basis of no net shifting of costs. The Commission's NIIS (and NDIS) proposal presents an opportunity to revisit these issues.

Box 1: Case studies from jurisdictions that have no-fault based motor vehicle injury schemes.

Case Study 1

Alison suffered a significant head injury as a result of a car accident. She has a very severe disability. She is medically stable but has little awareness of her surroundings or other people and no self-awareness. She has limited limb control.

In New South Wales, prior to the commencement of the Lifetime Car and Support Authority (LTCSA) scheme it is most likely that Alison would have been discharged to a nursing home.

Under the auspices of the LTCSA, Alison was able to move into one of the Authority's community houses and has received very high levels of ongoing rehabilitation. Alison will continue to receive rehabilitation and supported community access to improve her social ability for many years to come.

She will always need very high levels of care but her quality of life is greatly improved. The stress experienced by her parents about what will happen to her have been greatly reduced, and they can now provide her with the extra elements that make life special. They do not have to spend all of their time trying to get her services and basic support.

Case Study 2

In October 2010, eighteen year old James sustained a significant head injury in a car accident. He was airlifted to the Alfred Hospital where he spent a month in intensive care and required a metal plate to be put in his skull. The TAC worked closely with James' family and his health professionals to support him in the short and longer term.

Besides paying for James' treatment and support services, the TAC worked together with the hospital to plan his safe discharge back in the community. The TAC discussed his individual goals and needs with the aim of helping James live as independent a life as possible.

James wanted to start a plumbing apprenticeship at TAFE and play football again. The TAC developed a support plan and arranged a referral to an educational psychologist. James was rapt to start TAFE with all the other apprentices and begin the practical plumbing component with his employer. He has also been cleared to play football as long as is wearing a protective helmet. James and his parents now feel he is on the road to greater independence.

Key questions for discussion:

Do you agree that a coordinated policy response is required to address differences in the treatment of people with catastrophic injuries between States and Territories?

2. THE PRODUCTIVITY COMMISSION'S PROPOSAL FOR A NIIS

Key points:

- *The Commission recommended that a NIIS be established to provide lifetime care and support for catastrophic injuries resulting from accidents.*
 - *It envisaged that the NIIS would be a fully-funded federated model underpinned by minimum benchmarks, so that states and territories can retain control over management, operation and financing.*
 - *The scheme would be funded from a variety of sources, for instance motor vehicle accident claims could be funded from compulsory third party (CTP) premiums.*
 - *The Commission has estimated the cost impact for implementing a NIIS across each jurisdiction.*
-

The Commission recommended that the NIIS be structured as a federation of separate, State and Territory-based schemes. The management, operation and financing of each scheme would be handled by individual jurisdictions. However, each State and Territory scheme would be subject to national agreed reasonable minimum benchmarks for the level of benefits and standard of care and support provided. This would ensure that everyone who sustains a catastrophic injury would be covered and that they would have some certainty over their care and support needs are addressed.

The option of a nationally legislated and governed system was considered by the Commission, but it found a number of potential problems with this approach. In particular, it would likely require jurisdictions to refer their constitutional powers to the Commonwealth. In addition, there does not appear to be any power under which the Commonwealth could legislate to extinguish the common law right to sue under negligence, contract or statute to recover damages for accidental injury, although jurisdictions could voluntarily agree to make legislative changes.

The Commission proposed that the NIIS be established as a separate scheme from the NDIS for a number of reasons, including:

- The NIIS would be a 'fully funded scheme' which would provide strong incentives to manage costs over time and certainty about the capacity of the fund to meet a person's future liabilities. Whereas, it is proposed that the NDIS would be a 'pay as you go' system.
- Unlike the NDIS, the NIIS would cover a variety of health costs associated with catastrophic accidents, such as acute care and rehabilitation services.
- There is already existing expertise with no-fault schemes in some jurisdictions, which can provide a valuable platform for learning and dissemination of skills and expertise. This is not the case with the NDIS, which proposes a new system.
- A key goal of the NIIS would be to deter high risk behavior and reduce local risks that can contribute to accidents. This objective could be promoted through using sources of funding

which would send price signals that encourage improved safety. However, there would be no easy mechanism to address moral hazard through prices under the proposed NDIS.

The NIIS would provide lifetime care and support for people who acquire new catastrophic injuries, after the scheme has commenced. Whereas the NDIS would cover people with existing catastrophic injuries where they are not already covered by current no-fault arrangements.

Catastrophic injuries that would be covered by the NIIS include those caused by motor vehicle accidents, medical treatment, criminal injury and general accidents occurring within the community or home.

The Commission proposed using a definition of catastrophic injury that is broadly consistent with existing no-fault motor injury schemes for their proposed NIIS, such as those run by the Victorian TAC, the NSW LTCSA and New Zealand's Accident Compensation Corporation.

Severe brain injury and spinal cord injury are the most common types of serious or catastrophic injury covered by these schemes, but in rare cases multiple amputations, severe burns and permanent blindness can also be 'catastrophic' and give rise to a similar need for treatment, rehabilitation and lifetime care and support.

Special arrangements are proposed by the Commission for cerebral palsy. The Commission recommended that the NDIS have full responsibility for funding care and support for this condition, even if acquired through a medical accident. The reasoning behind this is that most cases of cerebral palsy cannot be avoided through clinical practices, and it is difficult to reliably determine whether clinical care was the cause in any individual case.

The Commission recommended that the scheme should be funded from a variety of sources. The appropriate funding sources would broadly depend on the causes of accidents, consistent with the objective of promoting incentives for safety and injury prevention. For motor vehicle accidents, the Commission proposed that claims be funded from compulsory third party premiums.

The Commission estimated that the total cost of implementing the NIIS for all jurisdictions would be \$835 million per annum, with motor vehicle injuries costing \$238 million per annum. However, the cost impact varies across jurisdictions. The high cost associated with motor vehicle injury reflects the introduction of no-fault coverage in jurisdictions that currently operate an at-fault scheme, and that around half of all catastrophic injuries arise in this context. The table at [Appendix B](#) summarises the Commission's estimates of additional costs to each state and territory.

As the proposed scheme would provide necessary lifetime care and support for catastrophic injuries, the Commission recommended that the ability to sue for long-term care and support should be removed. However, access to damages for pecuniary and economic loss, and general damages would remain. The Commission has suggested that this matter be reviewed in 2020, however in the meantime, it could be a matter for individual jurisdictions.

The Commission recommended that arrangements be put in place to implement the NIIS for catastrophic injuries caused by motor vehicle accidents by the end of 2013 and for all other specified causes by 2015.

The Commission also recommended a review of the NIIS in 2020, including an evaluation of the costs and benefits of removing common law rights more fully, and merging the NIIS with the NDIS. The Commission has also suggested that the review could consider the case for expanding NIIS coverage to include other heads of damages and significant, but non-catastrophic, injuries.

Key questions for discussion:

- *Is the timeline outlined by the Commission feasible given the work required to develop and agree minimum benchmarks for eligibility, coverage and benefits?*
- *What are the pros and cons of establishing a NIIS separate to the NDIS?*
- *What are the likely transitional issues for states and territories?*
- *What could the arrangements be for people who have already acquired a catastrophic injury prior to the establishment of the NIIS (or during transition phase)?*

3. COVERAGE

Key points:

- *The Commission recommended that the NIS cover all ‘catastrophic injuries.’ Jurisdictions could agree to a minimum national benchmark for defining ‘catastrophic injury’.*
 - *Individual states and territories could be more generous than these agreed minimum benchmarks should they choose.*
 - *How the coverage of a NIS would interact with the proposed coverage of the NDIS would need to be considered, as well as how it would interact with common law.*
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Defining catastrophic injury

The Commission recommended that the NIS cover lifetime care and support for *all* catastrophic injuries whilst noting that there are complex issues that would need to be considered in defining a clear boundary of what injuries are covered by such a scheme. A definition of catastrophic injury would form one of the minimum benchmarks, if the Commission’s proposed model were adopted.

There are four key principles that could be considered in settling on an appropriate definition of catastrophic injury:

- i. It should be objective so that there is clarity around entry, which will also minimise boundary issues with residual CTP schemes.
- ii. It should include a minimum benchmark for a definition of ‘catastrophic injury’ to be agreed by states and territories.
- iii. It should ensure that all people with a defined lifetime care and support need as a result of their injury are included in the scheme.
- iv. It should allow early identification of likely participants, to allow optimal returns from early intervention and treatment.

The Commission suggested a possible approach could be to adopt eligibility criteria defined by the type and severity of injury, for example:

- Spinal cord injury – based on evidence of a neurological deficit (principally paraplegia and quadriplegia).
- Traumatic brain injury – based on evidence of a significant brain injury, such as a period of post traumatic amnesia, plus a Functional Independence Measure (FIM)¹ at five or less, or two

¹ The FIM is a basic indicator of severity of functional limitation that uses a seven point ordinal scale for each of 18 activities of daily living. The scale provides for the classification of individuals by their ability to carry out an activity independently, versus their need for assistance from another person or a device. If help is needed the scale assesses the degree of that need.

points less than the age appropriate norm. A WeeFIM (modified FIM for children) is used for paediatric brain injury.

- Multiple amputations – these would need to be agreed and prescribed. The NSW LTCSA uses a reference to amputations of the upper and/or lower extremities at or above the fingers and/or adjacent to or above the knees or the equivalent impairment, plus a FIM at five or less, or two points less than the age norm.
- Burns – full thickness burns at an agreed level. The NSW LTCSA uses a measure of percentage burns to the body (30 per cent paediatric or 40 per cent adult) or full thickness burns to the hands face or genital area or inhalation burns causing long term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm.
- Traumatic blindness – using the legal definition of significant vision impairment. The NSW LTCSA uses the legal definition of blindness.

Any additional injuries covered by either statutory or common law would be a matter for each State or Territory. However, it will be important to specify who and what is included and excluded from any scheme to ensure clarity of entitlement.

Interim participation for traumatic brain injury

As for all injury types, the NSW LTCSA scheme provides for interim participation for people with traumatic brain injury. This is a five year period for children under five at the age of injury and a two year period for all other participants. This is in recognition of the fact that recovery from brain injury can be very unpredictable and allows people who have made a recovery to the point where they no longer will need lifetime care and support to exit the scheme. At the same time it enables early treatment and rehabilitation to be available for a broad range of potential participants. Interim participation could be particularly useful in jurisdictions where the residual scheme is fault-based, as it can provide certainty to individuals in situations where it is initially unclear whether new no-fault arrangements or the existing common law system will meet their needs. Whether a NIIS should provide for interim participation would need to be considered.

The boundary with NDIS

In addition to defining catastrophic injury for the purposes of a NIIS, there would need to be some work done to refine the definitions of injury type and severity to provide clarity, transparency and reduce boundary disputes with the proposed NDIS.

While both schemes are intended to achieve equivalent coverage for people who have a disability requiring lifetime care and support, there is no present correlation between the proposed eligibility criteria for NIIS and the concept of severe and profound disability that underpins the NDIS. To some extent this would not be able to be settled until entry criteria for the NDIS are finalised.

The boundary between State and Territory schemes and common law

It is possible that a NIIS would represent a common minimum coverage and benefits and not prevent jurisdictions from providing additional benefits to a greater pool of people, as already happens with TAC scheme in Victoria. The Commission proposes that States and Territories would remove access to common law for damages for those services provided by a NIIS.

Defining motor vehicle injury

The Commission proposed that the NIIS commence with no-fault motor vehicle injury. A clear definition of a motor vehicle injury would be required, which is consistent with the objective of ensuring all catastrophic injuries are covered. The following is an amalgam of a number of State and Territory definitions.

- Motor vehicle – means a vehicle that is capable of registration.
- A motor vehicle injury is an injury arising in the course of:
 - a collision or action taken to avoid a collision, whether the vehicle is stationary or moving;
 - the vehicle moving out of control; or
 - the driving of a vehicle.

This or a similar definition is used in Tasmania, South Australia, Northern Territory and New South Wales. Victoria has a more extensive definition of transport accident and Queensland and Western Australia use definitions referable to their indemnity cover. In practice, common law liability which they indemnify will use very similar criteria to that proposed.

All jurisdictions also distinguish between registered and unregistered vehicles for the purpose of their indemnity cover. Most will provide cover for an injury for a registered vehicle wherever this occurs but restrict cover for an unregistered vehicle to where the vehicle was being used in a road or road related area.

There is a range of existing policy exclusions across jurisdictions for illegal and high risk activities, such as where the vehicle being used in an organised motor sport or in an act of terrorism. Further discussion would be required on the feasibility of having such exclusions and how they would be defined.

What elements of a definition of motor vehicle injury would be picked up in a minimum benchmark, to provide an appropriate level of consistency, would also require further consideration.

One option is for an agreed definition to represent a common minimum cover which would mesh well with current provisions. For example, all jurisdictions are accustomed to dealing with boundary issues on matters such as whether a vehicle is capable of registration and what constitutes a road or road related area. States and territories could provide additional coverage above this minimum if they chose to.

Possible Extensions

Possible extensions to this minimum cover for motor vehicle injury have been identified as follows:

- unregistered vehicles on private property - such as farm vehicles
- unregistrable vehicles such as motor cross bikes, quad bikes, trikes
- other road users, such as push bikes
- other modes of transport

While these are within the broader concept of the NIIS model proposed by the Commission, it may be more appropriate to consider issues around possible extensions in a future review of the NIIS, given that information on incidence and cost by these modalities is limited. Those jurisdictions which have been examining and costing the no-fault motor vehicle component of NIIS have used a basis similar to the more common definition outlined above.

Extra-territorial application

In addition to covering any person injured in Victoria, the TAC scheme also provides extra-territorial cover to a Victorian resident in a Victorian registered vehicle who is injured in a motor vehicle accident in another state. This can reduce uncertainty and inconsistency in outcomes for Victorian residents who are injured in another state or territory. However, in some circumstances this provides dual coverage. It also has implications for recovery rights against interstate insurers, including statutory insurers. These issues would need to be explored if a proposal for a national scheme were progressed.

Application to overseas residents

States and Territories with common law cover do not restrict claims from people injured while visiting Australia. This is not the case in relation to no-fault benefits. The Commission's preferred position is that overseas visitors should rely upon private travel insurance while retaining right to sue at common law. This is another area where clarity around entitlement would be required.

Key questions:

- *What could be the interaction between the NIIS and the much broader NDIS in relation to coverage?*
- *Do jurisdictions think that the principle of ensuring that 'no one falls between the cracks' is a key objective in developing coverage criteria for any scheme?*
- *What might be an appropriate starting point for a definition for 'catastrophic injury' and 'motor vehicle injury' should minimum benchmarks be adopted?*
- *Do jurisdictions agree that it is desirable to develop a consistent approach to extra-territorial coverage?*

- *What mechanisms would be necessary for managing coverage disputes between jurisdictions?*
- *What exclusions for illegality and high risk behaviour might be appropriate?*
- *As mentioned in Chapter 2 of this discussion paper, should cerebral palsy be included in the NDIS as proposed by the Commission?*

4. BENEFITS

Key points:

- *The Commission's proposal for a NIIS would offer care and support benefits equivalent to the NDIS, with the addition of trauma retrieval (e.g. ambulance), acute care (e.g. hospital), medical treatment and rehabilitation services.*
 - *The repeal of common law heads of damage for care and support for NIIS recipients needs to be considered.*
 - *Under a federated model, schemes retain flexibility to offer broader or more generous benefits above the agreed base level, which means that diminution of benefits relative to current arrangements can be avoided.*
 - *The development of common needs assessment tools and workforce development strategies should be developed alongside the NDIS.*
 - *Self-directed funding should ultimately form part of the NIIS.*
-

The Commission recommends that the lifetime care and support under a NIIS would meet all of a person's injury-related needs (excluding income payments, which would sit outside of the scheme). Like the NDIS, it is proposed that the NIIS would fund all reasonable and necessary care and support. Key care and support benefits would include clinical health services, medical and social rehabilitation, early interventions, therapies, care, and home and vehicle modifications.

As well as benefits proposed under the NDIS, the Commission's proposal for a NIIS would provide additional benefits:

- trauma retrieval (e.g. ambulance);
- acute care (e.g. hospital);
- medical treatment; and
- rehabilitation services.

The rationale for providing a broader benefit suite than the NDIS is to aid early intervention following a sudden catastrophic injury which could encourage better outcomes, and facilitate an interdisciplinary approach towards planning to attain a client's goals and independence. The additional benefits listed above are not envisaged to be significant cost drivers under a NIIS. For example, in the NSW LTCSA scheme these benefit types comprise about 10 per cent of scheme costs.

As discussed earlier in the paper, current motor vehicle accident injury compensation schemes across Australia vary markedly with respect to benefits (see [Appendix A](#)). To enable the operation of a NIIS to be equitable and lever efficiencies across jurisdictions, a minimum benchmark on the set of benefits available under the NIIS, including the type and quantum, would be required (i.e. 'base level'). This should not preclude motor accident injury compensation schemes from offering

additional benefits to catastrophically injured people (which may ensure that benefits under existing compensation arrangements are not diminished).

However, if a minimum benchmark for a base level of benefits or support is agreed to, a significant design challenge for a NIIS would be to ensure a scheme's fiscal sustainability.

Further work would need to be undertaken on the application of treatment or therapies to be funded under a NIIS. As with the NDIS, the NIIS should only fund treatments and therapies in keeping with current clinical practice, evidence-based practice and clinical guidelines. This may require a coordinated, or even a centralised, approach between jurisdictions (in collaboration with the NDIS) to avoid duplication of work and eliminate undesirable inconsistencies.

Box 2: Interaction of the NIIS with other systems

Interaction with the NDIS

The Commission's stated goal of both the NIIS and NDIS is to achieve equity in the provision of a base level of lifetime care and support for people with a disability.

As highlighted above, trauma retrieval, acute care, medical costs and rehabilitation form part of the benefits available under the proposed NIIS, but not the NDIS. A key design challenge for a NIIS and NDIS would be how to minimise 'forum shopping' where one system is adversely (or preferentially) selected for its benefits, creating cost transfer and disputation issues. Consideration will need to be given to how to manage instances where there is a dispute about the circumstances of an accident and severity of injury - clear and objective criteria for entry and benefits for the NDIS and NIIS schemes will be important.

Interaction with the existing compensation arrangements

The NIIS is intended to be *prospective* in its application, hence people with existing catastrophic injury will be dependent on existing compensation and support arrangements (and may ultimately transition to a NDIS where these arrangements are inadequate).

Benefits available under a NIIS are intended to be provided on a reasonable and necessary basis as required, without the need to prove fault of a third party. The Commission envisaged that benefits available under a NIIS should be excluded from common law damages (as is the case in Victoria and New South Wales). This would require the repeal of certain components of common law in several jurisdictions (e.g. Western Australia, South Australia, Queensland and the Australian Capital Territory). A key design issue in these jurisdictions would be whether or not recipients of common law awards prior to scheme inception can buy into (opt-in) to a NIIS. The interaction with common law will need to be further discussed.

To ensure consistency, a NIIS scheme design would need to be underpinned with an efficient, equitable and transparent mechanism to guide decisions on 'reasonable and necessary' for the determination of eligibility to access certain benefits/services and the level of support needed. To illustrate, some of the questions to be answered would be:

- When are home and vehicle modifications appropriate and what should guide decisions to the extent of any modification, and frequency of modifications?
- How many hours per week of attendant care and personal care support is required, and how often should this be reviewed?
- When are sleep-over arrangements for attendant care appropriate, versus other support mechanisms, such as wireless emergency response systems?

Assessment Tools

Assessment tools should serve multiple purposes, such as confirming entry into a NIIS scheme, identifying needs and support requirements or priorities and more generally linking people with appropriate services (see Figure 1).

Robust assessment tools supported by evidence-based clinical/practice guidelines would be needed to ensure the boundaries of what are reasonable and necessary benefits remain well defined and clear. This would guard against the risk of service practitioners recommending exotic and very expensive interventions where there is questionable outcome validity.

This work could leverage off the existing body of guidelines and needs assessment tools that have been developed by the TAC, NSW LTCSA, MAIB, and also internationally, for instance New Zealand's Accident Compensation Corporation.

The key cost driver in a NIIS would be support services such as case management, attendant care and related services (such as home-help and personal care). The development of common needs assessment tools and evidence based clinical guidelines for treatment therapies should focus on these benefit types as a priority.

A comprehensive needs assessment process under the NIIS would need to provide flexibility, take account of a person's individual circumstances and changing needs over time.

Data collected from assessment tools could also be used to gauge client outcomes to enable transparent scheme reporting and benchmarking scheme performance.

Development of a common assessment tool kit for the NIIS could be coordinated with the work to develop a common assessment tool kit for the NDIS, noting some assessment tools may be more applicable to the NIIS reflecting the catastrophic and medical nature of impact injuries.

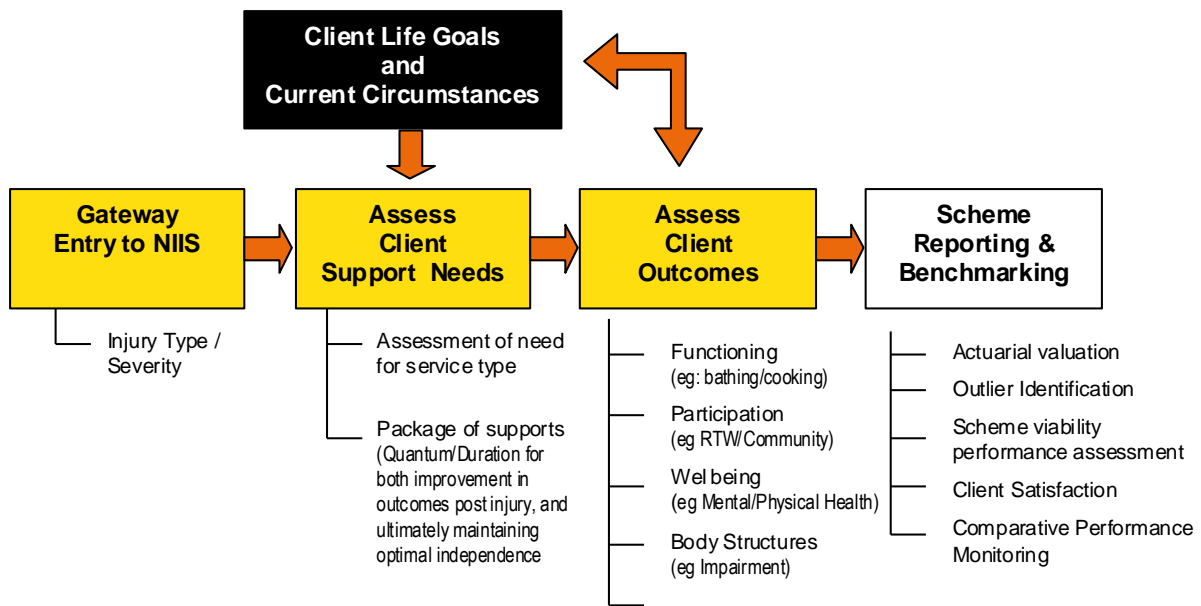


Figure 1: Common Assessment tool kits utilisation under a NIIS – Client-centered Approach

Care coordination

Care coordination will be important in facilitating an individualised approach and efficient allocation of services.

Critical aspects of care coordination would include the needs assessment to determine eligibility for entry into the NIIS, and the level of care and support package aligned to the client’s life goals and circumstances. The setting of expectations as to what is ‘reasonable and necessary’ care coordination at the early stages is critical in ensuring certainty for the client and avoiding disputation. Work practices and policies should actively orient all stakeholders towards the active achievement of the client’s recovery and independence, and not solely towards the delivery of benefits. Ideally, a codified ‘independence plan’ (such as that developed by the TAC) that is developed in collaboration with the client, can serve as a focal point for service providers to work towards delivering services aligned to the client’s goals.

A coordinated approach to actively facilitating a client’s recovery and independence will require care coordinators to be equipped with the necessary skills and capability. This is not expected to be an issue in existing no-fault schemes, but will present a challenge for jurisdictions transitioning to a NIIS both in accessing a skilled and capable workforce, and developing information systems oriented to case management and efficient collection of data to aid scheme management and benchmarking.

Further work needs to be conducted to identify opportunities for jurisdictions to collaborate and lever existing resources and information system architecture where possible to reduced traction cost and risks. It would also be necessary to ensure appropriate alignment with the local area coordinator systems and processes proposed for the NDIS.

Service provider capacity, capability and fee setting

Development of a competent and competitive market for service provision will be an important way of offering choice of provider to people covered by a NIIS and driving efficiency in the delivery of effective services.

Although an incremental approach to building provider capacity and capability may be necessary for jurisdictions adopting a NIIS, particularly those building a scheme from scratch, it will be critical that this be underpinned by robust management of provider fees to ensure long-term affordability and certainty.

Work needs to be undertaken to gauge the extent to which a national approach to fee setting is feasible and appropriate, to identify opportunities to leveraging purchasing power, and to gauge the potential for accreditation of certain provider categories to ensure appropriate standards of quality and service delivery.

Self-directed funding

Self-directed funding (where clients purchase services directly) should ultimately form a part of the NIIS operation. In order to achieve this, there needs to be an appropriate balance between choice or autonomy and efficient management of the system. It should be noted that self-directed funding should be predicated on a sound foundation for the identification of a client's goals, assessment of needs against those goals and the development of a package of supports.

While self-directed funding is offered by the TAC and NSW LTCSA, it is not yet widely adopted and is administratively complex to operate. Further work is needed to define and determine how self-directed funding can be streamlined, and how the NIIS can lever processes and practices that may be adopted across the NDIS to help manage implementation risk and achieve efficiencies.

Further work is required to understand a common definition and operation of self-directed funding. There is a spectrum of how this can be delivered and it will need to be analysed to understand how this would work in a NIIS.

Workforce development strategy for service providers

As recognised in the Commission's report, a key challenge for the NIIS will be building service provider capacity and capability, particularly for smaller jurisdictions and in remote and Indigenous communities.

The requirements of the NIIS should be integrated into the broader work being undertaken by the Select Council on Disability Reform on nationally consistent service and quality standards for the disability services sector and a comprehensive national disability services workforce strategy (which may also include allied health providers).

Accordingly, there may be merit in establishing an expert working group to progress workforce strategies and standards of service under the NIIS. Also, there would be benefit in ensuring the NDIS

and NIIS collaborate on workforce issues and minimise the risk of market dysfunction caused by competition for scarce resources.

Other design issues

There are several design issues that need to be progressed in finalising the scope and boundaries of benefits under a NIIS. These include:

- The status of family members as carers and the extent of remuneration for gratuitous care under the NIIS.
- Whether dispute over entry to the NIIS and level of benefits provided is determined via an independent medical panel assessment, or is resolved through the court system.
- The process of determining what is reasonable and necessary for high cost items.
- The extent to which there should be a nationality consistent approach to establishing evidence based clinical guidelines for the NIIS, and whether this should be progressed separately or collaboratively with the development of NDIS guidelines.
- As referred to in Chapter 3, for accidents occurring interstate, protocols are required to guide cost recovery actions and provide certainty with respect to which jurisdiction will provide care and support services. For instance, which jurisdiction would supply and cover the costs of care and support benefits provided under a NIIS where a Tasmanian resident, driving a Victorian registered hire car, is injured in an accident in Queensland?

Although the examples discussed in this Chapter relate to motor vehicle accident injury insurance schemes, many issues and challenges in the delivery of benefits will be similar for defining the care and support provided for the other causes of catastrophic injuries.

Key questions for discussion:

- *Do jurisdictions support the development of minimum national benchmarks for the degree of reasonable and necessary care and support benefits to those who acquire catastrophic injuries?*
- *What would the process be for managing disputes about the circumstances of an accident and severity of injury, and subsequent decisions about benefits provided to a person?*
- *Should the development of common needs assessment tools and evidence based clinical guidelines for treatment therapies focus on support services such as case management, attendant care and related services in the first instance?*
- *Noting the challenges in accessing a skilled and capable workforce for delivering care and support services, are there opportunities for jurisdictions to collaborate and lever existing resources for care coordination? Would there be benefit in establishing an expert working group to progress workforce strategies and standards of service under the NIIS?*

- *Should recipients of common law awards prior to scheme inception be able to buy into (or opt-in) to a NIIS?*
- *Is there a common definition of self-directed funding and view on how it could operate?*
- *Are there any legal, taxation or other barriers to self-directed funding or other arrangements that may provide NIIS clients with greater autonomy?*

5. GOVERNANCE

Key points:

- *Governance can refer to two aspects of a NIIS – the overarching structure and the operational governance of individual state-based schemes.*
 - *The Commission recommended a federation of state-based schemes, with each jurisdiction responsible for the operation of their scheme subject to some agreed national minimum benchmarks.*
 - *There are a range of approaches to defining such benchmarks, however the basic motivation was to ensure that no-one ‘fell through the cracks’ and was left uncovered and/or received insufficient support for their assessed care and support needs.*
 - *The Commission recommended the establishment of a NIIS secretariat with an independent advisory, monitoring and evaluation role.*
-

Appropriate governance arrangements are essential to the efficacy and sustainability of the NIIS. Efficacy means the scheme meets the social and economic policy purposes identified by the Commission at an acceptable cost to premium payers. Sustainability means that resources are available to support catastrophically injured people over the long term.

In this Chapter, the term governance refers to two key aspects of the NIIS:

- governance structure - the overarching structure of the scheme, that is, a federated model as was proposed by the Commission, including how to ensure national coordination and consistency; and
- operational governance - the way in which NIIS would operate at a local level in each state and territory.

Commission’s recommendations on the governance structure of a NIIS

A structured and coordinated federated approach was recommended by the Commission. States and Territories could control and manage their individual schemes, subject to agreed minimum reasonable benchmarks relating to, for example, the level of benefits and standard of care provided in each scheme. Under a federated model, State and Territory governments could underwrite the cost of NIIS and be responsible for the development and implementation of their own schemes.

The Commission recommended the Commonwealth play a facilitation role. Several aspects would be best defined and coordinated by a secretariat at the national level to provide certainty and consistency. It foreshadowed that the National Disability Insurance Agency (NDIA) could facilitate the linkages for a NIIS between the States and Territories.

While the Commission recommended the NIIS be structured as a federation of separate, state-based no-fault schemes, it is possible that individual schemes could coalesce to form a single Australian system over time.

A national system was explored by the Commission as it could have a number of benefits, including more simplified governance arrangements and reducing potential duplication. However, as discussed earlier, the Commission identified significant problems with a national option including constitutional barriers requiring states and territories to refer powers to the Commonwealth. It also identified the importance of not jeopardising a timely transition to a NIIS by possible delays in gaining the agreement of jurisdictions to such a model.

The relative merits of a national scheme versus a federated model could be revisited in a review of the NIIS in 2020 (as proposed by the Commission). By then, both the NDIS and the NIIS should be fully operational which should allow a better assessment of these issues.

The Commission identified that some benefits from cooperation would be lost if each State and Territory set up individual schemes similar to the Victorian TAC, the NSW LTCSA scheme or Tasmania's MAIB) without shared minimum benchmarks.

Coordination under a federated model

The Commission called for the establishment of a small full-time NIIS secretariat. A secretariat could provide an independent advisory and monitoring capability and evaluate scheme effectiveness. Activities could include monitoring performance through data capture and benchmarking, facilitating the sharing of information and experiences between schemes, including on IT systems, and the coordination of research to establish an evidence base. Further consideration would need to be given on the merits of having a secretariat and what their function would be should a NIIS be agreed.

One option could be to host a secretariat within the NDIA when it is formed. The proposed role of the secretariat broadly aligns with functions proposed for the NDIA with respect to the NDIS and each jurisdiction could have representation in the NDIA's governance.

An alternative host could be a body comprising representatives of federal insurance or accident compensation agencies.

Reasonable minimum benchmarks

The Commission proposed that a NIIS would be underpinned by a national set of agreed minimum benchmarks for the level of benefits and standard of care provided. In what form the national minimum benchmarks should take is an issue that requires further consideration. As previously mentioned, this method would balance flexibility for jurisdictions to implement schemes as they fit with national consistency. It would also permit states and territories to be more generous than these minimums.

These could be crystalised in an intergovernmental agreement or memorandum of understanding between the States and Territories, however again, this is an issue requiring further thought.

Another possible approach for the overarching governance structure of a NIIS is a model law approach. This would involve formulating draft legislation which would be agreed and implemented by each jurisdiction with strict controls over local variations ('jurisdictional notes'). An option under this approach could be to adopt the model of a jurisdiction whose scheme is agreed to be 'best practice'. This approach would provide the greatest consistency across jurisdictions, without moving to a single national scheme. However, the model law approach may be an issue for consideration at a future time, recognising the considerable challenges with moving to a model law approach, including the significant differences between current arrangements in each jurisdiction.

It may also be useful to consider some shared overarching principles of a NIIS. For example, a principle could be that no-one should 'fall between the cracks.' This would assist in the formulation of either minimum benchmarks or model law, should either of these approaches be adopted. What these principles might be could be further considered.

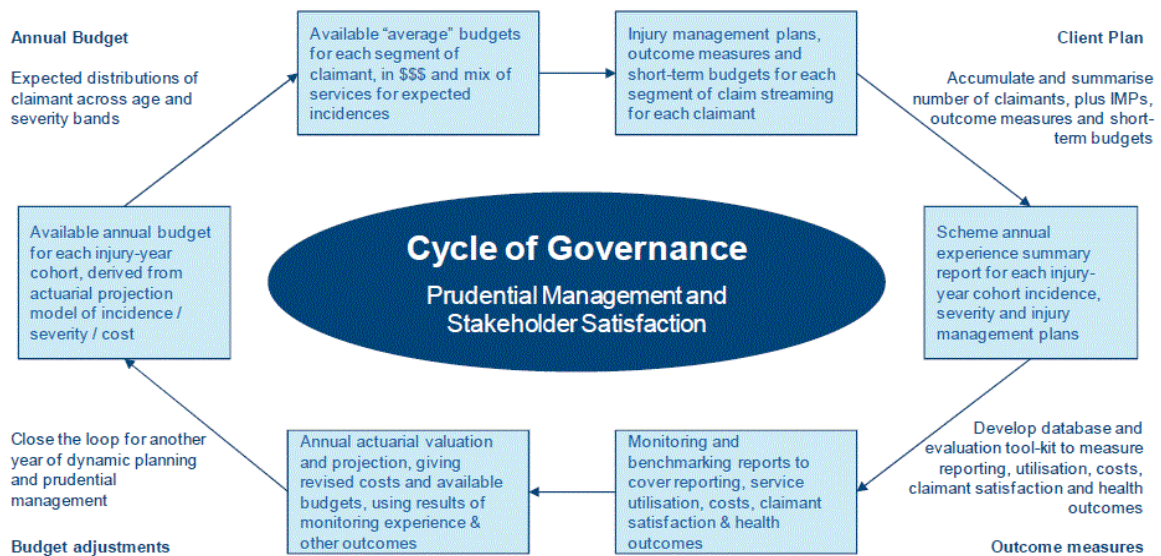
Another key issue for consideration is who could be responsible for the development and oversight of the implementation of minimum benchmarks. As part of its functions, a NIIS secretariat could facilitate discussion and agreement between participating States and Territories on the minimum benchmarks to apply on a national basis and their review and adjustment.

Operational governance

Many matters will best be defined and coordinated at the state and territory level. This is consistent with the Commission's proposal that individual jurisdictions would control the establishment and operation of their own schemes. This should be the guiding principle for the NIIS governance arrangements. Nevertheless there will be some elements of the scheme where a minimum national benchmark is warranted. Further discussion is necessary about how much, if any, national consistency would be advantageous in areas such as:

- funding source options;
- pricing of premiums or contributions, including risk rating;
- the investment of scheme assets;
- implementation of legislative infrastructure;
- levels of service and support provided above the minimum benchmarks;
- oversight of assessment and service delivery (including quality assurance) and dispute management;
- any outsourcing of care coordination and case management services;
- capital, pricing and reserving standards;
- transparency of financial performance; and
- scheme management and data planning.

Some of the operational governance issues that would need to be considered by jurisdictions in establishing a new scheme include budget, prudential management and stakeholder issues. These are illustrated in Figure 2.



Walsh, J and Dayton A et al. Institute of Actuaries of Australia: *Implementation considerations related to a National Injury Insurance Scheme*, PricewaterhouseCoopers, p21.

Figure 2: Cycle of Governance – Prudential Management and Stakeholder Satisfaction

In New South Wales, Tasmania and Victoria, the existing no-fault systems adopt insurance principles but they are operated and managed by publicly owned entities sector. For reasons of scale, cost, geography, experience base and leverage, one jurisdiction might chose to sub-contract scheme management or services to another. Some functions of a jurisdiction’s scheme, for example individual case management, may also be outsourced to private sector entities such as insurance companies or claims administrators.

Another issue for consideration is whether the proposed minimum benchmarks should extend to cover ‘operational governance’ requirements for the state schemes, such as requirements relating to boards and senior management, transparency and reporting, and prudential management of funds, or if these issues should be dealt with through some other mechanism.

Box 3 provides three examples of governance issues that could be addressed in the minimum benchmarks.

Box 3: Governance issues that could be addressed as minimum benchmarks

Fiscal integrity would be critical to promoting public trust and confidence in a NIIS scheme. As a result, one minimum benchmark might require schemes to adopt the principle of ‘full funding’ meaning that premiums or contributions collected by jurisdictions in any one year need to be sufficient to cover the ultimate expected lifetime cost of claims incurred during that year, recognising the usual variation in funding. This would provide strong incentives for jurisdictions to carefully manage NIIS scheme costs and their balance sheets. It would add certainty about the capacity of a jurisdiction to meet the costs of a person’s care and support needs as they fall due.

Key questions:

- *Do jurisdictions support a federated model underpinned by a set of minimum national benchmarks?*
- *What could the minimum national benchmarks cover?*
- *What could be an appropriate instrument to crystallise any minimum benchmarks, for example a Memorandum of Understanding or a model law approach?*
- *Should the proposed national minimum benchmarks be extended to cover operational governance requirements, such as prudential and transparency issues?*
- *What are the merits of having a secretariat to facilitate knowledge and data sharing and coordinate research? How could this be established and where could this be hosted? What would be its functions? What sort of funding would be needed to support its functions and where would this come from?*
- *Could one jurisdiction outsource scheme management or services to another?*

6. COSTS AND FUNDING

Key points

- *The Commission produced estimates of the additional costs of implementing the proposed NIIS, but noted challenges with obtaining data to inform its estimates.*
 - *Individual states have been assessing their potential cost impacts, which suggest that the Commission's estimates may be understated.*
 - *A key element in the funding arrangements for a new insurance entity or for a significant expansion in the coverage of an existing entity is the level of investment capital required or the potential contingent liability the relevant government is required to accept.*
 - *The compulsory nature of personal injury insurance for motor vehicle accidents makes it an obvious source of funding for care for those catastrophically injured in such accidents.*
 - *Definitional issues relating to coverage and benefits will impact on the costs of a NIIS.*
 - *In considering a NIIS for motor vehicle accidents, it would be useful to draw upon the experience of existing state-based no-fault schemes.*
-

CTP insurance in each State and Territory is funded by premiums paid at the time of registration of the motor vehicle. The extent to which existing premium collections meet the lifetime care and support needs of injured motorists varies between jurisdictions, reflecting differences in CTP scheme design (see [Appendix A](#)).

CTP insurance schemes in Victoria, Western Australia, South Australia, Tasmania and the Northern Territory are underwritten by their Governments. In New South Wales, Queensland and the Australian Capital Territory, private insurers are allowed to offer CTP insurance in a competitive market. In New South Wales, however, a government authority delivers the care and support needs for those who suffer catastrophic injuries, funded by a levy imposed on the CTP premiums charged by private insurers with the remaining aspects of the compensation available to injured motorists under privately underwritten fault-based schemes.

Expected costs

As mentioned, the Commission has proposed that the NIIS be a federation of separate, state and territory based schemes. Under this model, the funding options associated with the NIIS would be a matter for each jurisdiction.

The immediate task is to consider funding implications for no-fault care and support entitlements for catastrophic motor vehicle injuries, which will have implications for the CTP charged within the various jurisdictions.

The Commission has proposed the eventual extension of the NIIS to all catastrophic injuries. The funding issues associated with this extension raise a range of complex issues, potentially with Federal Government involvement.

Motor vehicle accidents – CTP premium impacts

The compulsory nature of personal injury insurance for motor vehicle accidents makes it an obvious source of funding for care for those catastrophically injured in such accidents, irrespective of whether there is fault or not.

For New South Wales, Victoria and Tasmania, the Commission estimated that the NIIS funding requirement for motor vehicle accidents could be met without any increase in existing CTP premiums. This is because no-fault entitlements to adequate lifetime care and support are already provided by the CTP schemes in those jurisdictions. However, Tasmania has assessed the NIIS proposal as requiring a premium increase of \$17 to \$22 because of a range of current exclusions to no-fault benefits under their legislation – that is, benefits are denied in the following circumstances:

- a person injured while driving a motor vehicle where that person is a disqualified driver or a person who does not hold a valid license;
- an owner of an unregistered vehicle (and therefore where no premium is paid) injured while driving that vehicle;
- a person injured in a motor accident and subsequently convicted of driving under the influence of alcohol, or of manslaughter, or of death by dangerous driving;
- a person in a motor accident as a result of intentional injury; and
- a person injured in a motor accident while in the commission of an act of dishonesty, for example, driving a stolen vehicle.

The Northern Territory also has a no-fault CTP scheme but there are thresholds and caps on certain benefit types, such as attendant care. The Commission estimates that there would be a \$10 million per annum additional funding requirement for the Northern Territory CTP scheme arising from the NIIS. This would require a very large increase in CTP premiums estimated at \$75 per vehicle. The Northern Territory is currently undertaking a review of attendant care benefits under the scheme, which could be used as a basis for comparison with the Commission's estimates.

In Queensland, Western Australia, South Australia and the Australian Capital Territory, which have fault-based lump sum CTP injury insurance schemes, a no-fault entitlement to lifetime care and support for those catastrophically injured in motor vehicle accidents would require an increase in CTP premiums (assuming that no other changes were made to the existing schemes). While the Commission produced estimates of the additional cost requirements, these estimates were based on an update of a 2004 study, and collected no new data from the jurisdictions. Individual states have been assessing the potential cost impacts, which suggest that the Commission's estimates were understated. For example:

- Queensland is currently undertaking costing work and believes that the Commission’s estimate of an additional cost of \$112 million per annum is an underestimate of the likely cost.
- South Australia has had an actuarial assessment undertaken which indicates that the additional annual cost impact for implementing a no-fault catastrophic lifetime care scheme would be \$72 per vehicle, compared with the Commission’s estimate of \$28.
- Western Australia is undertaking modeling which will be available in late December, but is treating the Commission’s estimate (additional cost of \$37 per vehicle) as a minimum.

A summary of each jurisdiction’s cost assessment compared to Commission estimates is shown in Box 4 below.

Box 4: Estimated additional annual costs of implementing no-fault motor vehicle injury insurance for each jurisdiction

	Additional annual cost estimated by Productivity Commission	Additional cost estimate by State and Territory
NSW	Nil	Nil
Vic	Nil	Additional administrative costs – amount unknown at this stage
Qld	\$112.0 million \$31 per registered vehicle	Currently undertaking assessment
WA	\$70.9 million \$37 per registered vehicle	Expected to be available early 2012
SA	\$36.5 million \$28 per registered vehicle	<i>\$95.6 million</i> <i>\$72 per registered vehicle</i>
Tas	Nil	\$7.9 to \$10.2 million \$17-22 per registered vehicle
ACT	\$8.9 million \$24 per registered vehicle	TBA
NT	\$10.1 million \$75 per registered vehicle	Current review of attendant care benefits underway

Start-up Costs

For a State or Territory to establish a fully funded insurance entity, or expand significantly the coverage of an existing entity, it is necessary to ensure that the entity can remain solvent in the early years, before it is able to build up its capital assets. For this reason, a general insurer regulated by the Australian Prudential Regulation Authority (APRA) is not allowed to underwrite business without a designated amount of start-up capital.

In the case of an entity under the NIIS, this involves either providing that entity with an initial capital injection or an assurance from the relevant state or territory government that it will underwrite any losses.

Otherwise, there is the risk, particularly in the early years, that the expenditure the entity is required to make under the scheme exceeds both the entity's funds and its capacity to borrow from the relevant borrowing authority.

A key element in the funding arrangements for a new insurance entity or for a significant expansion in the coverage of an existing entity is, therefore, the level of investment capital required or the potential contingent liability the relevant government is required to accept.

Further work

A range of issues require further consideration. These are outlined below.

- i. The Commission's estimated annual costs do not factor in some key costs, including:
 - Coverage for motor vehicles accidents on private property involving unregistered or unregistrable motor vehicles (including 'off-road' dirt bikes and quad bikes) where not currently covered by existing jurisdictional arrangements, and coverage for bicycle accidents.
 - : The Commission estimated that covering the cost of these injuries could add \$2-3 to CTP premiums. There are no readily accessible and accurate data sources regarding the number or types of unregistrable vehicles, and the number of catastrophic injuries they cause. Additionally, there are practical issues regarding collection of premiums from the owners of these vehicles. Unregistrable motor vehicles may need to be included in the deliberations for the broader NIIS coverage in 2015.
 - : The number of catastrophic injuries arising from bicycle accidents remains an unknown additional annual cost. Bicycle accidents may need to be included in the deliberations for the broader NIIS coverage in 2015.
 - The impacts of the Equal Remuneration Case recently determined by Fair Work Australia (FWA) on attendant and home care fees (and whether these can be accommodated within existing superimposed inflation allowances)².
- ii. CTP Schemes in jurisdictions that have fault-based CTP schemes will incur additional costs in the set-up of a new NIIS Scheme. This includes costs associated with the legislative change process and administrative set-up costs (for example, governance structure, IT systems, infrastructure, recruitment and staffing, policy development and development of provider panels).

² South Australia's estimates shown in Box 4 incorporate the estimated impact of the FWA decision.

- With respect to managing additional costs, jurisdictions without a no-fault scheme could draw on the experiences of jurisdictions that currently operate a no-fault scheme.
- iii. Additional funding would be required for the establishment of a small full-time NIIS secretariat, which could have a national coordinating capability. Whether or not this is a necessary feature of a NIIS can be further discussed.
 - iv. An understanding of the financial risks (and mitigating activity) associated with the NIIS coverage, eligibility criteria, needs assessment methodology and what this means for escalation of premiums over time as compared with current CTP scheme design would be useful. Jurisdictions will need to be assured that the NIIS will not require unsustainably large premium increases over time which will become unaffordable for motorists, although this risk already exists with respect to common law.
 - v. Funding arrangements should operate on the basis that the full lifetime care and support costs for each new entrant to the scheme is reflected in the annual levy charged through or on the CTP premium. That is, liabilities should be fully funded, which maximises the chances of long-term fund solvency, and reduces intergeneration risk of needing to levy future payers.
 - vi. This may involve the collection of excess premium income to accommodate uncertainty. The NIIS liability profile may also require some jurisdictions to alter their prudential risk margins and investment objectives and strategies (including asset liability matching strategies to help protect the balance sheet from financial market volatility). Existing no-fault CTP schemes may be able to share knowledge with schemes which have no experience with managing long tail liabilities and balance sheets.
 - Given that such liabilities extend over a lengthy timeframe, care may need to be taken to avoid unnecessary short term volatility in the levy, which may arise from a devotion to a full funding requirement at a single point in time (particularly at times of sharp movements in investments returns and discount rates). Some flexibility (for example, a target funding band of 90 per cent to 110 per cent) may be necessary. However, this would be a matter for each jurisdiction under a federated model.
 - The extent to which the NIIS interacts with commercial rate of return requirements for existing CTP schemes needs to be considered. For example, the Tasmanian MAIB is required to remit dividends and tax equivalents to the Tasmanian Government. In other jurisdictions such arrangements do not apply (for example, South Australia) where the CTP scheme is viewed as a social insurance fund. Once again considerations such as these and their implications for NIIS funding would be matters for each jurisdiction to decide under a federated model.
 - vii. For smaller jurisdictions, such as the Australian Capital Territory, there may be scope to buy into pooling arrangements for service delivery organised by larger jurisdictions.
 - viii. Cross border issues may differ from current arrangements, which could result in differential premium impacts across the States.

Key Questions for discussion:

- *Is there new data available to update the Commission's estimates of the potential costs of the NIIS for each jurisdiction, in particular with respect to catastrophic injuries acquired from motor vehicle accidents?*
- *What mechanisms could assist in mitigating against any cost escalation? What mechanisms do schemes in New South Wales and Victoria currently use? Are these effective?*
- *Is it appropriate for a NIIS to have commercial rate of return requirements, similar to existing CTP schemes?*
- *What scope could there be for smaller jurisdictions to buy into pooling arrangements?*

CONCLUSION

The purpose of this discussion paper is to provide the Standing Council for Federal Financial Relations with information to assist them consider implementing a NIIS for catastrophic injuries arising from motor vehicle accidents. The NIIS proposal for motor vehicle accidents essentially involves two parts: extending no-fault arrangements for motor vehicle accidents to all jurisdictions; and developing minimum benchmarks for coverage and benefits across all jurisdictions.

To this end, the paper explores a number of NIIS policy and implementation issues. These issues go to the rationale, design (such as eligibility and benefits), governance and funding of a possible scheme. In particular, the paper highlights the considerable differences in existing schemes across jurisdictions. The paper also emphasises the federated nature of the proposed NIIS, with States and Territories responsible for managing and funding their respective schemes. On this latter point, it was also acknowledged that the potential cost of a NIIS is a concern for some jurisdictions.

Subject to the Standing Council's consideration of the NIIS and the issues detailed in the discussion paper, it is proposed that NIIS design and implementation issues be developed further over 2012. This would include further work on developing minimum benchmarks for coverage and benefits, drawing upon the expertise and experience of officials from existing CTP schemes. In addition, consideration will also need to be given to a NIIS implementation timetable, including whether the Productivity Commission's proposed timetable of 2013 for motor vehicle schemes and the remaining causes of catastrophic injury by 2015 is achievable.

Appendix A – Comparison State and Territory CTP Schemes

Jurisdiction	Scheme Authority and Legislation	Scheme Description	Eligibility	Common Law Rights	Entitlement	Number of Vehicles in millions at 30/6/2011	Approximate CTP Premium + Motor Vehicle Registration Fee (small passenger vehicle, lowest available option)	Financial Position of Schemes
NSW	NSW Lifetime Care and Support (LTCS) Authority Motor Accidents Authority (MAA) <i>Motor Accidents Compensation Act 1999</i> <i>Motor Accidents (Lifetime Care and Support) Act 2006.</i>	Two schemes operating 1. LTCS scheme: <ul style="list-style-type: none"> No-fault basis for catastrophic injuries Publicly run Lifetime care and support services provided Access to some common law rights through the CTP scheme for damages not paid through LTCS Funded through levy added to CTP 2. CTP claims system: <ul style="list-style-type: none"> Fault basis for non-catastrophic injuries except -- for minor injuries up to \$5,000 which are no fault Common law with statutory limits Catastrophic injuries can still claim fault-based damages for damages other than future care and support Competitive, private insurance regulated by the MAA, funded by a levy on CTP premiums Nominal defendant (ie, a statutory body for compensating people who are injured as a result of negligent driving of unidentified or uninsured (no CTP insurance) motor vehicles. For example, a hit and run CTP premium bought directly from insurer who provides a green slip required for registration 	LTCS scheme : The motor vehicle accident occurred in NSW, even if the vehicle is registered in another state or the person injured in the accident lives in another state. CTP claims system: The motor vehicle is registered in NSW, insuring the owner or another person driving the vehicle against liability to another person killed or injured in the collision, in any part of the Commonwealth.	LTCS scheme (catastrophic) Replaces common law claims for ongoing care and support, but retains the right for people with catastrophic injuries to pursue other common law claims such as income loss and pain and suffering through the CTP scheme. CTP claims system Access to common law for claims against at-fault drivers. --Access to non-economic loss if exceeds 10% whole permanent impairment (WPI). Access to first \$5,000 of medical or economic loss irrespective of fault.	LTCS: Lifetime care and support for catastrophically injured children and adults. There is an opportunity for this care to be self-directed. CTP claims system: Common law benefits for all matters excluding those provided by the LTCS. Compensation for pecuniary loss capped at \$4129 per week), medical expenses and pain and suffering (up to, and non-economic loss capped at \$450,000. Time limits apply. The compensation may be reduced if the person was partially at fault. Excesses apply in some instances. Anyone injured in a motor vehicle accident in NSW regardless of who was at fault, may be able to access the early payment of reasonable and necessary medical expenses and/or lost earnings up to a maximum of \$5,000.	4.753	\$459.85 inclusive of GST and and MCIS levy, this amount represents the lowest premium amongst private insurers (approx \$420 excluding GST on CTP) as at 30 June 2011 Registration Fee: \$283 Combined (approx): \$700 (exclusive of GST on CTP)	June 2011 NSW-LTCSA Total Assets: \$1.56b Total Liabilities: \$1.45b Net Assets: \$104.6m The total premium collected during the 2010/11 financial year was \$1.7 billion excluding GST.
VIC	Transport Accident Commission (TAC) <i>Transport Accident Act 1986</i>	<ul style="list-style-type: none"> No-fault benefits provided injured person not convicted of a driving offence, including lifetime care and support for the catastrophically injured Limited common law rights for serious injuries, with statutory limits CTP also provided for rail and tram transport accidents Publicly owned, managed by TAC CTP premium is paid as part of motor vehicle registration Claims can be brought against TAC for unidentified and uninsured vehicles in certain circumstances 	Applies to accidents occurring in Victoria. Also applies to a Victorian and non-Victorian resident who is injured or dies in an interstate transport accident involving a Victorian registered vehicle.	Permits people to pursue additional compensation through common law. Claimants who are seriously injured and are eligible to sue the driver at fault for pecuniary loss and non-economic loss (pain and suffering). To be deemed seriously injured, the claimant must be assessed as 30% or more permanently impaired, or be issued a serious injury certificate by the TAC or a court.	<u>Under no-fault:</u> Opportunity for care to be self-directed Hospital, Medical, Rehab. - reasonable costs without limit. Family Excess is \$564. Life time care and support benefit for catastrophically injured: reasonable costs without limit Income benefits: after the first five days (up to \$1,130 per week Loss of Earnings and \$958 per week Loss of Earnings Capacity) subject to time limits. Impairment: Lump sum based on assessed impairment (up to \$304,140). <u>Under common law:</u> This only applies to a serious injury. Time limitations apply. The compensation may be reduced if the person was partially at fault. Pecuniary Loss: Threshold of \$47,230 and up to a maximum of \$1,063,160.	4.20	CTP Premium: \$372 (exclusive of GST and 10% stamp duty) Registration Fee: \$191 Combined: \$563 (excl GST & S/Duty on CTP) Note a 50% pension concession applies.	June 2011 Total Assets: \$8.66b Total Liabilities: \$8.90b Net Assets: \$(239.45)m

Appendix A – Comparison State and Territory CTP Schemes

					Pain and suffering: Threshold of \$47,230 and up to a maximum of \$472,500.			
QLD	<p>Motor Accident Insurance Commission (MAIC)</p> <p><i>Motor Accident Insurance Act 1994</i> <i>Civil Liability Act 2003</i></p>	<ul style="list-style-type: none"> Fault-based Private CTP insurance regulated by the MAIC (which also administers the nominal defendant funds) Common law with statutory limitations The MAIC is funded by a statutory levy payable with the CTP insurance premium CTP premium is paid as part of motor vehicle registration Nominal defendant (ie, a statutory body for compensating people who are injured as a result of negligent driving of unidentified or uninsured (no CTP insurance) motor vehicles. 	<p>Any person who is injured in a motor vehicle accident in Queensland due to the fault (total or partial) of the driver, owner or other person indemnified under the policy of insurance may make a Compulsory Third Party (CTP) claim under the Queensland legislation.</p>	<p>For the injured third party, the scheme provides access to common law, where the injured person has a right to approach a law court to seek monetary compensation from the person 'at-fault' for the personal injury and other related losses.</p> <p>Assessment of damages for non-economic loss restricted by relevant injury scale value.</p>	<p><u>Under common law:</u> There are some access restrictions on legal costs and smaller claims.</p> <p>Pecuniary loss: up to a maximum of three times the average weekly earnings.</p> <p>Pain and suffering: up to a maximum of \$303,350. Assessment of damages for non-economic loss restricted by relevant injury scale value.</p> <p>Reasonable medical, hospital and rehabilitation expenses including care and other support costs are paid throughout a claim once an insurer agrees to fund rehabilitation or admit liability. The compensation may be reduced if the person was partially at fault. Time limits apply.</p>	3.60	<p>CTP Premium: \$292.55 (exclusive of GST but includes levies and administration fee – total of \$38) GST on CTP premium = \$25.45</p> <p>Registration Fee: \$328.90 (includes Traffic Improvement Fee of \$48.85).</p> <p>Combined: \$621.45 (exclusive of GST on CTP) (as at 1 April 2012)</p>	<p>Private sector insurers collect approximately \$1.1 billion per annum in premiums</p>
WA	<p>Insurance Commission of Western Australia (ICWA)</p> <p><i>Motor Vehicle (Third Party Insurance) Act 1943</i></p>	<ul style="list-style-type: none"> Fault-based Common law with statutory limits. Publicly owned, managed by ICWA (also the nominal defendant for motor vehicle personal injury litigation in WA) CTP premium is paid as part of motor vehicle registration 	<p>Any person who sustains personal injury as a result of the negligent driving of a WA registered motor vehicle. Indemnity under the CTP policy is extended to the owner or driver.</p>	<p>For the injured third party it provides access to common law, that is, the injured person has a right to approach a law court to seek monetary compensation from the person 'at fault' for the personal injury and other related losses.</p> <p>Claims for non-pecuniary loss are capped at \$350,000 and a deductible of \$17,500 applies to claims up to \$53,000, thereafter the deductible reduces on a reducing scale with no deductible applying to claims over \$70,500. Claims for economic loss are capped at 3 X AWE</p>	<p><u>Under common law:</u> Access is based on fault and a threshold for pain and suffering.</p> <p>Pecuniary loss: up to a maximum of three times the average weekly earnings.</p> <p>Pain and suffering: threshold is \$17,500 and up to a maximum of \$350,000. Time limits apply.</p> <p>Reasonable medical, hospital and rehabilitation expenses are paid following determination of liability until settlement.</p> <p>The compensation may be reduced if the person was partially at fault. Time limits apply.</p>	2.4 including caravans and trailers	<p>CTP Premium: \$223 (exclusive of GST)</p> <p>Registration Fee: \$185 and a recording fee of \$13.05; stamp duty of 10%</p> <p>Combined \$441 (exclusive of GST on CTP).</p>	<p>June 2011 - Third Party Insurance Fund (ICWA)</p> <p>Total Assets: \$2.48b</p> <p>Total Liabilities: \$1.81b</p> <p>Net Assets: \$672.73m</p>

Appendix A – Comparison State and Territory CTP Schemes

SA	<p>Motor Accident Commission (MAC) is the CTP insurer.</p> <p><i>Motor Accident Commission Act 1992</i></p>	<ul style="list-style-type: none"> Fault-based Common law with statutory limits Publicly owned, managed by MAC with claims management outsourced to Allianz CTP premium is paid as part of motor vehicle registration. Claims can be brought against the Nominal Defendant for claims involving unidentified or uninsured motor vehicles 	<p>The at-fault person must be driving a SA registered motor vehicle.</p>	<p>For the injured third party, the scheme provides access to common law, where the injured person has a right to approach a law court to seek monetary compensation from the person 'at-fault' for the personal injury and other related losses.</p> <p>Access to common law rights subject to limitations. Awards for non-economic loss are according to a scale system.</p>	<p><u>Under common law:</u> Reasonable medical, hospital, rehabilitation and care expenses are paid following determination of liability until settlement.</p> <p>The first week of economic loss is not paid in past loss settlement.</p> <p>Pecuniary loss: up to a maximum of \$2,871,540 (2011 AY) (indexed annually)</p> <p>Pain and suffering: threshold is based on Impairment >=7 days or >= \$3,590 medical expenses subject to CPI Up to a maximum of \$303,980.</p> <p>\$460 (2011) Excess applied to all insured more than 25% at fault Recovery rights against breach of policy or uninsured drivers</p> <p>The compensation may be reduced if the person was partially at fault/ negligent in accident.</p> <p>3 year time limit applies for claim reporting.</p>	1.30	<p>Total CTP Premium: \$449 (exclusive of GST) GST on CTP premium = \$40.05</p> <p>Total Registration Fee: \$212 Registration=\$106 Admin=\$22 Emergency Services levy=\$24 Stamp duty on CTP = \$60</p> <p>Combined CTP + registration= \$661 (exclusive of GST on CTP) \$701 (inclusive GST on CTP)</p>	<p>June 2011</p> <p>Total Assets: \$2.68b</p> <p>Total Liabilities: \$2.25b</p> <p>Net Assets: \$431.1m</p>
TAS	<p>Motor Accidents Insurance Board (MAIB)</p> <p><i>Motor Accidents (Liabilities and Compensation) Act 1973</i></p>	<ul style="list-style-type: none"> No-fault benefits subject to acts of illegality, including lifetime care and support for the catastrophically injured Limited common law rights with statutory caps Publicly owned, managed by MAIB CTP premium is paid as part of motor vehicle registration. Claims can be taken against the Board if the vehicle is unidentified 	<p>Covers all Tasmanian residents injured in Tasmania and non-residents if the accident involves a vehicle registered in Tasmania. Also covers Tasmanian residents injured outside Tasmania provided a Tasmanian registered vehicle is involved in the accident.</p>	<p>Access to common law damages due to negligence subject to time limitations.</p>	<p><u>Under no-fault:</u> Medical and Rehab: up to \$400,000 (Unlimited if more than two hours of care per day is required)</p> <p>Income benefits: after the first 7 days, 80% earnings up to three times the average weekly earnings. Time limits apply.</p> <p>No lump sum payments for impairment.</p> <p><u>Under common law:</u> Access is based on threshold for pain and suffering. Time limits apply.</p> <p>Pecuniary Loss: up to three times the average weekly earnings.</p> <p>Pain and suffering: threshold of \$5000 with a scale of deductions up to \$25,000 with no maximum. The compensation may be reduced if the person was partially at fault.</p>	0.50	<p>MIAB CTP Premium: \$313 (exclusive of GST and \$6duty)</p> <p>Registration Fee: \$207</p> <p><u>Combined</u> \$520 (excl GST & Duty on CTP)</p> <p>20% pensioner concession applies</p>	<p>June 2011</p> <p>Total Assets: \$1.12b</p> <p>Total Liabilities: \$831.4m</p> <p>Net Assets: \$288.64m</p>

Appendix A – Comparison State and Territory CTP Schemes

ACT	<p>CTP regulator</p> <p><i>Road Transport (Third-Party Insurance) Act 2008</i></p>	<ul style="list-style-type: none"> Fault-based (however, up to \$5,000 medical expenses available on quasi-no fault basis) Common law without any restrictions Private monopoly CTP provider (NRMA) Nominal defendant for unregistered, unidentified or uninsured motor vehicles CTP insurance premium is paid as part of vehicle registration 	<p>Covers drivers, motorcyclists, passengers, pillion passenger, pedestrian or cyclist provided that the vehicle of the at-fault driver is registered in the ACT.</p>	<p>No restrictions on access to common law rights to seek compensation.</p>	<p><u>Under common law:</u> No restrictions to access, but time limits apply. Pecuniary loss: no threshold and up to a maximum of three times the average weekly earnings. Pain and suffering: No threshold maximum on pain and suffering.</p> <p>The compensation may be reduced if the person was partially at fault.</p>	0.26	<p>CTP Premium: \$478 (exclusive of GST and \$0.50 CTP regulator levy)</p> <p>Registration Fee: \$245 (includes \$18 in registration levies)</p> <p>Combined: \$723 (exclusive of GST on CTP)</p> <p>100% pensioner concession on registration fee (but not levies or CTP premium) for a single motor vehicle.</p>	<p>Not available (Insurance Australia Limited, trading as NRMA Insurance, is currently sole CTP provider)</p>
NT	<p>Motor Accidents Compensation (MAC)</p> <p><i>Motor Accidents (Compensation) Act 1979</i></p>	<ul style="list-style-type: none"> Pure no-fault subject to acts of illegality. Benefit reductions and exclusions apply for undesirable behaviour (including unregistered, alcohol and non-use of seatbelts/helmets.) Publicly owned, managed by Territory Insurance Office on behalf of MAC CTP premium is paid as part of motor vehicle registration. 	<p>Covers everyone injured or killed in a motor vehicle accident in the Territory, irrespective of where the motor vehicle is registered. Also covers people involved in a motor vehicle accident occurring interstate if a NT registered vehicle is involved.</p>	<p>Abolished in 1979 for residents Abolished in 2007 for non-residents</p>	<p><u>Under no-fault:</u> Hospital, Medical and Rehab: Reasonable costs. Long term care and support benefit available to catastrophically injured if >60% permanently impaired, subject to caps in hourly rate and hours Income benefits: Up to a maximum of 85% of Northern Territory Average Earnings (of all employees' total earnings less a notional deduction for tax) until the age of 65 or until no longer incapacitated.</p> <p>Impairment: calculated based on average weekly earnings. Current maximum is \$259,022.</p>	0.20	<p>CTP Premium: \$443 (exclusive of GST)</p> <p>Registration Fee: \$98</p> <p><u>Combined</u> \$541 (exclusive of GST on CTP)</p>	<p>June 2011</p> <p>Motor Accidents Compensation Fund of the TIO</p> <p>Total Assets: \$464.58m</p> <p>Total Liabilities: \$301.50m</p> <p>Net Assets: \$163.1m</p>