

***National Injury
Insurance Scheme:
Motor Vehicle
Accidents***

June 2014

***Decision
Regulation
Impact Statement***

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1 About this regulation impact statement

1.1 Purpose of this Decision RIS

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

The purpose of a Decision RIS is ‘to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking in to account the outcomes of the consultation process’.² As motor vehicle insurance and accident compensation schemes are the responsibility of State and Territory governments, this RIS support jurisdictions’ consideration of the possible impact of changes to their motor vehicle accidents schemes in the context of the proposed NIIS and the requirement for minimum benchmarks for the provision of lifetime care and support in the event of sustaining a catastrophic injury from a motor vehicle accident. States and Territories may obtain legal and actuarial advice and undertake public consultation before enacting any changes.

Specifically, the focus of this Decision RIS is on identifying the best way of providing *lifetime care and support* for all newly acquired catastrophic injuries due to motor vehicle accidents;³ this RIS does not consider compensation for pain and suffering, or any loss of income that may also be due to motor vehicle accidents where catastrophic injury results. This RIS also does not consider support for people who are injured through other causes, such as medical accidents. While some submissions to the Consultation RIS did consider these issues, they are beyond the scope of this engagement.

This Decision RIS follows the publication of a Consultation RIS, in relation to which a number of submissions were received. Those submissions have informed this final document and more details on them can be found in Chapter 6.

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

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

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

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

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

1.2 Report structure

This Decision RIS is structured as follows:

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

2 Nature of the problem

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

2.1 Catastrophic injury

There are many accidents resulting in injury each year in Australia, with over 50,000 transport accidents alone. Some injuries are 'catastrophic', resulting in substantial and permanent disability, such as severe brain or spinal cord injury, amputation and permanent blindness. Catastrophic injuries are distinctive in that they result in particularly high and sustained costs. Common law damages for lifetime care which, in 2011, the Productivity Commission found to be an average of \$1-2 million,⁴ provide an indication of the size of enduring costs.

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

- motor vehicle accidents (approximately 50 per cent of all catastrophic injuries)
- general accidents (32 per cent), typically associated with sport and recreational activities, criminal assault and catastrophic falls
- medical accidents (11 per cent)
- workplace accidents (8 per cent).⁵

In 2013, there were 17.2 million registered motor vehicles in Australia, which is approximately 0.75 vehicles per head of population.⁶ With this many vehicles on the road, there were approximately two motor vehicle accidents per 1000 people and 0.02 catastrophic motor vehicle accidents injuries per 1000 people.

2.2 Pre-existing support for catastrophic injuries

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

⁴ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, available at <http://www.pc.gov.au/projects/inquiry/disability-support/report>, page 795.

⁵ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 793.

⁶ Australian Bureau of Statistics (2013) *Motor Vehicle Census*, cat no 939.0, available at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/268932501A477446CA257BB00011A2FF/\\$File/93090_31%20jan%202013.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/268932501A477446CA257BB00011A2FF/$File/93090_31%20jan%202013.pdf).

for lifetime care and support. Some may be cared for in residential aged care services even if they are relatively young, or acute care hospitals.⁷

The Productivity Commission examined the performance of fault-based schemes against the criteria of predictability of support throughout a person's lifetime, consistency of coverage, rehabilitation incentives, capacity for choice, capacity to punish, deterrence of risk and efficiency and concluded that no-fault systems are likely to produce superior outcomes.⁸

The Productivity Commission determined that the adequacy of care should be defined by certainty, timeliness and quality of access.⁹ Based on this definition, fault-based schemes were falling short in terms of certainty (because of the need to prove an at-fault party) and timeliness (because of the lengthy court process before compensation can be awarded). States and Territories have agreed that adequacy of care should include access to medical treatment, injury rehabilitation treatments, aids and equipment, home and vehicle modifications, and attendant care services. More detail on the types of supports and assessment of adequacy is included in section 4.2.

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

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

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

- motor accidents – 60 per cent
- workplace accidents – 100 per cent
- medical accidents – 50 per cent
- general accidents – 20 per cent.¹⁰

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

⁷ Outlined in the Young People In Nursing Homes National Alliance submission to the Consultation RIS.

⁸ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 849.

⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 796.

¹⁰ PwC (2005) *Long Term Care: Actuarial Analysis on Long-Term Care for the Catastrophically Injured*, page 2.

In theory, support could also be offered to individuals through insurance for personal injury and income protection. Many people have life insurance cover as part of their superannuation plan, and this is usually packaged with total or permanent disability (TPD) cover ('total or permanent' is usually a high threshold of injury, but so is the catastrophic level of injury covered in this RIS). However there are issues with assuming that insurance included in superannuation will be sufficient.

- Children who have never worked may not have an established a superannuation account, so may not have this automatic cover.
- Insurance additions to superannuation are generally opt out so some people can choose to not be covered (opt out insurance is mandated in any MySuper products¹¹). As discussed under section 2.4 below, the risk and reward of insurance against such a low risk are hard to comprehend and as such the insurance may not seem worth the cost for some people. However, the opt out nature of this cover may make it less likely for people to not have this cover in their super.
- The disability insurance provided in these plans may not always be adequate to cover lifetime needs; 'the levels of basic life and TPD cover are low and are not likely to provide an adequate level of cover for many people'¹² and ASIC cautions individuals to note the level of benefits offered by automatic cover or insurance that does not require medical checks 'this type of cover can be very limiting – that's why it is cheap'.¹³

2.3 Motor vehicle insurance arrangements

No-fault third party motor vehicle insurance is available to differing extents in New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory. In New South Wales, South Australia (from 1 July 2014) and the Australian Capital Territory (from 1 July 2014) no-fault lifetime care and support is available for catastrophic injuries, while the other jurisdictions cover all injuries (though there are some specific limitations in Tasmania and the Northern Territory). Details on State and Territory motor vehicle accident compensation systems are provided in Appendix A.

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

This RIS focuses on the fault based insurance arrangements in the other jurisdictions. In Queensland and Western Australia, people rely on the common law to claim compensation from the at-fault driver's compulsory third party insurance, which will only succeed if they can identify a negligent and solvent first party as the cause of the accident. How much

¹¹ Australian Government Treasury, 'Stronger Super', available at http://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/government_response/recommendation_response_chapter_5.htm.

¹² Machin, Clair (2014) 'Australia: The challenges of insurance in superannuation', Mondaq, available at <http://www.mondaq.com/australia/x/316282/Insurance/The+challenges+of+insurance+in+superannuation>.

¹³ ASIC Money Smart (2013) 'Total & permanent disability cover', available at <https://www.moneysmart.gov.au/managing-your-money/insurance/life-insurance/total-and-permanent-disability-cover>.

compensation they get depends on the presence of insurance,¹⁴ the circumstances of the accident, the severity of their injury, the extent of their disability and future needs, judicial interpretation of liability, the brinkmanship of the out of court settlement process, and the process for assessing damages.

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

- court outcomes are uncertain and, by far, most people settle out of court
- the individual's future needs are unpredictable, so that damages awarded at a given time may underestimate or overestimate their future needs, which on a personal level can mean that sufficient care is not available for the period of time that it is needed
- compensation is often delayed and, particularly if liability is disputed, access to early treatments and appropriate discharge from hospital to medical and social rehabilitation can be delayed and poorly coordinated
- assumptions about discount rates play an important role in determining lump sum compensation, especially for payouts intended to last many decades, and while it is generally agreed that rates applied are too high, agreement is lacking about the 'right' discount rate
- lump sums may not be managed appropriately to meet long term needs, and there are inherent difficulties in managing preclusion periods for access to safety-net services, especially when it may be unrealistic to refuse essential care and support needs.¹⁵

In addition, adversarial fault-based systems may reduce the scope for improvements to an individual's health and functioning following an injury (and might sometimes exacerbate problems). For example, the size of an individual's award for compensation under the common law is dependent on the severity of the injury. The usual strong incentives for people to maximise recovery could potentially be undermined for some people by an awareness that the greater the recovery, the lower the potential level of compensation. Litigation processes also take time, are stressful, and accentuate an individual's preoccupation with the disabling aspects of an injury (psychosocial factors play a significant role in recovery).¹⁶

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

- the accident was purely a matter of chance without any other party's involvement
- a person may make a mistake that anyone might make, but which results in their own catastrophic injury

¹⁴ Insurance may not be available if the car is not registered (although there are schemes such as the Queensland Nominal Defendant which provides personal injury insurance to people injured by uninsured or unidentified drivers in certain circumstances). Another potential gap relates to at-fault drivers - although limited cover (in the form of a lump sum payment) can be purchased from some insurers in these jurisdictions as an additional feature of CTP cover, it is subject to caps and various other restrictions. The Productivity Commission concluded that people at fault who are not covered by insurance rarely have a capacity to pay compensation, significantly weakening any deterrent effects of the common law in personal injury for such people (who often tend to have the highest risks).

¹⁵ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

¹⁶ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

- another person causes the accident but has nevertheless taken 'reasonable' care
- the injury arose out of a single vehicle accident and the injured driver was at fault.¹⁷

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

While the Productivity Commission concluded that no-fault schemes tend to lead to better outcomes, it was recognised in their report that common law has merits for injured individuals.¹⁸

- Lump sum compensation was described as the 'ultimate' in self-directed funding. It is left completely to the individual and those they choose to trust to manage and spend. One submission to the Consultation RIS emphasised that a move away from lump sums can mean less self-direction and more reliance on an external party to approve supports.¹⁹ Lump sums do allow the highest degree of tailoring to personal needs, but they leave the sum open to mismanagement through inexperience or by those in positions of trust.
- No-fault systems can extinguish an individual's right to pursue a common law claim while fault schemes do not constrain personal rights. That said, some common law systems have become 'constrained' as they place limits on damages or timeframes.
- Common law systems can give injured individuals a sense of justice that a penalty has been placed on the wrongdoer. However, the at-fault party may not be represented in the court room or paying the damages from their own pocket as they could be represented by their insurer. Other punitive actions, such as criminal offences, remain available in both fault-based and no-fault systems.

This conceptualisation of the problems with (and merits of) the common law is based on the analysis of the Productivity Commission. It is noted that some submissions - both to that inquiry and the Consultation RIS disagree with the stated faults of the common law, and the assertion that they can be solved by no-fault systems.

For example, a submission to the Consultation RIS argues that reforms have shown that the common law is not inherently a lengthy process and that no fault schemes often involve their own dispute processes and capricious outcomes.²⁰ The submission also disputes the conclusion that common law rights cannot and should not co-exist with no-fault systems; citing existing hybrid systems.

This RIS acknowledges that the comparative virtues of fault and no-fault schemes are not absolute and the costs and benefits of introducing a new scheme are discussed further below. The introduction of the NDIS means that a no-fault system is introduced to this space, regardless of the establishment of the NIIS. This RIS takes its guidance from the Productivity Commission on how the NDIS will interact with a fault-based system.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Law Institute of Victoria submission to the Consultation RIS.

²⁰ Joint submission from the Queensland Law Society and the Law Council of Australia to the Consultation RIS.

2.4 The National Disability Insurance Scheme

In its 2011 inquiry into disability care and support, the Productivity Commission found that the Australian disability care and support system was underfunded, unfair, fragmented and inefficient.²¹ This shortage of support often means individuals with disability and their families reach a crisis point before they get the help they need. Families in crisis are prioritised by these systems, which in turn adds delays to others in the system and increases the likelihood that they too will end up under extreme pressure. This can mean that people spend time in hospitals and nursing homes when they could be living at home and participating or working in the community.

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

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

The NDIS was designed so that anyone under 65 years of age with, or affected by, a disability could approach the National Disability Insurance Agency (NDIA) for information services or a funded support package which would be targeted at people with significant and permanent disability.²² It has been estimated that around 460,000 Australians will be eligible to access NDIS funded packages when the scheme is fully rolled out across Australia.²³

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

From 1 July 2013, the NDIS commenced trials:

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

²¹ Ibid.

²² The age limit for entry to the NDIS is set at 65 in section 22 of the *National Disability Act 2013* (Cth), until rules to the contrary are set on prescribed age. The current *NDIS (Becoming a Participant) Rules* reaffirm the 65 years old age limit (Part 3), except for the special rules for the roll out sites. It is possible that as the pension age is extended this prescribed age may change, but for the purposes of this RIS, the current prescribed age of 65 is used, and referenced in the rest of this paper.

²³ Australian Government (2013) *2013-14 Budget Paper No 2*, page 141.

From 1 July 2014, the NDIS will commence trials in the Australian Capital Territory, the Barkly region of the Northern Territory and in the Perth Hills region of Western Australia.²⁴ All States and Territories are preparing for the roll out of the NDIS (except for Western Australia, which is yet to agree to roll out the NDIS beyond mid-2016), with coverage expected to progressively commence from July 2016 with full roll out complete by 2019-20.²⁵

2.5 NDIS interaction with accident injuries

Existing accident compensation systems provide some cover but are inconsistent across jurisdictions and still rely, in some cases, on fault-based claims and apportionment of liability. The NDIS establishes a no-fault 'safety net' that will provide certain, timely and quality care and support for Australians with significant and permanent disability regardless of how or when it was acquired (only subject to an age restriction upon entry into the scheme). In the absence of any action on accident compensation schemes, the NDIS will provide support to people with a catastrophic injury amounting to disability who is not receiving that support elsewhere. This would mean approximately 106 individuals each year who are catastrophically injured in motor vehicle accidents in Queensland and Western Australia will be able to access NDIS support when it rolls out fully in those jurisdictions.²⁶ However, as the NDIS does not allow entry to people aged 65 or over, there would be approximately eight individuals in Queensland and Western Australia each year who would not be able to access NDIS support, despite being catastrophically injured in a motor vehicle accident. Appendix B has further detail on the calculation of the number of injuries per year.

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

If the NDIS is introduced in the absence of any agreement on motor vehicle accident compensation, the burden of catastrophic injury would fall differently on the NDIS depending on the State or Territory and the nature of how the injury was acquired. In other words, the NDIS will provide support for some catastrophic motor vehicle injuries in those jurisdictions that are currently fault-based, but not those in no-fault jurisdictions. Aside from the issue of who funds the support, there are other issues with using the NDIS to provide support for motor vehicle accident injuries. Namely, if individuals who are catastrophically injured in a motor vehicle accident were supported by the NDIS, it may reduce the price signals that exist to provide incentives for safety through premiums linked to risky activity.

- There is no easy mechanism to address moral hazard through the NDIS, which is funded by government revenue based on agreements between the Commonwealth and the States and Territories.
- Premiums are collected at the geographic level where governments have the greatest capacity to reduce risks. State and Territory governments have the capacity to improve policing and the justice system to improve transport safety through laws,

²⁴ Related to the commitment to trial the NDIS in Western Australia, there will be a *My Way* (the Western Australia model for person centred disability support) trial in two sites (Kwinana/Cockburn and the Lower South West regions) over two years from 1 July 2014. During this two-year trial period the performance of the NDIS and *My Way* disability support systems will be evaluated to see which was more effective in Western Australia. The *My Way* trial agreement specifies that Western Australia will be responsible for 100 per cent of the costs for any trial participants in either site who should have gone into the NIIS for motor vehicle accidents. However, this agreement only covers the trials, and is only until 30 June 2016.

²⁵ National Disability Insurance Scheme, *Roll out of the National Disability Insurance Scheme*, available at <http://www.ndis.gov.au/roll-out-national-disability-insurance-scheme>.

²⁶ Based on State and Territory Government submissions to the Consultation RIS, as well as previous actuarial estimates.

regulation, advertising, training, and infrastructure (thereby reducing CTP premiums); and with local government, reducing the risks of general accidents.²⁷

It should also be noted that in existing no-fault systems, part of this State and Territory capacity to reduce risk can include using a 'community rating' to decrease premiums from a direct risk rated price. This is to keep premiums affordable and thereby reduce the incentive to drive an unregistered or uninsured car.²⁸ This does reduce the ability to use true price signals in this levy system.

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

²⁷ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

²⁸ Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf)

3 Objectives of government action

The objective of government action stated in the Consultation RIS was to provide adequate, consistent and tailored lifetime care and support for all individuals who newly acquire catastrophic injuries due to motor vehicle accidents:

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

Submissions to the Consultation RIS addressed the issue of objectives and suggested changes or additions to the above. These suggestions were:

- that adequacy of care should be explicitly expanded to have the meaning that the Productivity Commission assigned it, that of 'certainty, timeliness and quality of access'²⁹
- that consistency with the implementation of the NDIS should be phrased as consistency with NDIS objectives³⁰ or consistency with NDIS principles,³¹ as the two schemes, while similar in aspirations, have differences in rules and emphasis
- the NIIS for motor vehicle injuries should include income benefits and impairment payments as the Victorian scheme does³²
- an additional objective should be the facilitation and guarantee of appropriate accommodation options³³
- an additional objective should be the sustainability of informal care networks and the caring role of families³⁴

²⁹ Submission to the Consultation RIS from the Australian Orthotic Prosthetic Association.

³⁰ Submission to the Consultation RIS from the Young People in Nursing Homes National Alliance.

³¹ Submission to the Consultation RIS from the Quarterly Brain Injury Services Meeting.

³² Submission to the Consultation RIS from the Young People in Nursing Homes National Alliance.

³³ Submission to the Consultation RIS from the Quarterly Brain Injury Services Meeting.

³⁴ Ibid.

- it should be an objective to implement a scheme in a way that facilitates data collection, which can be used to identify trends and benchmark performance between jurisdictions³⁵
- the objectives should include support that features appropriate timing of rehabilitation and smooth transitions through the health system and that key transition points should be anticipated and planned for ³⁶
- an objective should be included that acknowledges the additional funds flowing through the scheme, which should help to develop specialist health services necessary to rehabilitation³⁷

Some of these are consequences of a good scheme, but are not necessarily the primary objectives of intervening in the current market (such as data collection and development of specialities) and some are outside the scope of this RIS (such as income benefits and accommodation options, which are not affected by the implementation of the NDIS and are broader issues).

With consideration of these submissions, the overarching objective is to provide tailored lifetime care and support to all individuals who newly acquire catastrophic injuries due to motor vehicle accidents. This support should be certain, timely, with quality of access, and should be provided to at least a minimum agreed level regardless of where a person lives or is injured. Additional objectives are that this support should be administered in a way that:

- is financially sustainable
- discourages risky behaviour
- encourages rehabilitation and early intervention to facilitate independence and participation and timely transitions through the hospital and health systems
- is equitable in its impact on each State and Territory and their residents
- is consistent with the principles of the NDIS,³⁸ including its recognition of the role of carers and family.

³⁵ Submission to the Consultation RIS from the Suncorp Group.

³⁶ Submission to the Consultation RIS from Legs 4 Life.

³⁷ Submission to the Consultation RIS from Legs 4 Life.

³⁸ COAG, 'High-level principles of the NDIS', available at https://www.coag.gov.au/sites/default/files/NDIS_high_level_principles.pdf, sets out the high-level principles as: access to individualised care and support; adequate and sustainable funding; transparent and accountable governance; and effective transition from existing systems.

4 Options

This chapter outlines the options to be considered in this RIS. Under the base case, the NDIS will provide coverage of catastrophic injuries from motor vehicle accidents in fault-based jurisdictions, with minimal impact in the other no-fault schemes. Options 1 and 2 both involve fault-based jurisdictions shifting to a no-fault basis, and all jurisdictions signing up to minimum benchmarks. The only difference is that, under Option 2, some jurisdictions may choose to contract out the care and support for some or all individuals who are catastrophically injured in a motor vehicle accident under the age of 65 to the NDIS.

4.1 Base case – NDIS as the safety net

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

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

Under this base case, the existing fault-based schemes in Queensland and Western Australia continue. Those who are catastrophically injured in a motor vehicle accident, but cannot access lifetime care and support under their local jurisdiction's scheme will be able to access NDIS support as it becomes available (for details of NDIS roll out see section 2.4). These people will be able to access NDIS supports if they are under the age of 65 and were either:

- at-fault in the accident
- unable to identify an at-fault party
- received compensation in the past or will receive compensation in the future, once those funds are exhausted or by agreement with the NDIA.

By the end of 2019-20, all people under 65 years of age who are catastrophically injured in motor vehicle accidents will be able to access support regardless of fault (except for accidents that occur in Western Australia beyond mid-2016 if Western Australia does not agree to the full NDIS),³⁹ as the NDIS acts as a safety net for the differences in State and Territory schemes. Given some catastrophically injured people will be supported through State and Territory motor accident compensation schemes and some will be supported through the NDIS, the funding of support will also vary across jurisdictions, as follows:

- New South Wales, Victoria, South Australia and the Australian Capital Territory⁴⁰ will fund their no-fault schemes through CTP charges and will cover people regardless of age.
- Tasmania and the Northern Territory⁴¹ will fund their no-fault schemes through CTP charges, although the NDIS may pick up some catastrophically injured individuals who are ineligible for the state schemes because of minor differences to the minimum benchmarks. Any person aged 65 or over who is ineligible under the state scheme will not be able to access no-fault NDIS funded supports because of the age limit on the entry into the NDIS.
- Queensland and Western Australia (if Western Australia agrees to roll out the NDIS beyond mid-2016) will continue their fault based arrangements, with the NDIS providing support to all people who acquire their catastrophic injury before they are 65 years old and are unable to claim compensation through other means. Common law payments will remain for those able to identify an insured at-fault party. People who acquire a catastrophic injury when they are aged 65 or over and are not able to access common law payments will not be able to enter the NDIS.

4.2 Option 1: Federated Model of the NIIS

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

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

Funding would be able to be tailored towards support, optimising rehabilitation and reducing long term cost of care in a similar way to the NDIS. However, there would be no age limitation for entry into the NIIS for motor vehicle accidents, unlike the NDIS.

³⁹ For the purposes of costing in this RIS, it is assumed that full roll out of the NDIS in Western Australia will be in line with other jurisdictions and will have full coverage by 2019-20.

⁴⁰ The Australian Capital Territory recently passed legislation to establish a lifetime care and support scheme for those catastrophically injured in a motor accidents (Andrew Barr Media Release (10/04/2014) 'Lifetime Care and Support Legislation passed in Legislative Assembly', available http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2014/lifetime-care-and-support-legislation-passed-in-legislative-assembly)

⁴¹ The Northern Territory passed legislation on 7 May 2014 to amend their scheme to align with the minimum benchmarks. These amendments include removing the caps on hour for attendant care and adjusting the rate payable to market referenced rates.

States and Territories could continue to manage how this scheme is implemented including using the private sector to provide insurance⁴² and claims management as occurs in some States and Territories.

For the sake of cost benefit analysis, the implementation date of this option has been taken to be 1 July 2014. It is acknowledged that in reality it may take jurisdictions longer than this to implement this option. However, this date is used in the absence of a stated implementation date to reflect that this option is not reliant on the roll out of the NDIS and as such, in theory, it could begin earlier.

Eligibility to the NIIS for motor vehicle accidents would be defined by minimum benchmarks (see Box 1) that each jurisdiction must meet. The benchmarks were developed by State and Territory Senior Official representatives with reference to the coverage of the New South Wales Lifetime Care and Support (LTCS) scheme. It was decided that the agreed minimum benchmarks should not exceed those of LTCS. The minimum benchmarks set eligibility for entry only in terms of the type of injury and the inclusion of a registrable vehicle in the accident. Under the minimum benchmarks, a person cannot be excluded from receiving support simply because they were at-fault, committing an unlawful act (such as driving under the influence or without a licence) or driving an unregistered or uninsured car.

The Productivity Commission determined that the adequacy of care should be defined by certainty, timeliness and quality of access.⁴³ Certainty and timeliness are addressed by the design of a scheme, while the 'reasonable and necessary' criteria discussed in Box 1 addressed the quality of access of supports. The Productivity Commission found that policy behind 'reasonable and necessary' should turn on assessment of need, not an arbitrary rationing of available resources.⁴⁴ Reasonable and necessary does not specifically define supports, and so also allows for change in technology and norms to include things that become available and considered necessary, although may not have existed when an initial plan was made. However, current expectations of the sorts of supports that are reasonable and necessary can be indicated by supports provided in the New South Wales and Victorian state based systems (as outlined in Box 1).

⁴² Currently some jurisdictions do have privately underwritten CTP generally, but all no-fault catastrophic components are currently government underwritten.

⁴³ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 796.

⁴⁴ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 257.

Box 1: Minimum benchmarks

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

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

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

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

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

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

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

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

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

Submissions to the Consultation RIS did include comments on the appropriateness of the benchmarks, specifically with regard to:

- the definition of significant amputation, there was a view that any form of limb amputation should be regarded as catastrophic
- the need for evidence of permanent impairment for traumatic brain injury when this is usually not immediately determinable after an accident, hence delaying services
- the criteria for reasonable and necessary – that this would have to be assessed by the jurisdictional scheme (which would need to build expertise in the area) rather than being whatever is recommended by a practitioner, or self-directed by the participant
- the uncertainty about whether an injury will meet the benchmark can cause delay.⁴⁵

This Decision RIS does not examine the appropriateness of these benchmarks, but instead considers the different models of implementation of the NIIS for motor vehicles. These benchmarks have already been agreed by the jurisdictions who have agreed to the full rollout of the NDIS and may be examined again in the 2020 review of the NIIS.⁴⁶ It should be noted that the benchmarks are set as a minimum and jurisdictions can exceed them if they want to on policy grounds (as some jurisdictions already do).

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

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

- no change in New South Wales, Victoria, South Australia and the Australian Capital Territory
- minor changes in Tasmania and the Northern Territory to cover the gap outlined below in Box 2 (for traffic offences and unregistered vehicles respectively)
- significant change in Queensland and Western Australia as they move from fault-based systems to no-fault systems for the lifetime care and support of individuals with catastrophic injuries.

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

Option 2 is based on the same premise as Option 1, the introduction of the NIIS as recommended by the Productivity Commission. Under this option, State and Territory governments would provide lifetime care and support for people who are catastrophically injured in motor vehicle accidents on a no-fault basis. Catastrophic injury claims would be managed on a social support approach, instead of through a court process. There would be no lump-sum compensation for the future care costs, instead the claimant's care and support costs will be met as they arise over their lifetime. However, the common law right to sue

⁴⁵ Submission on the Consultation RIS from the Australian Orthotic Prosthetic Association, Limbs 4 Life and the Law Institute of Victoria.

⁴⁶ COAG (2013) 'Council of Australia Governments Meeting – Communique, Canberra, 19 April 2013', available at https://www.coag.gov.au/sites/default/files/COAG_Communique_190413.pdf.

could still be available for those who are catastrophically-injured in a motor accident by someone at fault and in relation to other heads of damage (e.g. economic loss) and non-catastrophic injuries.

Entitlements would be the same as Option 1 as per the minimum benchmarks as shown in Box 1.

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

In the case where a jurisdiction does not meet the minimum benchmarks, a person who is injured in that jurisdiction and meets the minimum benchmarks but is not covered by the local scheme would generally be supported under the NDIS. However, that jurisdiction would be 100 per cent responsible for the NDIS costs over an individual's lifetime. This means that the State or Territory would allocate additional NDIS funding over and above the current level of NDIS contributions as governed by the NDIS agreements between the Commonwealth and the States and Territories. However, because of the age limitation on the NDIS, a person aged 65 or over in this situation would receive neither NDIS nor jurisdictional support. They would be reliant on services in the public systems and/or common law compensation if fault could be established.

Under Option 2 all people under 65 catastrophically injured in motor vehicle accidents would have access to lifetime care and support funded through State and Territory based mechanisms, but the support may be offered through either a jurisdiction based NIIS or the fallback option of the NDIS. People catastrophically injured when they are aged 65 or over will have access to lifetime care and support funded through State and Territory based mechanisms (either common law before scheme enactment, or if they are included in the benchmarks the jurisdiction chooses to enact in its scheme) if eligible, but will not have the fallback option of the NDIS. If ineligible, then they would be reliant on the public system.

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

The practical difference between Option 2 and the base case is the flexibility it gives the jurisdictions. If the jurisdictions do nothing, this will represent the base case. However, any move that is made towards the NIIS will have some of the impacts discussed in Option 1. Additionally, NDIS coverage would be provided as per the NDIS roll out schedule, where as any move to the NIIS could be at any time (subject to local consultation, preparation and implementation).

Box 2: Current arrangements in the States and Territories

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

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

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

The Northern Territory also already has a no-fault scheme, and passed legislation on 7 May 2014 to amend this scheme to meet almost all minimum benchmarks. These amendments include removing the cap on hours for attendant care and adjusting the rate payable to market referenced rates. However, there remains exclusions that do not meet the minimum benchmarks. For example, drivers and owners of unregistered vehicles will not be covered in the Northern Territory, which is narrower than the minimum benchmarks. On the other hand, passengers and pedestrians injured in motor vehicle accidents on private land involving unregistered and unregistrable motor vehicles will continue to be covered by the scheme, which is wider than the minimum benchmarks.

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

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

4.4 Other options not considered further

It is required under the Best Practice Guidelines that a RIS have a non-regulatory option, or explain why a non-regulatory approach is not feasible.⁴⁷

4.4.1 Non-regulatory

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

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

⁴⁷ COAG (2007), Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies, Canberra.

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

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

As such it is not appropriate to suggest a non-regulatory option to solve a regulatory problem and no non-regulatory options have been further analysed in this RIS. It was widely agreed in the submissions received on the Consultation RIS that there are no feasible non-regulatory options to the identified problems, including court process reforms.

4.4.2 Reforms to court processes

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

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

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

Third, attempts in the past to fix some of the issues with the common law have been unsuccessful. For example, the court's decision on a discount rate can affect the practical sufficiency of a lump sum. A past attempt to mitigate this issue has been to offer structured settlements for lifetime annuities that are tax-exempt and indexed. However, the Productivity Commission could only find one instance of this annuity being taken up in Australia.⁴⁸

The Productivity Commission concluded that past attempts to reform the court system have shown that 'it *may* be possible to address drawbacks of standard common law processes through specific intervention. However, alternative measures for redress and care and support of injured people would intrinsically avoid such delays and inefficiencies'.⁴⁹

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

⁴⁸ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 810.

⁴⁹ *Ibid*, page 805 (emphasis added).

5 *Impact analysis*

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

5.1 Base case – NDIS as the safety net

5.1.1 Individuals and households

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

- ongoing support (not a lump sum payment that may or may not be adequate to meet lifetime care needs) is able to be personally directed by the recipient. This allows them to access much more predictable and coordinated care and support over their lifetime
- more people will be able access support, as there will not be a requirement that there be a negligent party nor is it an issue if the injured party contributed to the accident (such that single car accidents and at-fault parties are also covered)
- where an injured individual would have been able to make a claim under the fault-based system in their jurisdiction (i.e. there was identified solvent at-fault party), this individual may still be required to pursue that common law claim and have that compensation replace part of their NDIS payments. A National Disability Insurance Agency (NDIA) delegate may require an NDIS participant to take required action to recover compensation if they have reasonable prospects of success.⁵⁰ Additionally, individuals may still litigate for other heads of damage, such as loss of earnings
- the support received by catastrophically injured individuals in the no-fault States and Territories will differ from those that are supported by the NDIS. The NDIS does not provide payments for rehabilitation and medical treatment which is offered by motor vehicle lifetime care and support compensation schemes.

This would benefit up to 114 people each year when the NDIS is fully implemented (based on recent estimates of an additional 70 per year in Queensland and estimates from 2005 of 44 in Western Australia).⁵¹ There may also be a small number of people who benefit in Tasmania and Northern Territory where there are slight variations from the minimum benchmarks.

However, if any of these people are 65 or over when they sustained a catastrophic injury they will be ineligible for the NDIS and will only have access to state funded health, disability and aged care services. Based on a range of sources (discussed in Appendix B), it is estimated that of the new catastrophic injuries that this RIS covers, eight per year will be people 65 years old or older (five in Queensland and three in Western Australia). People aged 65 or over are

⁵⁰ NDIS (2013) *Operational Guideline – Compensation – Recovery of NDIS Amounts – Action has not Been Commenced to Recover Compensation*, available at http://www.ndis.gov.au/sites/default/files/documents/og_compensation_action_not_commenced.pdf.

⁵¹ Queensland estimates provided in a response to the Consultation RIS. In absence of more updated numbers, Western Australia estimates are taken from John Walsh, Anna Dayton, Chris Cuff and Peter Martin (2005) *Actuarial Analysis on Long-Term Care for the Catastrophically Injured*.

excluded from entering the NDIS on policy grounds. The Productivity Commission outlined that disability is a predictable outcome of old age and as such it is more reasonable to accumulate private resources over time to cover the costs.⁵² It was also noted that funding arrangements between disability and aged care were already based on the National Disability Agreement. However, the same predictability does not apply to catastrophic accidents. Catastrophically injured older people who are in the NDIS could relieve fiscal pressures on the public health and aged care systems.⁵³

Individuals and businesses that register vehicles in no-fault jurisdictions will continue to pay CTP charges on the same basis as currently.

Until the NDIS commences in these jurisdictions, people catastrophically injured in Queensland and Western Australia will continue to face all the existing problems with fault-based systems that were discussed in the problem chapter. This will affect approximately 350 individuals injured in Queensland and 220 individuals injured in Western Australia and a small number in Tasmania and the Northern Territory between 1 July 2014 and 30 June 2019.

All taxpayers will contribute to the funding of the NDIS including through the increase in the Medicare levy of 0.5 per cent of taxable income. To the extent that - under the base case - shifting fault-based jurisdictions into the NDIS will be funded out of government revenue, then in effect all taxpayers are subsidising some of the cost of the NDIS coverage in Queensland and Western Australia. In agreeing to the NDIS under their Heads of Agreement, New South Wales stated that this may constitute some jurisdictions paying a 'subsidy' to others.⁵⁴

Adequate care and support provides benefits to more than the injured individual. There are positive outcomes that may flow through to the economy at large. These are particular to do with workforce participation. Properly funded support may mean that fewer family members will need to act as informal and unpaid carers. This will allow them to participate in the workforce, and will reduce government carers payments. Similar, better health and rehabilitation outcomes for injured individuals may allow them to enter the workforce more than they would have been able to without adequate care. This will again increase workforce participation and decrease income support pensions. These outcomes are somewhat limited under the base case, with the exclusion of people aged 65 or over when they sustained a catastrophic injury and especially the lack of coverage of rehabilitation which can facilitate earlier workforce inclusion.

5.1.2 Governments

As stated, the base case excludes any further agreement on how the NDIS will be funded for the higher number of participants. Therefore, the base case assumes that the additional cost would be negotiated between the Commonwealth and the States and Territories who have fault based schemes, or whose existing schemes do not fully meet the benchmarks.

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

⁵² Productivity Commission (2011) *Disability Care and Support Inquiry Report*, Appendix C.

⁵³ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 777.

⁵⁴ Australian and New South Wales Governments (2012) *Heads of Agreement between the Commonwealth and NSW Governments on the National Disability Insurance Scheme*, available at <http://www.ndis.gov.au/sites/default/files/Agreement-between-Commonwealth-and-NSW-Governments-NDIS-signed.pdf>.

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

- an assumption that the cost of the NDIS providing coverage is generally equal to the Productivity Commission's estimate of the cost of the NIIS (apart from costs associated with those aged 65 or over and medical and rehabilitation costs, discussed below)
- no additional payments are made to individuals in a jurisdiction before the NDIS is fully implemented in that jurisdiction (this is a simplifying assumption to only cost the full roll out of the NDIS despite the existence of some coverage through the trials)
- full implementation dates of June 2019 for Queensland, Western Australia, Tasmania and the Northern Territory.

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

These costs were described as 'incremental' and 'additional' by the Productivity Commission, as the net estimates are reduced by 'current spending associated with lifetime care and support for catastrophic injury'.⁵⁵ However, the Productivity Commission also noted that further savings could reduce these costs, including 'savings to the Australian Government from reduced use of publically-funded Medicare and other services', as well as because 'coordinated lifetime care scheme should produce better health and wellbeing outcomes, reducing long-run usage of services, including of income support'.⁵⁶

The Productivity Commission estimates include the full cost of the NIIS for motor vehicle injuries, including medical and rehabilitation costs, and also injured people aged 65 or over. People aged 65 or over are approximately 7 per cent of claimants but will represent less than that percentage of costs because of their shorter lifespans after injury than a younger person (in general). It has been estimated, based on available age distribution data that approximately 2.4 per cent of costs will be for people aged 65 or over (see Appendix B for calculations and data sources).

Medical and rehabilitation costs were not able to be quantified as a percentage of the total costs, although it appears likely that the quantum of these costs will differ under the NIIS as opposed to the NDIS.

⁵⁵ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 907.

⁵⁶ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 906.

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

Jurisdiction	Estimate of additional costs (per annum)	10 year net present value (June 2014 – July 2024)
Queensland	\$285,968,000	\$835,994,00
Western Australia	\$217,648,000	\$636,269,00
Tasmania	\$7,396,000	\$21,622,000
Northern Territory	-	(1)
Total additional costs to the NDIS to be funded by governments		\$1,493,885,000

Source: PwC analysis based on estimates provided by jurisdictions (Queensland and Tasmania Governments, Insurance Commission of Western Australia). The net present value calculation uses a discount rate of 7 per cent. Note: (1) The Northern Territory has recently passed legislation bringing their scheme very close to the minimum benchmarks. However, due to slight variations, it may be possible that some injuries may end up in the NDIS. However, there is no available evidence of the number of these instances, though it is known to be unlikely. Hence no net present value has been calculated for the Northern Territory. (2) Totals may not sum due to rounding.

An issue with having fault-based systems using the NDIS as a safety net is that there is potential risk of individuals being double-compensated. An individual who receives lump sum common law compensation before the roll out of the NDIS may find it does not last their full lifetime (as discussed in Chapter 2) because it is an inadequate amount or due to the possible mismanagement of funds (although one submission to the Consultation RIS disputed that mismanagement occurs). When the individual's lump sum compensation runs out, they may still be able to access NDIS support, meaning that they could effectively be double-compensated.⁵⁷ To address this issue the NDIA can recover NDIS amounts paid before the compensation is received and also revise and reduce supports to take in to account compensation received.

5.1.3 *Non-government and private sector*

Queensland, New South Wales and the Australian Capital Territory currently have private insurers that provide CTP insurance and individuals can choose which provider they are insured with. In all other jurisdictions there is a public CTP provider and is included as a levy charged at the same time as the registration fee for the motor vehicle.⁵⁸ There is no change expected to this situation under the base case.

With all catastrophically injured people receiving adequate support (as opposed to before the roll out of the NDIS), providers of care and support services will need to meet this increased demand. However, in the context of the NDIS more generally, catastrophic motor vehicle

⁵⁷ It should be noted that the NDIA has capacity to recover some common law compensation amounts received after NDIS support was provided (see *NDIS Operational Guideline – Compensation – Recovery of NDIS Amounts – Compensation Received by a Participant from a Judgement or Settlement*, available at http://www.ndis.gov.au/sites/default/files/documents/og_compensation_received_judgement.pdf) but it is unlikely that a judgement or settlement will exclude NDIS payments being made in the future.

⁵⁸ Ty Birkett (2013) *Reinsurance for Injury Schemes*, presentation at the Actuaries Institute 2013 Injury Schemes Seminar, available at <http://www.actuaries.asn.au/Library/Events/ACS/2013/BirkettReinsurance.pdf>.

accidents will comprise a very small proportion of supported individuals. The Productivity Commission noted this, saying that because of the small number of people catastrophically injured each year 'the organisations that coordinate services would not need to be very large and would not be likely to place excessive pressures on an already strained labour market in disability services'.⁵⁹ This will be more so the case because NDIS implementation will occur over several years.

5.2 Option 1: Federated Model of the NIIS

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

5.2.1 Individuals and households

Under this option, consistent coverage will be provided to injured parties according to injury related needs, with much more predictable and coordinated care and support over a person's lifetime. Moving to a no-fault system could be expected to positively affect people's incentives to improve their functioning following an injury and more broadly no-fault systems are likely to be more efficient than fault-based schemes.

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

There is also no age limit under this option, so people aged 65 or over will benefit. As outlined earlier this is estimated to be five in Queensland and three in Western Australia per year.

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

Lifetime care and support funding, especially including rehabilitation costs, could increase economic participation. There are three different ways this may happen.

- 1 Carers. Adequate funding may mean that informal carers can return to the workforce as paid carers can take up their duties. While this is a substitution of people performing the same role, on the definition of participation, it is an additional person in paid employment. This will mean an increase in taxable income and a more efficient allocation of skills in the workforce, as informal carers can be employed according to their skills.
- 2 Catastrophically injured people who are capable of working, but are not receiving the supports they need to enter the workforce. These supports could be adequate equipment, transport options or personal attendant care in the workplace and could be provided under the NIIS.
- 3 Catastrophically injured people who are not capable of working, but would be if they had received adequate and timely rehabilitation. This is more abstract than the first two, but there is some anecdotal evidence to support it. A case study was presented in

⁵⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report* p. 863.

a submission to the Consultation RIS from Young People in Nursing Homes National Alliance explaining how stopping necessary rehabilitation meant that the injured person, Carl, lost the progress made and confined to a wheelchair. Only when these rehabilitation services were funded again after 10 years was Carl able to once again walk with assistance. The Productivity Commission also recognised this ability to increase participation; ‘providing early access to services and supports may facilitate earlier recovery, reducing the risk of further injury, or exacerbation of the original injury, associated with sub-optimal treatment or inadequate rehabilitation. In some instances, relatively minor injuries can trigger a spiral into poor health, social and economic participation outcomes that can be difficult and costly to reverse’.⁶⁰

Under this option, as opposed to the base case, no catastrophically injured person will be required to pursue a common law case for lifetime care and support (though they may choose to litigate for other heads of damage). This would remove any potential incentive to delay recovery to ensure injury is provable in a common law case, so rehabilitation outcomes could possibly improve (and workforce participation for both the injured and those supporting them such as family members and/or friends).

The reduction in litigation related to motor vehicle accidents will reduce legal costs for claimants and insurers and lessen the burden on the justice system. The Australian Bureau of Statistics estimated that \$410 million was spent on legal costs for personal injuries caused by motor vehicle accidents in 2006-07,⁶¹ although only a portion of this will be eliminated when catastrophic accidents become no-fault (as support for non-catastrophic injuries and other heads of damage may remain unchanged).

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

- the costs of lifetime supports for an injured person
- any costs associated with coordination of care and support
- the standard administrative costs of any insurer (including reinsurance, claims management, depreciation and so on)
- any litigation costs (whether explicit in party-party form or implicit as a share of the compensation payouts). These are zero in pure no-fault systems and significant in fault-based systems.⁶²

Individuals in some jurisdictions will see an increase in their premiums when the NIIS for motor vehicles accidents is introduced. This is because there would be more individuals who are eligible to make a claim under the scheme, including those at fault and those not able to prove fault. The fact that lifetime care and support payments, rather than just a lump sum, would need to be paid to individuals who are catastrophically injured may also result in a slight increase in premiums. Table 2 shows an estimation of the potential premium changes for a standard class 1 motor vehicle.

The Productivity Commission reasoned that, with the introduction of the NIIS all premiums would now provide cover to the same level (the minimum benchmarks), and so over time premiums will converge and individuals will pay the same for the premiums, all else being

⁶⁰ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 910.

⁶¹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

⁶² *Ibid* p. 847

equal. However, in reality all else will not be equal, with jurisdictional differences in cost of care and costs of claim management, as well as different assumptions made in levy setting (of economic outlooks and investment strategies).

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

Table 2: Estimate of premium change, Class 1 motor car

Jurisdiction	Current medium premium	Increase on medium premium	% increase on medium premium
Queensland	\$333 ⁽¹⁾	\$81 ⁽²⁾	24%
Western Australia	\$264 ⁽³⁾	\$109 ⁽⁴⁾	41%

Sources: (1) Based on publically available Statistical information 1 July to 30 December 2013 on the Queensland MIAC website. (2) Queensland estimate of increase of premium in 2013 terms was \$81, provided in a submission to the Consultation RIS. The Queensland Government is currently in the process of updating these estimates. (3) Current WA premiums from Premium Schedule published on the Insurance Commission of Western Australia website. (4) Recent actuarial estimates from Western Australia provided to the Consultation RIS suggest that the CTP increase would be \$109, if implemented in 2015.

To put these premium increases in context, Finity Consulting publishes an 'affordability index' of CTP premiums across Australia and New Zealand. The latest addition from March 2014 has Western Australia and Queensland as first and second most affordable as a percentage of average weekly earnings.⁶³ Applying the above estimates to that affordability index would still place Western Australia as most affordable and Queensland comparable to Tasmania in the next position.

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

5.2.2 Governments

As the Productivity Commission noted, costs are generally higher in no-fault schemes, compared to fault-based schemes, for two main reasons (outside of any consideration of whether actual support payments are adequate). Firstly, claim numbers are higher because at-fault parties, and parties unable to prove any fault, have the ability to claim. Secondly, staffing and administration is needed to coordinate payments and lifetime care and support, a function not usually performed in fault-based schemes where lump sum payments are awarded and administered by the injured individual (or their Trustee) over their full lifetime or until the lump sum is exhausted.⁶⁴ These increased costs will be reflected in the increased premiums to individuals.

Option 1 requires each jurisdiction to offer the same level of support (at least the minimum benchmarks). The magnitude of the impact of this will depend on the current design of each scheme. Broadly, the existing schemes fall into three categories; no-fault schemes that meet

⁶³ Finity Consulting (March 2014) 'd'finitive accident compensation CTP news', available at http://www.finity.com.au/wp/wp-content/uploads/2014/03/CTP_News_Mar2014.pdf?page=5.

⁶⁴ Some fault-based schemes involve administration while a common law claim is being processed, but lifetime care and support no-fault systems will require this management and administration for much longer periods.

the benchmarks, no-fault schemes that do not fully meet the benchmarks and fault-based schemes that do not meet the benchmarks.

- **New South Wales and Victoria** – These two jurisdictions already operate no-fault schemes that are taken to meet the minimum benchmarks. As such, no policy or administrative changes are required. This means the impact on these jurisdictions will be minimal.
- **South Australia and the Australian Capital Territory**– South Australia moved to a no-fault scheme for children in 2013 and will meet the benchmarks for all catastrophic injuries when their legislation comes into effect from 1 July 2014. The Australian Capital Territory will meet the minimum benchmarks when its newly passed legislation also comes into force on 1 July 2014.⁶⁵
- **Tasmania** - Tasmania already operates a no-fault scheme, which is close to the minimum benchmarks though currently excludes serious offences (see Box 2). They also have an established and funded body to administer the NIIS for motor vehicle accidents, which should reduce the additional costs. Including serious offences would mean that Tasmania will have increased support payments.
- **Northern Territory** - the Northern Territory already operates a no-fault scheme, which is close to the minimum benchmarks but does exclude drivers of unregistered vehicles in some circumstances (see Box 2 for recent legislative changes). The Northern Territory already has an established and funded body to administer the NIIS for motor vehicle accidents, though it may need to be expanded. The Northern Territory would also expect to pay more in support payments.
- **Queensland and Western Australia** - These jurisdictions currently have fault-based schemes and there would be costs associated with moving to no-fault schemes for the lifetime care and support of catastrophic injuries. Administration costs would need to cover assessment and distribution of support payments, as well as the legal costs involved with any dispute regarding the assessment decisions.⁶⁶ By way of example:
 - The Productivity Commission found that evidence from no-fault systems suggested that administration costs would be relatively low. As a ratio of premium income, they found that administration costs in 2009-10 were 3 per cent in NSW, 14.1 per cent in Victoria, 9.9 per cent in New Zealand and 4 per cent in Tasmania.⁶⁷
 - In Victoria in 2013, the Transport Accident Commission had approximately \$149 million in administration costs.⁶⁸ It is important to note that Victoria also administers no-fault compensation for non-catastrophic injury, as opposed to the New South Wales scheme.

Option 1 does not give some jurisdictions time to undertake their formal decision-making processes, including consultations with the public and consideration of the financial implications. While State and Territory officials have developed the minimum benchmarks of

⁶⁵ Andrew Barr Media Release (10/04/2014) 'Lifetime Care and Support Legislation passed in Legislative Assembly', available http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/barr/2014/lifetime-care-and-support-legislation-passed-in-legislative-assembly.

⁶⁶ The Law Institute of Victoria submission to Consultation RIS suggested that disputes over TAC decisions of eligibility can be costly.

⁶⁷ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 839.

⁶⁸ Transport Accident Commission (2013) *Annual Report*, available at http://www.tac.vic.gov.au/data/assets/pdf_file/0003/56064/2013_TAC_Annual_Report_WEB.pdf.

the NIIS for motor vehicle accidents, Governments need time to consult the public in their jurisdictions before making a ministerial decision on the benchmarks and how to implement them to ensure that proper Government decision-making processes are followed and that stakeholders have a voice in the democratic process.

Table 3 shows actuarial estimates of the costs and number of claimants for a lifetime care scheme for catastrophic injuries from motor vehicle accidents. This table serves to show the comparative cost of such a scheme across jurisdictions. The final column, cost per claim, is not representative of how much each client will receive in support payments, but is included to show the relative expense of each jurisdiction.

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

Jurisdiction	Annual additional number of claims	Cost per claim (million in 2013 dollars)
Queensland ⁽¹⁾	70	2.6
Western Australia ⁽²⁾	44	4

Sources: (1) Revised actuarial estimates provided by Queensland Government in a submission to the Consultation RIS. (2) Updated actuarial estimates provided by the Insurance Commission of Western Australian.

Note: this represents the annual additional number of claims. These are only the people injured that could not previously access support, not the total number of catastrophic injuries. For further details see Appendix B.

Table 4 shows what Option 1 would cost in additional lifetime care and support payments over the ten years starting July 2014. This table is calculated using a similar approach taken for Table 1 in the base case. This assumes that from July 2014, all catastrophically injured people will be receiving lifetime care and support payments. This will result in a higher cost than the base case, but it means that support is getting to those who need it earlier rather than waiting for the full roll out of the NDIS. Table 4 also includes people who are aged 65 or over when they are injured.

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

Table 4 also includes a calculation of the additional costs compared to the base case. The key drivers of this additional cost are the inclusion of people aged 65 or over, and the different implementation dates.

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

Jurisdiction⁽³⁾	Estimate of additional costs (per annum)	10 year net present value (July 2014 – July 2024)	Additional cost to base case (as shown in Table 1)
Queensland	\$293,000,000	\$2,057,909,391	\$1,221,915,086
Western Australia	\$223,000,000	\$1,566,258,684	\$929,989,980
Tasmania ⁽¹⁾	\$7,625,000	\$53,554,809	\$31,932,730
Northern Territory	-	(2)	
Total		\$3,677,722,884	\$2,183,837,795

Source: Estimates provided by jurisdictions (Queensland and Tasmanian Governments, Insurance Commission of Western Australia) The net present value calculation used a discount rate of 7 per cent.

Note: (1) MAIB has advised that the cost of removing the Tasmanian exclusions would be between \$7.07 and \$8.18 million a year (current prices) (2) The Northern Territory is now very close to the minimum benchmarks and there is no available data to put a net present value on. (3) Unlike the base case, this cost does not directly fall on the jurisdiction's government but would be gathered through CTP levies in that jurisdiction. For further consideration of funding mechanisms, see section 5.5.

Option 1 could lead to fewer people choosing to litigate in the courts because they would recognise that they could receive more timely and adequate care and support through the NIIS and may not see the need to also litigate.

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

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

One submission to the Consultation RIS suggests that evidence for existing no-fault jurisdictions shows that individual schemes can facilitate capacity building in specialist rehabilitation and transitions across the whole continuum of care.⁶⁹ Access to specific expertise in brain injury rehabilitation has been shown to improve long term outcomes, decreases care needs and has the potential to significantly reduce long term care costs.⁷⁰ It

⁶⁹ Submission to the Consultation RIS from QBISM.

⁷⁰ Turner-Stokes, L. (2008). Evidence for the effectiveness of multi-disciplinary rehabilitation following acquired brain injury: a synthesis of two systematic approaches. *Journal of Rehabilitation Medicine*, 40(9), 691-701. Quoted in the QBISM submission to

has been recognised that the lack of this specialised care can be a strain on, and even ‘block’ other systems, such as hospitals and aged care.⁷¹

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

5.2.3 *Non-government and private sector*

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

During the Productivity Commission submissions, a concern was expressed that the NIIS should not ‘crowd out’ private insurers but work with private providers.⁷² The Insurance Council of Australia, in their submission, discussed five possible models for the party that provides the insurance under the NIIS, each with their own potential risks and benefits.⁷³

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

the Consultation RIS. Similar issues were raised in the submission to the Consultation RIS from Young People in Nursing Homes National Alliance.

⁷¹ Queensland Office of the Public Advocate (2013), ‘People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation’, available at <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T3974.pdf>.

⁷² Insurance Council of Australia (2011) *Productivity Commission Inquiry into Disability Care and Support - Insurance Council’s Submission to the Draft Report*, available at http://www.pc.gov.au/data/assets/pdf_file/0016/110257/subdr0986.pdf.

⁷³ Ibid.

It is acknowledged that providing insurance for catastrophic injury can be very capital intensive. This may mean that private insurers may not wish to underwrite such a scheme, given prudential requirements, and that they may not be as efficient as a government underwriter.⁷⁴ However, as mentioned above, even in a government underwritten scheme, there may be scope for private insurers to provide other services, like claims management.

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

It is also possible that jurisdictions may choose to use this flexibility and pool their CTP insurance to achieve economies of scale and reduce premiums by widening the range of policyholders. However, this does not seem likely in the current environment as governments are likely to remain the underwriters for schemes that cover catastrophic injuries.⁷⁵ Government underwriting was the recommended approach in a submission to the Consultation RIS from the Suncorp Group, as prudential requirements on private underwriters would make the premiums prohibitive. Submissions also noted that experience of privatisation in New Zealand affected financial viability and government underwriting had to be reinstated.⁷⁶ Also, widening the range of policy holders may lead to residents of some jurisdictions subsidising the premiums of those in others. As such, even if economies of scale in administration are sought (as may happen with the ACT buying in to the NSW scheme), the premiums are likely to remain separately priced.

With all catastrophically-injured people receiving adequate support, providers of care and support services will need to meet increased demand in fault-based jurisdictions. However, in the context of the roll out of the NDIS, catastrophic motor vehicle accidents will comprise a very small proportion of supported individuals. It was suggested in one submission that there would be an administrative cost to providers if another new scheme was added that they need to understand and comply with, especially if it will not cover a large amount of people.⁷⁷

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

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

- allows Tasmania and the Northern Territory to keep their particular policies of eligibility to their schemes should they wish
- allows for flexibility about eligibility policies

⁷⁴ Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf).

⁷⁵ Based on the evidence that the existing catastrophic lifetime care and support schemes in New South Wales and South Australia are government underwritten and that insurance provider advice suggests this is the best option (Suncorp Group (2012) *What scheme works when people get hurt? Reflections on underwriting options for personal injury insurance*, available at [http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/\\$FILE/002%20Suncorp%20Group.pdf](http://www.parliament.nsw.gov.au/Prod/Parlament/committee.nsf/0/f28ec1aa29485b5fca257c1a00823d14/$FILE/002%20Suncorp%20Group.pdf)).

⁷⁶ Submission to the Consultation RIS by Quarterly Brain Injury Services Meeting.

⁷⁷ Submission to the Consultation RIS by Australian Orthotic Prosthetic Association.

- allows access to an administrative body if the jurisdiction believes it would be more efficient than setting up their own.

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

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

However, these benefits only apply to jurisdictions that implement a no-fault scheme. Where a State or Territory chooses to only pay the costs of NIIS clients in the NDIS, these benefits are not realised. This is particularly true for rehabilitation, as this is not covered in the NDIS, and the ability to draw on the existing no-fault structures. Also, the reliance on the NDIS in this option means that there is capacity for people aged 65 or over to be excluded, as under the base case.

5.3.1 *Individuals and households*

Every person under 65 who has lifetime care and support needs will receive them (though the availability of medical and rehabilitation costs will vary). Further any person who is aged 65 or over but sought lifetime care and support before they were 65 years old can choose to continue receiving that care and support. Some injured people will receive this support through no-fault schemes, and some will receive it through the NDIS. Both these systems of support will be based on ongoing personalised needs and will be under a scheme set up to be adequate and certain for life. However, individuals receiving support under the NDIS will not receive the same payments for rehabilitation and medical treatment which is offered by the NIIS and not the NDIS, as in the base case. The true cost of an accident includes these medical and rehabilitation costs, therefore individuals will either have to pay these costs themselves, rely on jurisdiction funded health systems or not access these early support services to the detriment of their long term outcomes. It should also be noted that individuals relying on the NDIS will have to wait until the NDIS rolls out in their jurisdiction to be able to access support and individuals not eligible for jurisdictional schemes cannot enter the NDIS if they are aged 65 or over at the time of their accident.

It was suggested in submissions that increased complexity or uncertainty about which scheme an individual is in under this option may create delay and restrict the timeliness of services.⁷⁸ However, this will depend on how each individual scheme is run, and there are some existing mechanisms to counteract these issues, such as automatically included injured people on a short term basis while the extent of their injury is still being assessed.

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

⁷⁸ Submission to the Consultation RIS by Australian Orthotic Prosthetic Association.

5.3.2 *Governments*

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

However there are a few factors that may reduce the costs compared to Option 1. This is because the jurisdictions have more time to implement the option. Whilst the jurisdictions who do not meet the benchmarks will have to pay the gap filled by the NDIS, there is no deadline for meeting the benchmarks. These jurisdictions can rely on the NDIS and pay for the difference for the foreseeable future, take time to develop their policy and change their scheme as geographically specific circumstances change. Costs are generally reduced if there is extra time to implement as it allows more opportunities to plan for and spread out costs over time.⁷⁹ However, during this time where a jurisdiction may choose to delay, the jurisdiction will incur the long term liabilities of additional NDIS payments for a catastrophically injured person who enters the NDIS because that jurisdiction's scheme does not cover them.

The flexibility option 2 brings allows each jurisdiction to assess risks particular to their jurisdiction and address particular policy concerns and decide not to fully implement the minimum benchmarks if they feel that certain exclusions are necessary to maintain the integrity of existing motor accident schemes. Jurisdictions being able to influence their own policy can help reduce risk and in the long run lower costs if fewer people are getting injured. Jurisdictions can influence the rate of unlawful behaviour through a variety of mechanisms including social marketing, policing strategies and criminal prosecution. Those mechanisms sit outside of injury compensation and are available in the base case and all options. However, the flexibility of Option 2 allows disincentives to unlawful behaviour to be built in to the compensation scheme. For example, Tasmania provides incentives to drive safely and within the law by maintaining exclusions to entry to the scheme (at a different level to the minimum benchmarks) for claimants who were injured while they were committing a serious traffic offence. This also ensures that law-abiding motorists are not required to pay increased premiums to fund the lifetime care and support of individuals who are catastrophically injured while engaging in certain criminal conduct. This also means that these jurisdictions will not have to set up an administrative agency if they choose not to, they can essentially pay to outsource this function to the NDIA. This would be done if, in the assessment of the jurisdiction, it would be easier and less costly to do so and they do not wish to cover medical and rehabilitation costs or people injured when they are aged 65 or over outside of the public health system.

As with the base case, those injured individuals supported through the NDIS and not the NIIS will not have their medical and rehabilitation costs covered. As such, these costs will either fall on the individual's personal resources, or more likely, State and Territory funded public health systems. Also, people aged 65 or over who are not eligible for jurisdictional schemes will have to be supported by publically funded health and aged care services.

Also as with the base case, there is capacity under this option to have an issue with compensation through two mechanisms where an individual receives lump sum common law compensation, this may not last their full lifetime (as discussed in Chapter 2) either through

⁷⁹ Costs of setting up an administrative body can be delayed. However, in the converse the State or Territory that delays meeting the minimum benchmarks will start incurring the long term liability of funding the NDIS costs for individuals catastrophically injured in motor vehicle accidents in the interim.

general inadequacy or mismanagement. This person then may seek NDIS support, despite already having received an amount of funds for care and support.⁸⁰

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

5.3.3 Non-government and private sector

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

5.4 Summary impact

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

As discussed in section 4.3, the practical differences between the base case and Option 2 will depend on how the jurisdictions utilise the flexibility that Option 2 gives them. If no action is taken, it will represent the base case, but any action represents a move towards Option 1.

⁸⁰ It should be noted that the NDIA does have some capacity to recover some compensation amounts against NDIS payments made in the past (see *NDIS Operational Guideline* available at but it is unlikely a judgement or settlement will exclude NDIS payments being made in the future.

Table 5: Impact summary

	Base case	Option 1	Option 2
Injured individuals under 65	Support will depend on in which jurisdiction the injury occurred (and therefore which scheme an individual is in). Those relying on the NDIS may have to wait for roll out in their jurisdiction and will not receive the same medical and rehabilitation cover.	Fully supported from 1 July 2014, regardless of jurisdiction.	Support will depend on in which jurisdiction the injury occurred (and therefore which scheme an individual is in). Those relying on the NDIS may have to wait for roll out in their jurisdiction, and will not receive the same medical and rehabilitation cover.
Injured individuals aged 65 or over	Support will depend on which jurisdiction (and therefore which scheme) an individual is in. However, will not be able to rely on NDIS to fill any gaps.	Fully supported from 1 July 2014, regardless of jurisdiction.	Support will depend on which jurisdiction (and therefore which scheme) an individual is in. However, will not be able to rely on NDIS to fill any gaps.
Service providers	Must meet demand of supported individuals (full coverage from 2019)	Must meet demand of supported individuals (full coverage from 2014)	Must meet demand of supported individuals (full coverage from 2019)
New South Wales	Supports injured individuals to at least the level of the minimum benchmarks		
Victoria	Supports injured individuals to at least the level of the minimum benchmarks		
South Australia	Supports injured individuals to minimum benchmarks		
Tasmania	Supports most injured individuals and contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring some change to the local scheme	Supports most injured individuals which requires no change to local scheme and contributes additional funding to NDIS on an as needed basis
Northern Territory	Supports most injured individuals and contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring some change to the local scheme	Supports most injured individuals which requires no change to local scheme and contributes additional funding to NDIS on an as needed basis
Western Australia	Does not give no-fault support but contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring considerable change to the local scheme	Can choose to support injured individuals to any level and contributes additional funding to NDIS on an as needed basis
Queensland	Does not give no-fault support but contributes additional funding to NDIS	Supports injured individuals to minimum benchmarks requiring considerable change to the local scheme	Can choose to support injured individuals to any level and contributes additional funding to NDIS on an as needed basis
Australian Capital Territory	Supports injured individuals to minimum benchmarks		
Commonwealth	Additional contribution to the NDIS	No additional contribution to the NDIS as it no longer includes motor vehicle accident injuries	No additional contribution to the NDIS as jurisdictions fully cover the NDIS costs of their own injured individuals
Insurance providers	Offer insurance as previously	Possible cost or lost business due to product changes	Possible cost or lost business due to product changes
Individuals and community	Individuals pay CTP and income tax including the Medicare levy, part of which goes to support catastrophic accidents. Possible other taxation supports jurisdictional NDIS contributions	Individuals pay the same or increased CTP depending on jurisdiction. No part of Medicare levy supports new cases of catastrophic motor accident injuries.	Individuals pay the same or increased CTP depending on jurisdiction. No part of Medicare levy supports motor accidents. Possible other jurisdiction based taxation supports jurisdictional NDIS contributions

5.5 Transfers and net impact

The previous section considered the costs and benefits of the options. From a cost-benefit analysis perspective, some of the key impacts represent a transfer of resources or redistribution between two groups in society.⁸¹ Transfers can only be regarded as enhancing community wellbeing if a decision is made that one group derives more value from the resources than the other.⁸²

In regard to the NIIS for motor vehicle accidents, the main example of a transfer is lifetime care and support payments. These lifetime care and support costs are funded through a CTP levy on motor vehicle users (NIIS), or from government revenue ultimately provided by taxpayers (NDIS) and the redistribution to the community represents a transfer. While the budgetary costs of lifetime care and support have been estimated, the economic net benefit is assumed to be zero.

However, there are also economic impacts from the way these funds are collected that may impact on community wellbeing and are relevant to the overall assessment of the net impact of the options.

- A CTP levy under Option 1 represents the ‘full cost’ of certain risks associated with driving, essentially internalising what was an externality. It is imposed only on those seeking to engage in that activity. The Productivity Commission noted that ‘if premiums force a driver to take greater account of the costs associated with their unsafe driving, choice of vehicle type, or other aspects of transport use that are within an individual’s control, injuries can be reduced’.⁸³
- Option 2 potentially funds the NDIS from state government revenue. State government taxes can have a range of distortionary impacts depending on the tax mix. For example, taxes on transactions like stamp duty can stifle deals that would have brought economic benefits to all the parties involved – businesses or households – as well as to the community. On the other hand, taxes on immovable resources – such as land tax – have low economic costs.
- The NIIS is fully funded, which means the amount collected each year is equal to the present value of all the injuries from that year. Comparatively, the NDIS is a ‘pay as you go’ system, which means the amount collected each year is the amount needed to be paid in supports that year. This means that Option 1 has no transfers between generations, with drivers only paying for the years they are on the road. Whereas in Option 2, catastrophically injured people under the NDIS could be paid for by later generations of taxpayers to continue support over a lifetime of the injured people.

Other impacts that will have an effect on community wellbeing relate to the quality, coverage and timing of care (essentially controlling who has access to the benefits of the lifetime care and support payments), as well as the relative efficiencies of running the different schemes. These are shown at a high level in Table 6 and discussed in more detail below. Overall, Option 1 is likely to generate the highest benefits with least distortion, although Option 2 also represents an improvement over the base case. Option 2 could involve jurisdictions largely implementing the benchmarks but reimbursing the NDIA for any costs that flow from

⁸¹ C R Sunstein, ‘The Cost-Benefit State: The Future of Regulatory Protection’, *Section of Administrative Law and Regulatory Practice*, American Bar Association, USA, 2002, p190.

⁸² Victorian Competition and Efficiency Commission, *Adjusting the Balance: Inquiry into Aspects of the Wrongs Act 1958*, draft report, Victoria, November 2013, p5.

⁸³ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 865, referencing Edlin and Karaca-Mandic 2006.

specific exclusions to the benchmarks. This would represent a significant improvement over the base case.

Table 6: Impacts affecting community wellbeing

	Base case (NDIS)	Option 1 (NIIS)	Option 2 (NDIS and NIIS)
Funding source	State government revenue (less efficient)	Levy imposed on CTP (more efficient)	State government revenue and CTP levy
Care	Lifetime care and support but no rehabilitation or medical costs	Lifetime care and support including rehabilitation and medical costs	Lifetime care and support for all, with some individuals receiving rehabilitation and medical costs
Coverage	People under 65	All catastrophic injuries	All people under 65 Possibly some people aged 65 or over
Timing	Full roll out 1 July 2019	Implementation assumed to occur on 1 July 2014	Full roll out of NDIS 1 July 2019 Possible implementation earlier in some jurisdictions
Litigation	Small reduction in legal costs	More sizeable reduction in legal costs	Small reduction in legal costs (but potentially greater than under base case)

5.5.1 Care

The base case has no medical or rehabilitation costs covered. Option 1 covers these costs for all injured people. Option 2 allows jurisdictions to set their eligibility for the local schemes, so some people will be in those and have their medical and rehabilitation costs covered, and some will be in the NDIS and not have them covered.

Including medical and rehabilitation costs has several key benefits:

- it allows for the development of specialist services (as highlighted in the previous chapter and emphasised by many health organisations in their submissions to the Consultation RIS)
- having funding available for these early costs encourages participants to incur them and lack of delay may lead to better outcomes

- it allows premium setting to 'take into account the full 'external costs' of catastrophic injuries, and not only those associated with lifetime care and support (an issue that does not apply to the NDIS)'.⁸⁴

Victorian TAC statistics shown in the Productivity Commission report show that, in the first two years after an accident, costs other than long term care makes up the majority of costs for major injury clients. Together, hospital, medical and paramedical costs makes up almost 100 per cent of the first year costs and approximately 80 per cent of second year costs.⁸⁵

5.5.2 Coverage

Any reliance on the NDIS may mean that some people with catastrophic injury who are aged 65 or over at the time of their accident may be excluded from accessing any lifetime care and support.

5.5.3 Timing

Similarly, any reliance on the NDIS means a delay in coverage to wait for it to roll out in each jurisdiction. This would be 2019-20 for full coverage in Queensland and Western Australia (although coverage may start incrementally from 2016).

This delay means that for five years some people will continue to be catastrophically injured and will not be able to access either no-fault lifetime care and support or the NDIS (apart from in the trial sites). The amount of people catastrophically injured in this interim who will not be eligible for common law damages is 350 in Queensland and 220 in Western Australia and possibly a small number in Tasmania and the Northern Territory.

5.5.4 Litigation

According to the Productivity Commission, in a pure no fault scheme, legal costs should be theoretically zero, however, none of the options represent a pure no fault scheme. There are a few key areas where common law rights will remain and legal activity is expected to be maintained at some rate.⁸⁶

- People with catastrophic injuries retain common law rights for other heads of damage that the NIIS will not cover, such as pain and suffering and loss of income.
- People who enter the NDIS if their jurisdiction has a fault based system will retain all common law rights.

Additionally, because the NIIS for motor vehicle accidents has eligibility benchmarks and 'necessary and reasonable' benchmarks, there will inevitably be disputes around the margins of these. Current schemes have an internal mechanism for settling these disputes, which would generally not involve legal representation, however, some do allow for appeal to administrative tribunals (as does now the NDIS allow appeals to the Administrative Appeals Tribunal), which may involve legal costs for the participant and the authority. Legal costs of the authority are part of administration (considered above), but the legal costs of the participant may be an economic impact. Though many tribunals are more informal than courts and do not require legal representation, an individual may choose to engage legal services from their own resources, or if they are particularly vulnerable, legal aid or other services may be provided to them, at a cost to of all society. However, there is no data to quantify these legal costs.

⁸⁴ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 47.

⁸⁵ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 795.

⁸⁶ Additional to those situations listed, non-catastrophic injury common law will continue to be litigated.

Legal costs are difficult to quantify with certainty, because of confidentiality, lack of data and variety between cases. The Productivity Commission did not come to a conclusion of total existing legal fees in its report, and included a section titled 'there is scant evidence on the size of legal fees and charges'.⁸⁷

5.5.5 Administrative burden

New South Wales, Victoria, South Australia and the Australian Capital Territory are either already taken to meet the minimum benchmarks or have taken actions that will ensure they are compliant with the benchmarks by 1 July 2014. Tasmania and the Northern Territory either largely comply with the minimum benchmarks or have taken actions that will ensure that they will largely comply with the minimum benchmarks by 1 July 2014. As such, there will be no regulatory burden for insurers in these jurisdictions. Western Australian CTP insurance is provided by the Insurance Commission of Western Australia, which is a monopoly statutory authority and thus any regulatory administrative burden will not be imposed on a business, community organisation or individual and so does not fit within the regulatory burden measurement framework. The regulatory burden in Queensland will depend on the response it takes after undertaking its own analysis and consultation with the people of Queensland prior to Parliament making a decision on the extent to which, if at all, its CTP scheme is modified to meet the NIIS minimum benchmarks. At least up to this time, there will be no regulatory burden for insurers in Queensland.

⁸⁷ Productivity Commission (2011) *Disability Care and Support Inquiry Report*, page 915.

6 Consultation

6.1 Previous consultation

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

6.1.1 Productivity Commission

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

- South Australian Government⁸⁸
- Western Australian Government⁸⁹
- Motor Accidents Insurance Board (Tasmania)⁹⁰
- Tasmanian Government⁹¹
- Australian Local Government Association⁹²
- New South Wales Government⁹³
- Victorian Government⁹⁴
- Australian Capital Territory Government⁹⁵

⁸⁸ South Australian Government (2011) *SA Government Response to the Productivity Commission Disability Care and Support Draft Report*, available at http://www.pc.gov.au/data/assets/pdf_file/0005/109445/subdr0861.pdf.

⁸⁹ Western Australian Government (2011) *Western Australian Government Submission: Productivity Commission Inquiry on the draft report into disability care and support*, available at http://www.pc.gov.au/data/assets/pdf_file/0007/108349/subdr0683.pdf.

⁹⁰ Motor Accident Insurance Board Tasmania (2011) *Submission to the Productivity Commission*, available at http://www.pc.gov.au/data/assets/pdf_file/0015/109311/subdr0687.pdf.

⁹¹ Tasmanian Government (2011) *Draft Report on Disability Care and Support: the Tasmanian Government's Submission to the Productivity Commission*, available at http://www.pc.gov.au/data/assets/pdf_file/0014/110381/subdr1032.pdf

⁹² Australian Local Government Association (2011) *Response of the Australian Local Government Association to the Disability Support and Care report*, available at http://www.pc.gov.au/data/assets/pdf_file/0019/109450/subdr0864.pdf.

⁹³ NSW Government (2011) *NSW Government Response to the Draft Report on Disability Care and Support*, available at http://www.pc.gov.au/data/assets/pdf_file/0007/109852/subdr0922.pdf.

⁹⁴ Victorian Government (2011) *Victorian Government Submission in response to the Productivity Commission's draft report on disability care and support*, available at http://www.pc.gov.au/data/assets/pdf_file/0019/110278/subdr0996.pdf.

- Queensland Government ⁹⁶
- Various Australian Law Councils and Associations
- Insurance Council of Australia.

6.1.2 *Advisory Group*

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

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

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

6.1.3 *Senior Officials*

State and Territory governments are key stakeholders in this area. They have been involved in the development of policy through the NIIS Senior Officials group.

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

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

The States and Territories contributed to the Consultation RIS, including through making submission and were involved in the preparation of this Decision RIS.

6.1.4 *Consultations undertaken by the States and Territories*

As each State and Territory has looked towards the implementation of the NIIS, they have engaged in consultation with stakeholders. For example, South Australia released a green paper of their CTP scheme for public comment.⁹⁷

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

⁹⁵ ACT Government (2011) *ACT Government Submission*, available at http://www.pc.gov.au/data/assets/pdf_file/0010/110332/subdr1012.pdf.

⁹⁶ Queensland Government (2011) *Queensland Government Submission to the Productivity Commission's draft report: Disability Care and Support*, available at http://www.pc.gov.au/data/assets/pdf_file/0003/110379/subdr1031.pdf.

⁹⁷ South Australian Government (2012) *South Australia's Compulsory Third Party Insurance Scheme 2012 Green Paper*, available at http://www.treasury.sa.gov.au/CTPgreenpaper/from_the_treasurer.htm.

6.2 Consultation for this RIS

Consultation RIS was issued for public consultation on the NIIS for motor vehicle accidents. It was available for public comment on the Commonwealth Treasury website from 16 April 2014 to 23 May 2014. Submissions were received over this period and for two weeks after the deadline due to an additional number of parties wishing to contribute. The objective of this consultation was to collect stakeholder feedback about the analysis that underpinned the Consultation RIS, particularly the impact analysis.

Additionally, because the RIS was prepared on behalf of the Council on Federal Financial Relations, all State and Territory Governments read the Consultation RIS in its draft form and provided comments and additional data where possible.

6.2.1 Summary of submissions received

The views and data from the public submissions have been incorporated in to the analysis in this Decision RIS where applicable and noted when they are outside the purview of this paper. Where submissions are mentioned in the previous chapters of this RIS, they have been referenced with the party they were received from.

Submissions were received from the following. The themes of their submissions are summarised below but the full submissions are available for public viewing on the Commonwealth Treasury website.⁹⁸

- **Australian Orthotic Prosthetic Association (AOPA).** AOPA supports Option 1, although finding the minimum benchmarks to be not reasonable or appropriate (as discussed above in section 4.2). The AOPA submission highlighted the issues with using the NDIS as a safety net with regard to rehabilitative care, people aged 65 or over and the delay until 2019 and agreed that lump sums are inherently risky as they rely on prediction in a 'constantly changing healthcare and technological environment'. AOPA also recommended that other transport accidents, including trains and trams should be included in the benchmarks. AOPA noted that such a small scheme may fragment the health care system.
- **Avant.** Avant's submission focused on scheme design, particularly how the design would apply should it be extended to medical accidents. As such the submission did not assess the specific motor vehicle issues considered in this RIS. Avant recommended using the NDIS over the introduction of dual schemes, particularly with regard to medical accidents, to harness economies of scale and ensure national consistency.
- **Cerebral Palsy League of Queensland (CPL).** CPL highlighted the need for consideration of people aged 65 or over in the analysis and stated a clear preference for Option 1 because of its inclusion of people aged 65 or over and as it does not rely on 'already overloaded State health systems'.
- **Law Institute of Victoria (LIV).** LIV notes that while a no-fault scheme is important for people who sustain catastrophic injury in non-compensable circumstances, their submission does not support a scheme that erodes common law rights. The submission highlights, through case examples, the ability for costly disputation to occur within a no-fault scheme and for scheme administration to diminish self-direction of care.

⁹⁸ See <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/National-Injury-Insurance-Scheme-Motor-Vehicle-Accidents/Submissions>.

- **Limbs 4 Life.** Limbs 4 Life do not support the base case or any reliance on the NDIS. As discussed above, Limbs 4 Life highlighted the gaps in coverage for people aged 65 or over and suggested that the limitations of minimum benchmarks also leave a gap for a large proportion of people impacted by amputation. Limbs 4 Life highlights that specifically for people impacted by amputation, lump sum payments do not necessarily allow for future advancements in technology. Limbs 4 Life also compared the experience for participants in existing jurisdictional models and stated a preference for 'a sustainable model such as the TAC in Victoria'.
- **MS Queensland.** MS Queensland's submission states the importance of the NIIS in removing cost burden from the NDIS and the public health system and disability services and highlights the lack of coverage for people aged 65 or over. MS Queensland believes the need for the NIIS has not been promoted and Australians generally believe appropriate care would be provided should they ever need it.
- **National Rural Health Alliance (NRHA).** The NRHA submission focuses on the situation of people living in rural and remote Australia who suffer a catastrophic injury, particularly the lack of geographically spread specialist services. The submission consists of a composition of previous works considering these issues in the context of the NDIS.
- **Quarterly Brain Injury Services Meeting Group (QBISM).** QBIS supports Option 1 in their submission, citing the additional benefits of additional quality of life impacts, capability for capacity building in specialist services, risk mitigation strategies able to decrease incidents of accidents and the importance of early intervention services.
- **Queensland Government.** The Queensland Government submission restated its commitment under the Heads of Agreement for the NDIS full scheme to ensure people with catastrophic injury receive reasonable and necessary lifetime care and support and its agreement in principle to the minimum benchmarks. As part of the Queensland Government's ongoing investigation in to the feasibility of extending its CTP scheme it has independent actuarial advice from 2012 that the CTP premium increase would be \$81 per registered vehicle on a basis of 141 injuries per year and the Government plans to update these estimates. The Queensland Government supports Option 2 as consistent with current commitments and as it allows the Queensland Government to 'undertake its own analysis and consultation with the people of Queensland' prior to modifying the CTP scheme.
- **Queensland Law Society and the Law Council of Australia.** This joint submission supports the base case and Option 2 on the basis that the common law is the 'most efficient and cost-effective means of determining compensation for injury' and that a single scheme, the NDIS, would be more effective to administer all cases, allowing for costs to be recovered from common law claims. The submission asserts that a uniform approach across a network of jurisdictional schemes is unlikely to be feasible due to a wide range of factors that differ between jurisdictions including existing support arrangements, population, geographic challenges, infrastructure and workforce, and budget and economic capacities. The submission is of the strong opinion that no common law entitlements should be lost and recommended the consideration of an option that allows an individual to choose between common law rights and no-fault care. As discussed above, the submission disputes the assertions made about the failings of the common law.
- **Queenslanders with Disability Network (QDN).** QDN recommends Option 1, with its opportunities for early intervention, inclusion of medical and rehabilitation costs and inclusion of people aged 65 or over. QDN notes that 'people with disability, and indeed all Australians, are tired of systems that dictate random outcomes on the basis of state jurisdiction laws'.

- **Spinal Injuries Australia.** Spinal Injuries Australia supports Option 1 in their submission, highlighting the coverage of people aged 65 or over, expansion of rehabilitation capacity and no cost imposition on 'already overloaded State health systems'.
- **Suncorp Group.** Suncorp supports Option 1 as the superior option and recommends that the NSW scheme is 'an excellent model to roll out nationally'. Suncorp states the benefits of Option 1 are the medical and rehabilitation cover, fewer delays, early intervention leading to better outcomes, removal of incentives to delay recovery and increased social and economic participation for injured individuals and their carers. Suncorp also highlights Australia's economic challenges and the context that places on the development of injury compensation policy and sets out guiding principles for scheme design.
- **Young People in Nursing Homes National Alliance (YPINH).** YPINH supports the statement of the problem, noting that in addition, current gaps in services mean that young people, especially those with Acquired Brain Injury can be forced to reside in residential aged care services. YPINH believes that Option 2 falls short of what is required to solve that statement problem and jurisdictions should not be allowed flexibility as to the level of implementation of no-fault schemes. YPINH recommends that jurisdictions who choose to rely on the NDIS should be 'liable for full cost recovery by the NDIS for their infrastructure and staff costs as well as the cost of a care package'.

6.2.2 *How this feedback is reflected in the Decision RIS*

The most common comment on the impact analysis made through submissions was that the Consultation RIS failed to deal with the special case of people aged 65 or over and their exclusion from the NDIS. To address this, this Decision RIS has added this qualitatively in the discussion throughout the paper, but has also attempted to quantify the impact of the costs (see Appendix B for analysis of the distribution of costs across ages) and include this in the impact comparison between the options.

Submissions were also specifically taken in to account in coming to a conclusion on the recommended option. Option 1 was preferred by the most submissions. However, the submission of the Queensland Government was particularly relevant when acknowledging the benefits of Option 2.

The treatment of the common law in the Consultation RIS was an area of disagreement, particularly in the submission from the Law Institute of Victoria and the joint submission from the Queensland Law Society and the Law Council of Australia. Acknowledgement of these views has been made in the statement of the nature of the problem in section 2.3 and more attention has been given to the consideration of legal costs in section 5.5. Ultimately, this RIS accords with the Productivity Commission's conceptualisation of these issues.

Another issue that came from the submissions is that of the appropriateness of the minimum benchmarks, which is discussed in section 4.2, but is not within the scope of the analysis of options in this RIS. Similarly, some submissions discussed other parts of the proposed NIIS, including medical accidents, which is not part of the decision being considered in this paper.

More minor submission comments were included qualitatively wherever possible and can be seen in the previous chapters. This includes additional objectives suggested by stakeholders.

7 Conclusion

Section 5.5 of this Decision RIS discussed the likely impacts of the options on different parties. This section identifies the option with the largest net benefit. The net benefit takes into account changes in economic impacts and other impacts that affect community wellbeing (but no budgetary impacts).

Based on the analysis in the preceding chapters, and taking into consideration views put in submissions provided in response to the Consultation RIS, the Decision RIS concludes that Option 1 theoretically generates higher net benefits and the best outcomes for individuals who are catastrophically injured in motor vehicle accidents. However, some jurisdictions are in the process of considering whether and how to implement the NIIS through consultations with the public and consideration of the financial implications to ensure that their decisions on the policy are appropriate for their jurisdictions. Option 2 is meritorious to the extent that it allows jurisdictions to choose to reimburse the NDIS if they identify a strong policy rationale to maintain minor exclusions to the minimum benchmarks.

All options provide lifetime care and support to most or all individuals catastrophically injured in motor vehicle accidents. The differences relate to the types of support covered, who is able to access that support, and when.

Overall, Option 1 best meets the objectives set out in Chapter 3, in so far that the NIIS:

- provides certainty and equality of access by extending coverage to all catastrophically injured people regardless of age or place of injury – the base case and Option 2 to varying degrees may exclude people aged 65 or over from accessing certain support
- provides quality of access by covering medical and rehabilitation services to facilitate better long term outcomes
- is timely, in that it provides support sooner than the other options – the assumption is that the NIIS for motor vehicle injuries commences nationally on 1 July 2014 to account for the fact that it does not need to rely on the roll out time frame of the NDIS
- sees the greatest reduction in legal costs - in the base case (and to a lesser extent Option 2), the NDIA may require individuals receiving support through the NDIS to go through the court systems to recoup the costs of support, and people excluded from the NDIS because they are aged 65 or over will still have to rely on the common law
- does not involve any cross-subsidisation, unlike the base case
- is funded through a more efficient mechanism (CTP premiums)
- ensures financial sustainability through fully funding, rather than pay as you go, and avoids intergenerational transfers.

The conclusion is that Option 1 is theoretically likely to generate higher net benefits because the motor vehicle NIIS benchmarks offer additional benefits to reliance just on the NDIS (in terms of age coverage, medical treatment and rehabilitation services). This means that both options are superior to the base case because any move by the fault based systems to implement the motor vehicle NIIS benchmarks before the NDIS rolls out will have a range of benefits. Option 1 will result in this being done sooner and so has higher benefits. However, Option 2 does share many of the same benefits because it is also based on moving towards the minimum benchmarks.

Conclusion

The Queensland Government has argued that Option 1 (based on a commencement date of 1 July 2014) is not feasible as it will take longer to work out whether to implement any form of the NIIS for motor vehicle accidents. Option 2 recognises this and acknowledges jurisdictions will need time to consult and work out whether to meet the benchmarks themselves or pay the NDIS to provide coverage.

8 Implementation and review

8.1 Implementation

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

8.2 Review

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

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

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

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

(beyond no-fault arrangements for care and support) would desirably be tested in a much more focused inquiry, hence the proposed 2020 review.⁹⁹

In addition to this review of the full system, it has also been proposed that each 5 years, a review be undertaken to assess each jurisdiction's financial burden in relation to liability for services provided to non-residents, and any net transfers between jurisdictions.¹⁰⁰ This will address any possible issues of inequity between the jurisdictions, as it is possible for them to exceed minimum benchmarks and provide support to non-residents (who were, for example, injured in an accident in their jurisdiction, or by a car registered in their jurisdiction).

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

- number of entrants to each scheme and their characteristics
- classification of injuries of entrants
- average cost of support of scheme entrants
- average cost of care in each jurisdiction
- amount of care per claim overall and by injury classifications.¹⁰¹

⁹⁹ Productivity Commission (2011) *Disability Care and Support Inquiry Report*.

¹⁰⁰ <http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents>

¹⁰¹ *Ibid.*

Appendix A State and Territory motor vehicle accident compensation systems

New South Wales

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

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

Victoria

In 1986, the Victorian Parliament passed the *Transport Accident Act 1986* establishing the Transport Accident Commission (TAC) from 1 January 1987. The purpose of the Act was to establish a compensation scheme 'in respect of persons who are injured or die as a result of transport accidents'. The TAC is a state owned enterprise of the Victorian Government. It operates as a commercial insurer and is funded both by premiums and investment income generated on reserves. The scheme provides no-fault benefits including for lifetime care and support for people who are catastrophically injured. The scheme also includes temporary income assistance for the moderately injured and capped loss of earning capacity payments until retirement age for those with catastrophic injuries.

The scheme also allows injured parties to pursue damages for pain and suffering and future economic loss through common law actions. These claims still require an identifiable at-fault party. However, there is a threshold to access common law claims, that the injury must result in an impairment of 30 per cent or more, or the claimant must be granted a Serious Injury Certificate from the TAC. If an injured individual is not granted this certificate, they can apply to the court to get access to common law actions. However, this is likely to require the individual to engage their own legal representation.

The common law concept of fault is still retained in that TAC can recover some funds from at fault parties. For the most part, fault will be covered by the CTP premiums paid, but if the at-fault party was convicted of a serious indictable offence or an offence for driving under the influence, TAC can pursue a recovery against the at-fault party of the compensation the TAC has paid through the common law. In this situation TAC takes the role of the plaintiff lawyer, and so the legal costs involved (at least from the plaintiff's side) are absorbed within the operating or administration costs of TAC.

Tasmania

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

of compulsory third party (CTP) motor accident compensation to eligible people who have been injured in a motor accident.

Tasmania's no-fault system provides benefits including for lifetime care and support, subject to acts of illegality. For these acts of illegality, if the at-fault party is injured themselves, they may not be able to claim benefits, and if the other party is injured, MAIB can recover payments from the at-fault party using the common law. If a party is at fault but did not commit one of the specified offences, they are indemnified by their insurance premium.

Common law rights are retained for other heads of damage if there is an at-fault party, regardless if they have committed an offence.

Northern Territory

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

The Northern Territory passed legislation on 7 May 2014 to amend their scheme to meet the minimum benchmarks. These amendments include removing the caps on hours for attendant care and adjusting the rate payable to market referenced rates. However, there remain exclusions that do not meet the minimum benchmarks. For example, drivers and owners of unregistered vehicles will not be covered in the Northern Territory in some circumstances. On the other hand, passengers and pedestrians injured in motor vehicle accidents on private land involving unregistered and unregistrable motor vehicles will continue to be covered by the scheme, which provides coverage beyond the scope of the minimum benchmarks.

South Australia

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

Although common law fault based rights are retained for all non-catastrophic injuries, recent reforms placed a threshold to access damages for pain and suffering and loss of earning capacity, which is assessed against an Injury Scale Values. At-fault parties are indemnified by their CTP premiums.

Western Australia

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

Queensland

The Motor Accident Insurance Commission (MAIC) is the regulatory authority responsible for the ongoing management of the Compulsory Third Party (CTP) scheme in Queensland. Established under the *Motor Accident Insurance Act 1994*, the Commission commenced operations on 1 September 1994 as a statutory body. The Motor Accident Insurance

Commission (MAIC) regulates and monitors the scheme. Queensland's scheme is underwritten by private sector licenced insurers.

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

Australian Capital Territory

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

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

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

Appendix B Cost benefit analysis details

Number of people with catastrophic injury per year

The number of injuries that are pertinent for analysis in this RIS are the number of new injuries that are not currently covered through either the common law or an existing jurisdictional based no-fault systems up to the level of the minimum benchmarks. These are the catastrophic injuries that will enter the NDIS in the base case.

Currently there are four jurisdictions whose schemes do not meet the minimum benchmarks. The following are the best available estimates for the number of injuries in those jurisdictions that would have to enter the NDIS in the base case.

- In a submission to the Consultation RIS, the Queensland Government indicated that independent actuarial advice stated that in 2013 there were 141 catastrophic injuries that meet the minimum benchmarks and half of them were ineligible for current compensation. This means that 70 people would enter the NDIS from Queensland.
- The Insurance Commission of Western Australia has indicated that there is an estimated 92 catastrophic injuries from motor vehicle accidents per year in Western Australia. Of those 92 catastrophic injuries, 48 are currently able to access support and 42 are not able to access support under the current system and would rely on the NIIS should it be introduced. This RIS uses the number of 42 injuries for Western Australia as the additional number of people receiving support under any of the options.
- Tasmania and the Northern Territory have no-fault schemes close to the minimum benchmarks, but the difference may mean that people with catastrophic injury in those jurisdictions will have to enter the NDIS. However, there are no available estimates for the amount of injuries per year that would be in this difference between their schemes and the minimum benchmarks (as the Northern Territory changes are very recent, and the Productivity Commission took the additional cost in Tasmania to be zero). Due to the relatively small populations of these jurisdictions and the only minor difference between their schemes and the benchmarks, the number of injuries per year has been taken to be too negligible to quantify, but is discussed qualitatively where possible.

With 70 and 44 injuries per year in Queensland and Western Australia respectively, this puts the total number of injuries covered in this RIS per year as 114.

Number of people aged 65 or over who have a catastrophic injury

No data set currently splits motor accidents both by age and severity. Other data sets have been used to provide some indication of the amount of those 114 people who will have their accident when they are 65 years of age or older.

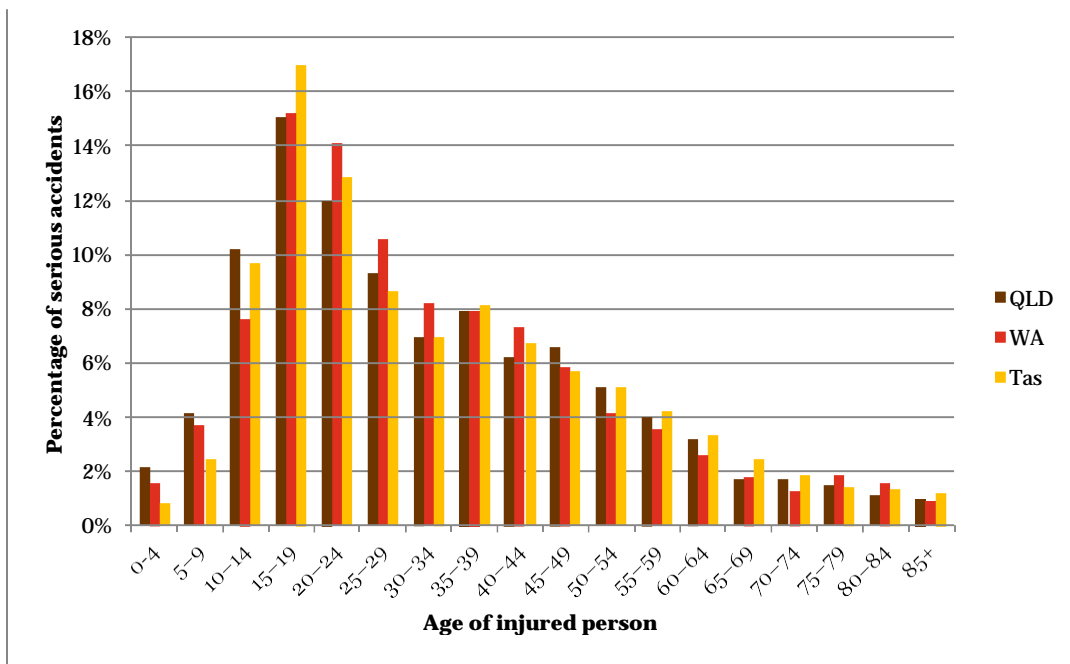
In 2012, 22 per cent of the Victorian Transport Accident Commission claims involving hospitalisation were for people over 60 and 38 per cent of claims involving more than

14 days of hospitalisation were for people over 60.¹⁰² However, hospitalisation lengths (especially for non-catastrophic injuries) are likely to have an age skew, as an older person may be more heavily affected by a physical injury.

The most recent data from the Australian Institute of Health and Welfare (AIHW) shows that 4,793 of a total of 52,747 land transport serious injuries in 2008-09 were people 65 years of age or older.¹⁰³ This represents 9.1 per cent (noting that catastrophic injuries will be a subset of serious injury, but this will give an idea of the distribution).

Using the AIHW state by state split in conjunction with ABS population data, this data set estimates that 7 per cent of serious injuries in Queensland are people aged 65 or over and 8 per cent in Western Australia and Tasmania. This distribution is shown in Figure 1 below.

Figure 1: Age distribution of serious accidents, 2009



Source: PwC analysis on Australian Institute of Health and Welfare (2012) *Serious Injury due to land transport accidents 2008-09* and Australian Bureau of Statistics (2009) *Australian Demographic Statistics*, cat no 3101.0.

Applying this distribution to the estimated injuries covered in this RIS means that 5 individuals a year from Queensland who be aged 65 and over and 3 individuals a year from Western Australia will be catastrophically injured but not currently able to access common law compensation. Using the section above, this means that there are 106 relevant injuries per year of people under 65.

People aged 65 or over currently make up 14.4 per cent of the population.¹⁰⁴ However, the estimate for catastrophic injuries is lower than this because motor vehicle accidents are skewed towards young people, and evidence suggests that accidents involving older people are more likely to be fatal than result in long term disability. However, with an ageing

¹⁰²Transport Accident Commission (2014) *Claims Involving Hospitalisation Annual*, available at <http://www.tac.vic.gov.au/road-safety/statistics/tac-hospitalisation-reports/claims-involving-hospitalisation-annual>.

¹⁰³ Australian Institute of Health and Welfare (2012) *Serious Injury due to land transport accidents 2008-09*.

¹⁰⁴ Australian Bureau of Statistics (2009) *Australian Demographic Statistics*, cat no 3101.0.

population, it is possible this percentage of people in catastrophic accidents aged 65 or over will increase.

Cost of people aged 65 or over with a catastrophic injury

The cost estimates relied on in this RIS cover all people who are catastrophically injured in a motor vehicle accident, regardless of age. To adjust these costings for the base case, individuals aged 65 or over must be removed, as they will be excluded from support.

While the above sections show that we can estimate that this is 7, 8 and 8 per cent of injuries in Queensland, Western Australia and Tasmania respectively, these people will not represent 7 per cent of costs.

This is because the NIIS is 'fully funded' meaning the cost per year in the net present value of the care provided for people injured in that year, *for the rest of their lives*. As such, the fully funded cost of a 65 year old injured this year is not the same as the fully funded costs for a 35 year old injured this year.

While the varying mortality rates of people with disability by age and by age when injured are not available in the Australian context, it is still important to estimate the relative costs of these older injured people to understand the impact on costs that excluding them will have.

It should be noted that the below calculation is based on broad assumptions and is not attempting to specifically quantify the cost of the NIIS for motor vehicle injuries at varying ages, but rather to estimate their relative impact.

The total costs for the lifetime care and support of people injury in one year used by the Productivity Commission was split between the various age ranges is display in the tables below and is based on the following assumptions.

- The distribution of age at the time of accident shown above in Figure 1, based on AIHW and ABS statistics.
- An average mortality of 80 for Australian males¹⁰⁵ (this is for the general population as no disability specific mortality was available). Male is used because no sex split is available and current schemes show that participants are more likely to be male, 71 per cent in the NSW scheme.¹⁰⁶
- The costs for care per year is taken to be equal across all ages and across time.
- People who are injured over the age of 80 are assumed to have only one year of care costs.
- People in an age bracket are assumed to be at the median age of that bracket.

¹⁰⁵ Australian Institute of Health and Welfare (2013) 'Life expectancy', available at <http://www.aihw.gov.au/deaths/life-expectancy/>.

¹⁰⁶ New South Wales Lifetime Care & Support Authority (2013) 'Lifetime Care & Support Authority of NSW Annual Report 2012-13', page 11.

Table 7: Queensland costs by age

Age range	Median age	Number of injuries	NPV cost per person (2014 dollars)	NPV cost for age range (2014 dollars)
0-4	2	1.5	4,638,513	6,960,647
5-9	7	2.9	4,628,930	13,424,542
10-14	12	7.1	4,615,490	32,941,697
15-19	17	10.5	4,596,639	48,375,244
20-24	22	8.4	4,570,200	38,417,472
25-29	27	6.5	4,533,118	29,582,674
30-34	32	4.9	4,481,108	21,849,774
35-39	37	5.5	4,408,162	24,441,655
40-44	42	4.4	4,305,851	18,844,304
45-49	47	4.6	4,162,355	19,275,263
50-54	52	3.6	3,961,095	14,192,383
55-59	57	2.8	3,678,816	10,389,769
60-64	62	2.2	3,282,906	7,370,782
65-69	67	1.2	2,727,621	3,267,528
70-74	72	1.2	1,948,806	2,318,900
75-79	77	1.0	856,478	890,357
80-84	82	0.8	305,011	241,491
85+	87	0.7	305,011	215,518
Total			293,000,000	
% aged 65 or over			2.4%	

Table 8: Western Australia cost by age

Age range	Median age	Number of injuries	NPV cost per person (2014 dollars)	NPV cost for age range (2014 dollars)
0-4	2	0.7	2,690,949	3,937,010
5-9	7	1.6	2,685,390	9,098,500
10-14	12	3.4	2,677,593	18,855,490
15-19	17	6.7	2,666,657	37,296,308
20-24	22	6.2	2,651,319	34,413,428
25-29	27	4.6	2,629,806	25,537,414
30-34	32	3.6	2,599,634	19,641,466
35-39	37	3.5	2,557,315	18,685,238
40-44	42	3.2	2,497,962	16,898,412
45-49	47	2.6	2,414,715	13,048,080
50-54	52	1.8	2,297,957	8,739,316
55-59	57	1.6	2,134,199	7,008,091
60-64	62	1.1	1,904,519	4,569,013
65-69	67	0.8	1,582,380	2,648,031
70-74	72	0.6	1,130,565	1,354,937
75-79	77	0.8	496,870	860,504
80-84	82	0.7	176,947	259,182
85+	87	0.4	176,947	149,580
Total				223,000,000
			% aged 65 or over	2.4%

Table 9: Tasmanian cost by age

Age range	Median age	Percentage of injuries	NPV cost per person (2014 dollars)	NPV cost for age range (2014 dollars)
0-4	2	0.8%	8,529,698	69,555
5-9	7	2.5%	8,512,077	210,254
10-14	12	9.7%	8,487,361	821,877
15-19	17	17.0%	8,452,697	1,436,953
20-24	22	12.8%	8,404,079	1,077,177
25-29	27	8.7%	8,335,889	721,816
30-34	32	7.0%	8,240,249	574,208
35-39	37	8.1%	8,106,110	658,112
40-44	42	6.7%	7,917,972	533,238
45-49	47	5.7%	7,654,099	436,718
50-54	52	5.1%	7,284,003	371,004
55-59	57	4.2%	6,764,925	284,352
60-64	62	3.3%	6,036,891	201,678
65-69	67	2.5%	5,015,786	123,563
70-74	72	1.9%	3,583,634	67,077
75-79	77	1.4%	1,574,965	22,794
80-84	82	1.4%	560,881	7,677
85+	87	1.2%	560,881	6,947
Total				7,625,000
			% aged 65 or over	3.0%

These tables show that approximately 2.4 per cent of total costs are for people aged 65 or over in Queensland and Western Australia and 3.0 per cent of total costs in Tasmania.

