



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SERVICES
Ms Elizabeth Lee MLA (Chair), Ms Bec Cody MLA (Deputy Chair)
Mr Michael Petterson MLA

Submission Cover Sheet

Inquiry into Motor Accident Injuries Bill 2018—Exposure Draft and Guide to the
Motor Accident Injuries Bill 2018 Exposure Draft

Submission Number: 59

Date Authorised for Publication: 26 October 2018

Snedden, Andrew

From: Gary Francis <[REDACTED]>
Sent: Thursday, 27 September 2018 8:31 PM
To: LA Committee - JCS
Subject: Real concerns over the proposed new CTP "system"
Attachments: GF Medical review CTP.DOCX

Dear Sirs,

I write extremely concerned over a number of issues relating to the new proposed CTP system.

Firstly. Please find attached a document I authored a while ago when the "Citizen's Jury" process was in flight. I would be most interested in your replies addressing the issue this document highlights.

The points and issues raised therein are numbered. Your replies as to how any new system is going to address the issues raised are most welcome.

Best Regards

:Gary-noel: Francis
[REDACTED]
[REDACTED]

V. C. All rights Reserved

PRIVACY NOTICE: Warning - any person, institution, Agent or Agency of any governmental structure or any Corporation, including, but not limited to, Australian Securities Intelligence Organization and The Commonwealth of Australia Corporation, United Nations, C.I.A. / F.B.I. / N.S.A / C.F.R. or Google using or monitoring this email and/or email address, You must obtain my notarized written consent/permission to utilize any of my information, or any of the content contained herein including, but not limited to my personal information, photos/images, and/or any of the information found within any email from this email address. The contents of this email are private and privileged and confidential information. If you are not the intended recipient, you should note that the reading, use, disclosure, copying or distribution of this email is prohibited. If you are not the intended addressee, please notify the sender by return email immediately as the violation of my personal privacy is punishable by law. **PRIVACY ACT 1988 - ALL RIGHTS RESERVED WITHOUT PREJUDICE**

Compulsory Third Party Insurance in the ACT

A review / feedback / personal comments and recommendations made by a current CTP claimant about his experience as a "successful" claimant ie someone who can "prove" fault.

At the time of writing he is on income support some three years into his recovery with perhaps another 6 to 8 months to go, post the fourth surgery.

His comments and experiences are relevant whatever new model is put in place. Please note that his experiences are very raw and painful. He puts his views strongly and these reflect his passion to stop other people suffering as he and his partner have. He has sought to put his experiences before many people in his journey and he believes that he has not been heard.

1) Introduction.....	3
2) Background.....	5
3) The elephant in the room.....	7
a) Payments to Treatment Providers	8
b) Communication	8
c) Delay Delay Delay.....	9
d) Expenses.....	9
e) Regulators Office	10
f) Case Managers engaged by the insurer	10
g) Legal Clarity	11
h) How the victim becomes the suspect	12
i) Third party "independent" medical assessment.....	13
j) The "Wearing you down" process.....	14
4) Adding pain to suffering.....	15
5) Case workers	16
6) Lawyers and the legal process.....	17
7) Privacy	18
8) Incentives that seemed to have been moved off the table.	19
a) The Compulsory Third Party Insurance Scheme.....	19
b) Follow the money folks	20
c) How is the Insurer working towards improving "the Lot" for Injured parties?.....	21
d) Measures / Service Level Targets upon the Insurers.	22
e) Review for Lip Service sake	23
9) Food for thought: an open letter to Andrew Barr. The stakes are high.....	24
10) Wrap up in disgust.....	26

Note: This is a working document. Space has been provided for any comment, thoughts and questions you might have of the author. Feel free to use it.

	Comments / Notes / Questions
<p>1) Introduction</p> <p>The document had to be long, for the issues contained herein are not simple. They cannot be explained or explored by way of bullet point.</p> <p>As the investment of authoring was taken seriously, it is our hope that it will be read and reread when necessary. No one should ever have to go where we have been over the last three plus years. Our journey has been hell. Neither journey has yet ended, as at 22.10.2017.</p> <p>To thoroughly understand all aspects of what it takes to have a major accident, survive and get back to full life is a personal thing. Different for each individual and their circumstance/s.</p> <p>One broken bone or ripped tendon is different for each individual. Time to heal, mental strength to "get through it and recover" different every time.</p> <p>This submission is based upon one basic core fundamental of life.</p> <p><i>Most people injured, want to get well as quickly as possible.</i></p> <p>For sure some folk operate in deceit, trying to take advantage where ever they can. Their behaviour however and injuries (for the most part) do stand out easily if process allows. (I'll comment on this element of the public later)</p> <p>The rest, perhaps 99 %, just want to get better and return, as close as possible, to the life they had before the accident.</p> <p><i>Most people injured, want to get well as quickly as possible.</i></p> <p>To achieve the primary outcome cited above a person needs:</p> <ol style="list-style-type: none"> 1. Intervention applied as quickly as possible to whatever the injury situation. This includes hydro, physio, surgery, physiological, and whatever else it takes to get better, as quickly as possible. 2. Financial Support. If any income has been affected because of the accident and for the duration of the rehab period the injured party needs financial support. <p>With these two fundamental, basic elements focused on all above all, all else needs to take a secondary position.</p> <hr/> <p>Recommendation: <i>Absolute focus must be applied to look after and support injured parties, above all.</i></p> <hr/>	

Lawyers can wait, Insurance companies can wait, blame can wait, all else can wait.

Importantly the needs of those travelling into the ACT territory need also to be considered. How do they "get home" with support if needed to Western Australia or Northern Territory for instance? Financial support is more than what income protection might bring to mind.

Recommendation: *The needs of Interstate drivers must be considered. Especially when necessary costs for repatriation.*

Also and equally importantly, no one has the time to read and study about the CTP Scheme until they are thrust into it. An Injured party has at one moment good health, then wham, they are in a system they know nothing about. Yet everyone else knows all about it. The Insurers, the lawyers, the hospitals, Even then their lives are upside down, busted. The last thing of focus is understanding "the process"

Recommendation: *Injured parties need someone independent to do some "briefing" for the Injured parties.*

The system as it focuses on neither. It in fact drives behaviour that is contra to both basic principles. For the longer it takes to get someone back to health the more desperate they may become to take a small settlement amount and leave the creditors ledge of the Insurer.

2) Background

14.12.2014. Having just completed a "toy run", where motorcyclists get together to give toys to kids in need at Christmas time. A car pulled out, having not seen my wife and myself on our motorbike.

Instant stop, having "T-Boned" the car as it consumed the entire lane, in a 60 kph zone.

We both flew up (about a storey and an half, eye witnesses have told me) impacting the road surface with descending and horizontal speed.

Physically

My wife broke her back and suffered a solid months' worth of concussion. She was not admitted to hospital despite presenting twice to A&E, once by ambulance and directly again the day after.

I'll never forget the fear on the faces of the nurses on the wade tending to me, when she "walked" in to visit on the second day, when they saw the condition she was in.

She had to undergo Spinal fusion surgery (5.5 hours worth) mid 2017, having tried all types of recovery treatment, trying to avoid fusing her spine.

I broke ribs on the right side, damaged my shoulder, damaged my right leg in the thigh, broke my pelvis, crushed and smashed my left ankle. My surgeon tells me I am lucky my left foot is still attached to my leg. Based on the amount of damage in the bones and soft tissue / tendons in the ankle.

I have had three reconstructive procedures done and looks extremely likely now that I'll have to undergo a fusion procedure in my ankle. The third operation on my ankle. Reconstructive surgery applied to my right shoulder.

Mentally (we have been to hell and back)

Neither of us has been able to work since, now almost three years and counting. This attributable to trying to get well, with as least surgery as possible. At least equally, but much much much more due to the time lost via the current processes contained in the CTP process.

Our future

At the time of writing our future is completely out of our control. We feel as if our lives have been taken from us, by a process that rips the very soul from our lives. Unless given medical clearances we are unable to free ourselves.

Unless of course we ask to settle the legal matter, take our injuries and leave
Never could I have imagined finding ourselves this out of control, on welfare,
struggling to correct both the physical and mental torture we have and continue
to go through.

I am strongly suspecting a third ankle surgery is in my stars. I don't think it will
happen any time before February 2018 at the earliest given the performance of
the Insurer to date. It can take months for them to get all the pieces together,
drag their feet to come to the conclusion that they can't not pay for it and finally
then to approve it.

Then and only then can I be placed in a surgical and hospital queue to undergo
the procedure. Then I have weeks and months re starting rehab for the third
time to hopefully finally get well enough to get some degree of my life back.

Intervention quickly as possible
Financial support
Everything else can wait

7) Privacy

Our privacy during our post-accident period has been invaded. There is an information leak whereby an offshore call center makes calls to the victims asking whether or not they have legal coverage in an endeavour to pass you on to their legal counsel.

I called the Regulators office about this. It was acknowledged that this is happening to some folk in the CTP scheme. The Police weren't interested.

Regardless from some source inside the existing CTP scheme our private mobile phone numbers and names managed to find their ways into the hands of those who preceded to cold call us about legal protection.

Note: I also now expect that our privacy has already been invaded, by private law firms engaged by the insurer. This has certainly happened before to many victims of motor vehicle accidents.

Recommendation: *Some work must be undertaken, perhaps again by the regulator to ensure breaches of privacy are investigated and stop.*

Perhaps with guilty parties facing criminal charge.

It is the last thing we needed. To be preyed upon by another third party. Who having obtained our details in deceit proceeded to try to make money from victims of an accident.

*Intervention quickly as possible
Financial support
Everything else can wait*

8) Incentives that seemed to have been moved off the table.

Moving onto the larger picture about the overall review currently taking place in the ACT. A few things really take my breath away.

- The CTP system is not the CTP System or process. It is in fact the Compulsory Third Party Insurance Scheme. Insurance implies premiums, and expectations. These are important words that carry meaning and perhaps agenda.
- To not ask those who are either in the system or have recently been in it, at the very start, as the real foundation for change, seems criminal at best.
- The review "board" (I am told) will comprise of three representatives from the insurance industry. Of course no bias will be found in their position to make decisions that best advantage the victims.
- How could any member of any "jury" ever possibly understand the pain, suffering frustrations, anger, depression, fear, disgust of being a victim that is then thrust into the current CTP system?

a) The Compulsory Third Party Insurance Scheme

According to Alistair Coe Leader of the Opposition, ACT Legislative Assembly the following is true (22.10.2017):

"Thank you for emails to my colleagues Ms Nicole Lawder, Mr Mark Parton and Mr Andrew Wall. In addition to being the Leader of the Opposition, I am the Shadow Minister for Transport and my portfolio responsibilities include compulsory third party (CTP) insurance. I may be able to provide some answers to the questions in your email.

I understand my fellow Canberra Liberals have previously outlined our position that we do not support the reform of the CTP insurance scheme through the citizens' jury. I wish to reiterate that the Opposition believes that Canberrans should have access to an affordable, expedient, and comprehensive CTP scheme. I do not think the use of the citizens' jury is the right way to determine policy, and at present I do not see a need to change the existing CTP arrangements.

I have the following information in response to your questions.

How effectively is this money being applied to Victims of Motor Vehicle accidents?

I have recently been advised the following breakdown of CTP payments made by insurers in 2016-17:

- Treatment and care costs, including past and future: \$29 million;*
- General damages: \$30 million;*
- Economic loss: \$21 million; and*

Commented [ftw1]: The CTP system as it currently set up in the ACT is not a system of insurance for injured people. It is insurance to cover the at-fault driver's liability for damages. What I am arguing for is a scheme which looks at the harm done and provides agreed compensation in the form of what has been lost eg bill paid, income support paid all promptly - rather than focusing on a single lump sum to "pay" it all. As you testify, to recover best and without stress, you need these payments all the way through so you don't have to worry and can focus on recovery.

Commented [ftw2]: This is not as I understand it. The next stage will see the development of the models, following the guidelines established by the Citizens Jury by two actuaries working with the Stakeholder Reference group. This includes 2 insurer reps, a rehabilitation doctor, myself (as a consumer rep), someone from the regulator's office, someone from Treasury, 2 personal injury lawyers (one from the Bar Association and one from the Law Society). This is the group I will ensure has this document, if I can't table it tomorrow (which I hope to do).

Commented [ftw3]: The 6 people who are being interviewed and their stories recorded have either received damages or not, but their claims are completed or it has been established they had no claim. There are three of each. While it is clear that everyone's story is different, from my case studies in NSW of 130 people, patterns emerged - many of which are reflected in your comments

Legal costs (defendant legal, investigation costs and plaintiff legal, excluding solicitor/client fees): \$28 million.

How much profit is being made by the Insurers, we are forced to pay?

The Justice and Community Safety Legislation Amendment Act 2016 amended the Civil Laws (Wrongs) Act 2002 to remove the requirement for annual reporting by insurers who carry on insurance business in relation to property in the ACT. This means the Government no longer receives a legislatively mandated report on the premiums paid to insurer by motorists.

During 2014-15, the last year of reporting, the premiums paid to the insurer totalled \$152.172 million. The value of claims paid by the insurer (including the expense incurred in managing the claim) totalled \$91.57 million. Unfortunately I am unable to provide more up to date information.

How is the Insurer working towards improving "the Lot" for injured parties?

This is a matter for each individual insurer. I would suggest you contact the relevant insurance companies directly.

What service level targets are being mandated on the Insurers to report against?

The documents on this Treasury webpage on CTP outline what is included in the ACT CTP Insurance Scheme. Any insurer offering CTP in the Territory needs to provide the level of coverage summarised on the Treasury website.

The ACT CTP Regulator is the body responsibly for monitoring CTP in the Territory. For a comprehensive overview of their work and reporting, I would refer you to Chief Minister, Treasury and Economic Development Directorate Annual Report Volume 1. Reporting by the ACT CTP Regulator can be found on page 252."

----- End of letter -----

*Intervention quickly as possible
Financial support
Everything else can wait*

b) Follow the money folks

Please forgive the author for this but a) The Insurers when they we last mandated to report received \$152.172 million and paid out (including legal costs) a mere \$91.57 million. Simple math then reveals \$60.602 million net difference that one can only conclude went as profit to the insurance companies.

That represented at that time a profit over the costs of 39.80 margin. So without

then having access to or the Insurance companies forced to declare it would be logical to conclude perhaps profit margins today are even higher.

I am forced, like the rest of us, to pay \$957.60 dollars each year in CTP levy. With roughly perhaps 40 percent of that number been taken as profit by the insurers. That represents \$383.04 going directly into the hands of the Insurers, without now, the need to report anymore, or since 2015. And no service level target to hit on how they are "handling" victims cases or victims return to good health.

Yet we think it fine and appropriate that three members from the Insurance industry sit on the final decision making team for this review. What utter and total nonsense!

Commented [ftw4]: See note above about the Stakeholder Reference Group

Recommendation: *Some work must be undertaken, perhaps again by the regulator to ensure breaches of privacy are investigated and stop.*

Perhaps with guilty parties facing criminal charge.

c) How is the Insurer working towards improving "the Lot" for injured parties?

"This is a matter for each individual insurer. I would suggest you contact the relevant Insurance companies directly."

Evidence of course that this level of reporting, or even if it was achievable would drive the Insurers to put even more pressure on the case worker to get the people "out of the system" regardless of whether or not it is the best interests of the victim/s.

These are commercial competitive entities interested in making profit, not more.

Recommendation: *Remove the Insurers from their current position of power and undisclosed profit making, without the need to report anything of meaning for the victims.*

Please instead the Regulators Office in a real position of power and active management to manage the overall process and money the public are forced to spend.

d) Measures / Service Level Targets upon the Insurers.

"What service level targets are being mandated on the Insurers to report against?"

The documents on this Treasury webpage on CTP outline what is included in the ACT CTP Insurance Scheme. Any insurer offering CTP in the Territory needs to provide the level of coverage summarised on the Treasury website."

Wouldn't it be a fair expectation that if you were being paid money you didn't even to pay to collect some \$60 Million that real service level reporting might be a reasonable expectation?

If insurance companies are to remain "in control" of millions and millions of dollars of our money, that real meaningful reporting should be mandatory? Even with plenty applied for breaches of these measures.

I disagree that the entire CTP scheme needs the insurance companies in the position they are today, totally. Why, because they are profit making entities not there with focus to get folk well and back to good health.

If they were / are to remain in the position they are in today, placing measurement upon them may highlight some of the poor performance currently hidden from public scrutinee. This might then be a good thing.

But in the long term, measurement and reporting will directly force them to rush out victims from the getting well process.

Getting well again Physically, emotionally and mentally is different for each individual. Their own circumstance, injuries, financial situation is and always will be different for each person.

Recommendation:

*Intervention quickly as possible
Financial support
Everything else can wait*

Just get the folks well. With the Insurers in their current position measurement may place more pressure on Injured parties and frankly end up with skewed result.

Without them in the way, the Regulators office could measure outcomes and time frames without placing pressure on victims. Moreover the Regulators

Office could then undergo higher level change to the process, given the start point of being higher up above the overall process than any competitive insurer could be.

Proper overall end to end management can ever come from Insurance Companies who are of themselves competitive in nature.

Recommendation: *Remove the Insurers from their current position of power and undisclosed profit making, without the need to report anything of meaning for the victims.*

Please instead the Regulators Office in a real position of power and active management to manage the overall process and money the public are forced to spend.

e) Review for Lip Service sake

"To not ask those who are either in the system or have recently been in it, at the very start, as the real foundation for change, seems criminal at best." – quoting me.

So if you wanted it to look like a real review had happened but you also didn't want that much too really change as an outcome. What might the one thing that would be avoided directly?

Perhaps feedback from folk who are in or have just exited the CTP Insurance Scheme.

If also I wanted to be seen to be doing right, allow enough time to make it look proper and engage folk for review, so I can point back and say what a good job was done.

Surely, simply, logically if a construction collapsed one day, let's say a bridge for instance; wouldn't subject matter experts be called in first, before any reconstruction took place? It would be madness to do anything else right? (not logical, however you look at it)

They would ask previous engineers about the decisions they took at the time, resurvey the ground base, because "things" change over time, then and only then submit plans for the new bridge.

Instead in this "process" it seems that those who really know about "The Process" have been excluded, or at very best margined by this "review process" right from the get go.

Why, why might this be the case? (I'll leave you to answer that, as there is too

much money around the issue for me to answer that clearly it seems)

According to the words Emma has used in the review sessions this appears to be a game, to have fun with it and the learning inside.

What happened to a good hard painful proper review where those who have spent weeks, months and even years suffering inside the current process, are consulted first?

Those that want to ensure no one has to go through the pain and suffering inflicted by the current CTP Insurance Scheme process, that they have had to.

9) Food for thought: an open letter to Andrew Barr. The stakes are high.

"Emily then gives the jury a pre-written form with the unfinished sentence, pre-cursing it with if Andrew Barr ACT Chief Minister was in the room, he would ask, 'It would be great if the Scheme aimed for...' - A Facebook page that, by the way, every road use in the state should read.

Can I please table my suggestions at the completion of this statement, in spite of not being allowed to attend or contribute to "the process" conducted over the last weekend.

'It would be great if the Scheme aimed for...'taking in honest genuine feedback from victims of motor vehicle accidents as the first basis for any change. As unbiased, real, honest, full of pain and suffering feedback as corner stone material through which any change might be measured against. Does "this change" whatever it might be help prevent this pain and suffering?, as the critical benchmark."

'It would be great if the Scheme aimed for...'holding itself accountable that any change will have huge positive benefits against situations and the unnecessary pain and suffering cited by those providing said feedback. More, that anything unnecessary or not contributing to these benefits be made at best secondary, or maybe discarded altogether"

'It would be great if the Scheme aimed for...'Getting the injured parties back to full health or as close as possible to it, as quickly as possible. As the single prime focus of why everyone is forced to pay compulsory for the CTP levy."

'It would be great if the Scheme aimed for...'Treating those injured and those suffering as a result of those injuries as people. Living breathing people. Not as many are today, namely: Not as a risk, but as someone to be protected, against the profits being made by interested parties connected to

'the Scheme aimed for...'using people, honest,

ungroomed suffers of Motor Vehicle accidents, and all they have learnt, as key stake holders in process reform. Not seemingly as afterthoughts as appears to be the case today".

'It would be great if the Scheme aimed for..."Putting in place practical measurement and service level targets to ensure the Insurers are tasked with achieving these targets, paying plenty if they are not achieved"

'It would be great if the Scheme aimed for..."Putting down political agenda and focused on real outcomes for injured parties rather than lip service for political gain"

'It would be great if the Scheme aimed for..."Transparency about the real profits being made by The Insurers.

'It would be great if the Scheme aimed for..."the absolute privacy of injured parties" As today, leaks in the system see private individuals personal information being presented to off shore interests.

My list Andrew, and the lists of many others, could go on and on.

Andrew, we the voting living breathing tax payers forced to pay the CTP levy have expectations.

Expectations that our needs will be heard. That people will be passionate about working together to achieve those expectations. That our voice, our needs will be met. That we will not be preyed upon for the profit interests of large corporations.

Expectations that you will carry this serious responsibility carefully on your shoulders.

Can I please sir, beg you to stop the current reform process, for what I am witnessing today is sheer madness.

It seems ridiculous in the extreme, that those involved or thrust into the CTP system as victims of Motor Vehicle Accidents and the lessons learnt is not being used as the very cornerstone, the very start point, for change.

Please hold yourself and those that work for you (and me therefore) accountable that whatever change that might be introduced will in fact result in measurable, real measurable benefits for those injured in Motor Vehicle Accidents. Physically, mentally, emotionally and whenever necessarily at least mean that victims of motor vehicle accidents do not suffer financially either.

You sir today, (and those that work for you) have a great opportunity to get this right.

You also (and those that work for you) have great opportunity to get this wrong at the real cost of human life.

The CTP system is not and should never have been about profits. It should be about supporting those suffering as a result of Motor Vehicle accidents. Physically, mentally and financially.

It is about or should be about the well being of those injured as a result of Motor Vehicle Accidents and getting them back to good health as quickly as possible.

I beg you sir, to make your decision wisely.

I welcome your response.

Signed
Gary Francis
(Currently suffering as the result of a Motor Vehicle accident, and sadly, directly as the result of the current CTP system)

10) Wrap up in disgust

26.10.2017 I have just learnt that this document is likely to never make it to those that matter. Nor perhaps might it ever therefore be reviewed with the energy and intent it was created for.

Frankly, with much left to cover, I can see no point in continuing to put myself through the hell of authoring it, against a system that probably is not honest enough to listen.

There was plenty more I had to reflect upon, highlight the pain and frustration through and make recommendation. It appears now however that those who might say they are interested, are in fact not.

To have three Insurance reps on the final review process speaks volumes to me by itself.

I will however still hold my hand up and welcome contact from any interested party to CTPreview@garyfrancis.com.au or to my mobile 0439 561131.

Commented [ftw5]: I am hoping that this will not be the case -- I am going to attempt to table it tomorrow as an example of how benefits need to be administered whatever system is used. I am also hoping that we might be able to see about getting some more user experiences in the review process, but I am not quite there yet.

Commented [ftw6]: Do you want your details on this -- I have de-identified it thus far. Have a thing about it. People can be quite intrusive and it is hard to control once the contact info is out there.