No Cover No Care

An essential public health response to the need for Lifetime Care and Support for West Australians seriously injured in motor vehicle accidents.

Response to the West Australian Government's Green Paper:
Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme

Young People In Nursing Homes National Alliance
December 2014

Section 1: Introduction

The Young People In Nursing Homes National Alliance (YPINH Alliance)

The YPINH Alliance is a national peak organisation that promotes the rights of young disabled Australians with high and complex health and other support needs living in residential aged care facilities or at risk of placement there (YPINH); and supports these young people to have choice about where they live and how they are supported.

The Alliance's membership is drawn from all stakeholder groups including YPINH, family members and friends, service providers, disability, health and aged care representatives, members of various national and state peak bodies, government representatives and advocacy groups.

We encourage a partnership approach to resolution of the YPINH issue by State and Commonwealth governments; develop policy initiatives at state and federal levels that promote the dignity, well being and independence of YPINH and their active participation in their communities; and ensure that young people living in nursing homes and their families have

- A voice about where they want to live and how they want to be supported;
- The capacity to participate in efforts to achieve this; and
- 'A place of the table', so they can be actively involved in the service responses needed to have "lives worth living" in the community.

As the pre-eminent national voice on this issue, the National Alliance's primary objectives are to

- Raise awareness of the plight of YPINH;
- Address the systemic reforms required to resolve the YPINH issue and address the urgent need for community based accommodation and support options for young people with high and complex needs;
- Work with government and non-government agencies to develop sustainable funding and organisational alternatives that deliver 'lives worth living' to young people with high and complex clinical and other support needs;
- Provide on-going support to YPINH, their friends and family members.

Since its inception in 2002, the Alliance has argued for a lifetime care approach to development of supports and services for disabled Australians; and for collaborative arrangements between programs and portfolio areas including health, disability, aged care and housing, to provide the integrated service pathways required by YPINH and others with lifelong health and disability support needs.

The Alliance has also led Australia wide moves for delivery of a national no fault catastrophic injury insurance scheme, consistently arguing for a scheme that would

- Provide cover where none currently exists for injures received in sporting and general accidents (including assaults and drug overdoses), whether at home or in the community

- Deliver a national approach to motor vehicle accidents that moves existing state fault based motor vehicle schemes to a no fault, 'reasonable and necessary' response basis
- Unify the various state work cover schemes through adoption of consistent benchmarks for work related accidents
- Support development and delivery of world's best practice clinical treatment and rehabilitation services protocols, particularly in those states with limited or no rehabilitative capacity at present
- Deliver optimal care and rehabilitation to injured Australians, no matter what state of the commonwealth they are injured in
- Use the 'gold standard' of the Victorian Transport Accident Commission as the NIIS' minimum benchmark for all state no fault motor vehicle schemes
- Deliver a truly national approach that provides world's best practice rehabilitation and lifetime care for catastrophically injured Australians, regardless of where or how they are injured.

In 2007, the Alliance convened Australia's first *National Summit on No Fault Catastrophic Injury Insurance*. Key peak organisations and senior state and federal public servants came together to discuss the need for reforms around catastrophic injury insurance generally; and collaboration on development of a catastrophic injury insurance scheme for the nation.

As well as the Australian Medical Association, the Summit was strongly supported by a range of national peak organisations including National Disability Services (NDS), Brain Injury Australia and Spinal Cord Injuries Australia.

The Summit Resolution that calls for establishment of a national working party to progress efforts in this regard is contained in Appendix A of this document, as well as a media advisory and statement of need. All Summit participants unanimously agreed to the Summit Resolution.

In arguing for a national catastrophic injury insurance scheme, the Alliance has also made submissions to and appeared before a range of parliamentary and other inquiries, including

- Hogan *Review of Aged Care* (2003)
- *Senate Inquiry into Aged Care* (2004)
- *Senate Inquiry into the Sale of Medibank Private* (2006)
- *Senate Inquiry into the Funding and Operation of the CSTDA* (2006)
- *Senate Inquiry into the Living Longer Living Better Aged Care Bills* (2013)
- Productivity Commission's *Inquiry into Disability Care and Support* (2010)
- Department of Health and Ageing's *Review of the Aged Care Funding Instrument* (2010).
- *Senate Inquiry into the Care and Management of Australians living with Dementia* (2013)

We would recommend that ICWA examine these pieces of work to get a full sense of the Alliance's work in this area. These documents can be accessed at www.ypinh.org.au/reports

Rather than reiterate the moral imperative for a no fault CTP scheme in WA that has garnered broad public support, this submission focusses instead on issues of scheme design; and the systemic imperatives and benefits of a no fault catastrophic injury scheme in WA.

Section 2: *A full No-Fault scheme is the only viable option for WA*

We believe that nothing short of a full no-fault CTP scheme is acceptable in the current national reform environment.

Of the three options offered in the WA Government's Green Paper, *Options to add No-Fault Catastrophic Injury Cover to Western Australia's Compulsory Third Party Insurance Scheme*, the Alliance strongly supports Option 2.

The Federal Government's *Consultation Regulation Impact Statement for Motor Vehicle CTP*, sets out the objectives for government action in this important area saying

> *The objective of government action in this area is to provide adequate, consistent and tailored lifetime care and support for all individuals who newly acquire catastrophic injuries due to motor vehicle accidents:*
>
> - *Regardless of the jurisdiction in which that person lives or was injured*
> - *In a financially sustainable manner*
> - *In a way that discourages risky behaviour*
> - *In a way that encourages rehabilitation and early intervention to facilitate independence and participation*
> - *Is equitable in its impact on each State and Territory and their residents*
> - *Is consistent with the implementation of the NDIS.*[1]

The Alliance strongly agrees with this objective and believes it can only be achieved through implementation of a full no fault motor vehicle scheme in WA.

The Alliance thus supports option 2 as the only viable option for WA that can meet this objective.

Because continuation of WA's current unfair and cumbersome fault based system is not viable in the NDIS environment, the Alliance believes that Option 1 is not a realistic consideration. The commitment of the WA government to insurance-based disability reform and the documented shortcomings of the fault-based CTP systems (summarized in 2.1 below)[2], suggests that Option 1 should not have been included in the Green Paper at all.

The Alliance believes that option 3 is also unviable because it would create different classes of funding and opportunity for people with the same types of injuries, and as such, would further entrench the current CTP inequities. Maintaining a second tier

[1] PricewaterhouseCoopers: *National Injury Insurance Scheme Motor Vehicle Accidents Consultation Regulation Impact Statement*, Sydney, April 2014: 10.

[2] See the PwC RIS consultation paper and chapter 17 of the Productivity Commission's Report into *Disability Care and Support.*

fault based scheme in tandem with a no fault scheme is simply too costly and inefficient.

Given that the desired outcome from this proposed reform is to improve the system of lifetime care and support for people with catastrophic injuries in WA, options 1 and 3 cannot be seriously considered as neither have the capacity to deliver the improvements that are urgently required.

Equity and certainly are key underpinnings of a quality long term care system. These were the key drivers of the National Disability Insurance Scheme (NDIS) campaign, a view reflected in then Prime Minister Julia Gillard's comments announcing the initial National Disability Insurance Scheme launch sites in 2012.

In comparing the inadequacies of the current disability support system to the benefits the NDIS would deliver, she said

> *"… you basically get a ticket in what can be a very cruel lottery…where access to services and support depends on your postcode or on the cause of your disability rather than on your need."*[3]

Removing this lottery and delivering certainty, is at the heart of the reform ambition of both the NDIS and the National Injury Insurance Scheme (NIIS). The upgrade of WA's CTP scheme is consistent with the process of state CTP schemes' harmonisation agreed to through the national Minimum Benchmarks for Motor Vehicle Accidents. WA has signed up to these as part of moves to establish the National Injury Insurance Scheme[4].

If the WA government truly believes in these, as well as the principles of the NDIS reform (which, through the signing of the NDIS trial bilateral agreement it has signaled it does), then there should be no question about progressing the no-fault reform of its motor vehicle CTP scheme.

After some initial equivocation from the WA Government on this question, the Alliance was pleased to see that both the Premier and the Treasurer have come out publically in support of the reform.[5] This leadership is important in the change process that needs to occur.

[3] Lunn, S. "Disability scheme to battle 'cruel lottery' of care", *The Australian*, May 1 2012.
[4] See: http://www.treasury.gov.au/Policy-Topics/PeopleAndSociety/National-Injury-Insurance-Scheme/Benchmarks-for-motor-vehicle-accidents
[5] For example see: https://au.news.yahoo.com/thewest/a/25701542/plea-for-crash-support/ and http://www.insurancebusinessonline.com.au/news/weekly-news-wrap-wa-premier-says-state-will-likely-have-nofault-insurance-scheme-within-2-years-194405.aspx

2.1 Shortcomings of the existing WA fault based CTP model

At their core, the NDIS and NIIS are concerned with delivery of a comprehensive national lifetime care and support system. The problems with fault based injury compensation models have been well canvassed, the design principles of the NDIS being carefully constructed to avoid such costly inequities.

The Productivity Commission's *Disability Care and Support* inquiry report summarises the problems with fault based insurance models thus:

> *Compensation outcomes from litigation typically fall well short of meeting an individual's lifetime needs. This reflects that*
>
> - *Court outcomes are uncertain and, by far, most people settle out of court*
> - *The individual's future needs are unpredictable, so that damages awarded at a given time may underestimate or overestimate people's future needs, which on a personal level can mean that sufficient care is not available for the period of time that it is needed*
> - *Compensation is often delayed and, particularly if liability is disputed, access to early treatments and appropriate discharge from hospital to medical and social rehabilitation can be delayed and poorly coordinated*
> - *Assumptions about discount rates play an important role in determining lump sum*
> - *Compensation, especially for payouts intended to last many decades, and while it is*
> - *Generally agreed that rates applied are too high, agreement is lacking about the 'right' discount rate*
> - *Lump sums may not be managed appropriately to meet long term needs, and there*
> - *Are inherent difficulties in managing preclusion periods for access to safety-net services, especially when it may be unrealistic to refuse essential care and support needs.*[6]

2.2 Consequences of no reform in WA

As indicated in the Green Paper, individuals who sustain catastrophic disability but are ineligible for compensation under the current fault-based system, rely on the under resourced public health and disability services systems as well as significant informal family support, to be sustained.

[6] PricewaterhouseCoopers 2014: p5

The green paper, however, somewhat understates the persistently grim realities for non-compensable people in WA. It suggests that publically available support systems can deliver care and support, which is clearly not always the case.

Because the existing service systems in WA (and indeed across the nation) are not geared to the needs of this group, many young injured people in this position are forced to live in institutions such as aged care or other inappropriate facilities, or at home with family with inadequate funded support.

2.2.1 Chronic lack of specialist rehabilitation capacity

The service gaps mentioned above have a profound impact on this group of people, particularly those with Acquired Brain Injury (ABI), as there is very little in the way of specialist ABI rehabilitation in the public sector. This is a significant gap that cannot be filled through the substitute provision of aged care services or additional disability services provided by the NDIS, for example, or the WA Disability Services Commission.

While the lack of specialist rehabilitation services in most jurisdictions is an historical anomaly in their health systems, it does not mean that these specialist services are not greatly needed. The key to early intervention, rehabilitation is a vital health service that has great value in the context of lifetime care and support for this group.

Many injured people who are ineligible for compensation also find themselves outside the disability services system because of its lack of capacity to support people with lifelong health and disability support needs. These people often require regular nursing support and other health services that are rarely available within disability or community services in any jurisdiction.

As a result, they end up living either in residential aged care or, increasingly in some jurisdictions, in acute care hospital beds. In a long chain of cost shifting, the aged care system and, more latterly, the health system, are continuing to operate as a safety net for the disability system.

2.2.2 The value of specialist ABI Rehabilitation

Actively providing the rehabilitation services this group needs will deliver clear cost benefits by reducing their care costs over the long term. Such savings are indicated in a cost benefit analysis conducted by the Brightwater Care Group in regard to the planned redevelopment of its Oates Street Rehabilitation Service. The report declares that

> *It is relatively common to discuss rehabilitation in terms of the improvements to the quality of life of the people who receive it…However…purely from a narrow (and conservative) economic perspective, effective rehabilitation is valuable, due largely to its ability to reduce the cost of care for those with ABI. If we as a society propose to save the lives of those who acquire a traumatic brain injury,*

> *rehabilitation has not only a moral justification but is also a very real way in which costs can be saved within the health system.*[7]

The report goes on to say that rehabilitation can reduce an individual's weekly care hours by between 35 and 91 hours per week and deliver yearly cost savings of anywhere from $158,522 for someone with high and complex needs, to $78,390 for someone with low support needs.[8]

The Alliance is not aware of comparable WA based research for spinal cord injury. However, the findings of the Spinal Cord Injury Response in Queensland show that improvements to individual quality of life and cost savings are achievable with more coherent rehabilitation and community transition processes.[9]

2.3 Young people living in nursing homes

In 2013 there were 520 people under 65 in residential aged care facilities in WA,[10] many of whom are there because of the poor design of the current CTP scheme that has rendered them ineligible for compensation.

By allowing their entry into permanent residential aged care, the disability system in WA has failed these young people.

While the COAG Younger People in Residential Aged Care initiative (2006-11)[11] did shine a light on the issue and assisted a modest number of people, the core drivers of young people going into aged care remains to the present day, including a lack of rehabilitation, alternative support, and a shortage of capable disability services. A reformed CTP scheme would provide the alternative supports required to prevent inappropriate aged care placement for young people, as well as building much needed capacity in the rehabilitation and community health area for this key group

While referring specifically to the situation in Queensland, the Queensland Public Advocate's recent Inquiry Report into the impact of people with disability living in health facilities is worth quoting at length in this regard. The report says

> *The response to people with ABI in Queensland is characterised by a 'bed blocked' system with a 'ripple effect' of subsequent consequences both economically for the state and personally for individuals who do not get access to the crucial rehabilitation they need following a catastrophic injury. Many places that were intended as slow-stream rehabilitation services have unfortunately become long-term destinations with many people residing in these services for 15 to 20 years. This prevents these facilities from operating as short-term rehabilitation services, services that are sorely needed in Queensland.*

[7] ACIL Tasman, *Oates Street facility redevelopment: a cost benefit analysis*, Perth, 2010: vii.
[8] ACIL Tasman ibid: 16.
[9] Griffith Institute of Health and Medical Research, *Review of the Spinal Cord Injuries Response*, Brisbane 2008
[10] Productivity Commission, *Report on Government Services 2014*, Canberra 2014: table 14.66.
[11] For more information on YPIRAC, see: http://www.ypinh.org.au/key-reforms-and-initiatives/ypirac

> *Many people with ABI now 'live' in facilities that were meant for intensive short-term rehabilitation with others residing in acute hospital beds and mental health services. The bed blockages in the rehabilitation services (or downstream blockages) mean that pressure starts to build up in acute hospitals to the extent that the next wave of people with ABI have nowhere to go once the acute phase of their care has passed.*
>
> *This creates a situation where many people with ABI are discharged from hospital into the care of their families without appropriate rehabilitation or support. They may also be discharged into aged care facilities. A by-product of not receiving appropriate rehabilitation support and/or being discharged to inappropriate environments is the potential for readmission to acute care facilities, or institutionalised models of support being implemented to address the gap between a person's needs and the available levels of care.*
>
> *These bed blockages have serious impacts, both economically for the public health system and for the long-term recovery and rehabilitation of individuals with ABI.*[12]

The Alliance supports the view of the Productivity Commission that

> *…the adequacy of care should be defined by certainty, timeliness and quality of access.*

We further support the view that access to lifetime care and support should not be based on the causation of someone's catastrophic injury, but should be based on need.

2.4 Relying on the NDIS

Option 1 in the Green Paper implies that the NDIS can cover the lifetime costs of non-compensable injured people in WA. While this is a safety-net option, it will not deliver the certainty, timeliness or quality of access to services that injured people need. The most critical issue here is that the NDIS will not fund specialist recovery and rehabilitation services.

Because the NDIS cannot fund these rehabilitation services, the value of early intervention and recovery is lost to injured people under option 1, resulting in poorer recovery outcomes, reduced independence for injured individuals and higher lifetime care costs, as mentioned in 2.2.2.

Relying on the NDIS will also result in a cost shift to the already under resourced public health system, both in terms of provision of medical services, as well as in the cost of care failures delivered by disability and aged care services not resourced to manage the level of need these injured individuals present with. As a result, health

[12] Office of the Public Advocate, *People with intellectual disability or cognitive impairment residing long-term in health care facilities: Addressing the barriers to deinstitutionalisation - A systemic advocacy report*, Brisbane 2013: ix.

issues such as pressure ulcers,[13] infections and aspirations from poor PEG feeding management are likely to result in recurrent hospital emergency admissions that place further demands on an already struggling health system.

In commenting on CTP reform failure that will force catastrophically injured individuals to rely on the NDIS for assistance, the PwC RIS consultation paper of April 2014 declared that

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

[13] In 2001 it was estimated that $350 million was spent on caring for patients with pressure ulcers, with the cost of each pressure ulcer estimated to be some $61,000 and inpatient recovery time for a serious pressure ulcer measured in months or even years. See Australian Wound Management Association, *Clinical Practice Guidelines for the Prediction and Prevention of Pressure Ulcers*, Cambridge Publishing, West Leederville, WA, 2001. In 2013 dollars, the average cost of a pressure episode is calculated to be $85,000.

> *It should also be noted that in existing no-fault systems, part of this State and Territory capacity to reduce risk can include using a 'community rating' to decrease premiums from a direct risk rated price. This is to keep premiums affordable enough that there is not an incentive to drive an unregistered or uninsured car.*
>
> *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.*[14]

If it fails to reform its fault based CTP scheme and relies only on the NDIS, the WA government will also be required to reimburse the cost of disability services provided by the NDIS for this group.

This means that while Option 1 appears to be a no-cost option in the Green Paper, West Australians will still pay for the services these people receive, but do it indirectly through reimbursement to the NDIS. Given the absence of comprehensive rehabilitation and the lack of opportunities for early intervention recovery for individuals in this approach, the costs across the lifetime for disability services will be higher than it would be if WA has no-fault injury arrangements in place and covers the costs through this scheme. There is clearly a false economy inherent in Option 1.

Should WA implement a no-fault CTP scheme, there are imperatives for close interaction with the NDIS that do not involve a total handover. These include shared policy and service development, shared provider management functions and cross-government collaboration. These and other opportunities are detailed in Section 3 of this response.

2.4 Consultation around CTP reform in WA

The need for a no fault CTP scheme in WA has been and, unfortunately, continues to be a sleeper issue in the community. From a community perspective, injury insurance, the NIIS and the NDIS have been conflated as implementation of the NDIS has progressed.

The public's understanding of catastrophic injury insurance and the nature of current levels of cover for catastrophic injury through WA's existing CTP scheme, has never been good. From what the Alliance is hearing in the community, many people still think they are already covered for these kinds of injuries and disabling health conditions through either the NDIS, Medicare and/or their CTP charge regardless of circumstance.

[14] PricewaterhouseCoopers, April 2014: 8.

While the Alliance recognises the need for public consultation for such a significant reform, we do not believe the ICWA's framing of the Green Paper provided sufficient detail to enable the public to fully understand the issues and the reform imperative of the scheme. The structuring of the ICWA's web based feedback page was also not as effective as it could have been in engaging the public on the key reform issues.

2.5 Proposed cost increase of $109 for Option 1

Key scheme design issues are, unfortunately, not canvassed in any detail in the Green Paper, making it difficult to assess whether the proposed cost increase of $109 is reasonable or accurate. The Alliance cannot reconcile the proposed cost increase without knowing the assumptions behind the modeling.

We recommend that an independent and transparent cost analysis be undertaken to determine the real cost of the introduction of a no-fault scheme. Because this reform is about more than just the cost to vehicle owners, a critical part of this work needs to include further consultation with key stakeholder groups about scheme design issues.

The reality is that WA will have to pay for the cost of lifetime disability services whether it does so directly through increased CTP premiums or indirectly via taxation. The comparative direct and indirect costs need to be available as part of this next tranche of work by the WA Government.

It is also imperative that the various cost options relating to scheme design, are detailed as part of the consultation. Different scheme design and operational processes will have different cost outcomes and these need to be canvassed. As a new scheme, the WA Scheme can avoid some of the problems faced by other no-fault schemes in its ability to manage key cost drivers.

Elements such as the claims management model; the degree of integration of the scheme across government and the community sector; the ways in which the scheme can leverage informal support from mainstream programs (such as health, education, transport etc) for scheme participants; the role it plays in advancing the National Disability Strategy[15] to promote equal citizenship; as well its role in influencing road safety campaigns in WA, will all have a significant impact on the new scheme's cost base and therefore its premiums.

Too often the narrow design of no-fault CTP schemes has led to the commodification of scheme participants. In such situations, it is common to see commercial transactions take the place of genuine community engagement for participants with complex needs, leaving participants with lives that are dominated by paid services and a consequent social isolation. In these situations, schemes do not have the mechanisms or connections to find alternatives to the provision of scheme-only

[15] Commonwealth of Australia: National Disability Strategy 2010-2020, Canberra 2011, accessed at https://www.dss.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf

funded services, or ways to curb growth in some of their services (particularly attendant support). There is potential for CTP reform in WA to take advantage of some of the best features of the NDIS and 'design in' ways to address these recurrent risks in a more creative and sustainable manner. Rather than designing the scheme solely within government, this will need a commitment to positive co-design with stakeholder groups.

A no-fault CTP scheme is more than just a funding mechanism for the estimated 100 individuals per year sustaining catastrophic injuries in WA. **It is a public health response to a quantifiable risk in the WA community** and can play key roles across government in areas such as road safety, data, as an active agent in the WA trauma and health systems, as well as in the infrastructure and justice areas of public administration.

One particular opportunity on offer through CTP reform, is that of leveraging capacity building in WA's rehabilitation sector. This has the potential to deliver savings in lifetime care costs for individuals compared to the current scenario as demonstrated by the Acil Tasman analysis referred to in 2.2.2. It will also save money in the health system by ensuring better training, assessment and review services over the life course of participants, thereby reducing and preventing re-hospitalisations through better resourcing of quality care.

The mandate for the scheme to collaborate in public policy initiatives such as the capacity building in rehabilitation and other health services, will need to be defined in the scheme's design.

It should be noted that the no-fault reform of the CTP scheme is only the first step in implementing the NIIS in WA. WA's reformed CTP scheme thus needs to be designed as a platform with capacity to incorporate the funding and management of support for other injury types not yet in the NIIS frame, but due to brought in at a later date. These include medical injuries, sporting and general injuries. While the premium income for these injury types is yet to be determined, a lifetime care scheme that can deliver resources and activate appropriate systems of care is a precondition for these injury types to be added to the NIIS framework.

Section 3: *Scheme design essentials: Functions and benefits*

The new no-fault scheme must be integrated across government and well linked with the community sector.

The scheme should be designed and promoted as a public health initiative for all West Australians, not just those who are injured.

It must be integrated with other West Australian government initiatives in health, justice, infrastructure and disability programs, thereby ensuring it can

- Access a skilled rehabilitation and community care workforce
- Participate in delivering road safety outcomes
- Have the capacity to engage in cross-sector and cross government initiatives and
- Utilise existing quality and safeguards regimes.

Some practical arrangements that could be incorporated into the scheme's operations include

- Utilization of the NDIS and Disability Services Commission infrastructure to assist in the design and distribution of individual claims/programs in the community
- Sharing the provider management function of existing arrangements within the Health Department, the Disability Services Commission (DSC) and the NDIS
- Funding a hospital liaison program to work in WA hospitals to be the first point of contact with injured people and their families to provide information, referral and support
- Inclusion of a public policy and service development unit within the scheme to work with other key programs (including health, mental health, housing, planning, education, justice, employment, disability) to jointly identify cross sector initiatives required for injured people and their families and to encourage whole of government activity.

  This unit would also work with the non-provider community sector on policy and service development to generate sustainable community building activity and increased economic and social participation for individuals and their families. Doing so would enable the scheme to lead and participate in policy initiatives including road safety, heath promotion, workforce development, trauma system reform etc. Without such initiatives, the risk of uncontrolled cost escalations in particular scheme participant cohort, cannot be fully addressed. This can be seen in the mental health and public housing areas in all States and Territories, where access to non-injury related services is highly problematic for people with compensation status.

By virtue of their legislation and operations, CTP lifetime care schemes in other jurisdictions have developed as boutique operations. Because of this, isolationist cultures have resulted wherein clients are unable to access mainstream community programs, such as education and housing, on the same basis as their peers; and parallel private sector markets have been created with separate fee structures for services.

Given that WA's CTP scheme will be designed in a post NDIS environment, it needs to be closely aligned with the goals and principles of the NDIS and mandated to build collaboration arrangements with mainstream programs into its structure.

3.1 Importance of an integrated scheme design

The integration of the scheme with other programs is a foundation strategy to manage the risks these schemes face around cost shifting and social exclusion of participants. Significant financial and social impacts will result if these risks are not addressed. Most existing CTP schemes have not had the ability to address these issues because of their narrowly focused design.

The Australian experience of compensation schemes is that with a limited mandate to fund a set range of individual services only, community inclusion and participation for clients is something the schemes have indirect influence over at best. As a result, increasing demand for 1:1 attendant care through the conversion of informal to paid support over time, has made this the single greatest liability for long term care costs in these schemes. The solutions to problems such as these lies in the scheme having a mandate to engage in public policy development and cross sector collaboration with other government programs.

A working model of effective cross-government collaboration can be seen in the Queensland Spinal Cord Injury Response (SCIR). This is a program that encompasses the Disability, Health and Housing portfolios in Queensland and provides a comprehensive service response to individuals with spinal cord injury that no single portfolio program can provide on its own.

While this initiative is for people who are non-compensable, it is a compelling example of how cross-program collaboration can lead to positive outcomes for individuals, industry and government. Rather than the norm for injury compensation schemes, this *is* the kind of collaboration that the new CTP scheme in WA can "build in" to deliver sustainability and community participation outcomes.[16]

Unless a proper partnership with other government agencies, such as Housing and Health is developed, pressure will build on the scheme to deliver its own response and cover the shortfall created by gaps in provision in other mainstream programs. Gaps in the labour market and labour market services for people with ABI and SCI also contribute to this problem.

[16] Griffith Institute of Health and Medical Research: op.cit

Significant work has been done examining cost data in compensation schemes in Australia and New Zealand that has informed those schemes and provided useful data for the work on the NDIS. Given the scale of the NDIS and it's community wide scope, it is imperative that these cost drivers are clearly understood in the context of disability services, community involvement and consumer and family involvement.

Prevatt and Gifford developed predictive models for identifying long term care cost drivers. The quantifiable factors driving cost for compensable individuals are

- Injury type
- Rehabilitation outcomes and
- Functional skills of clients.

Despite clinical and historical claims cost data, more than half the costs are unexplained through the scheme data as the following diagram from Prevatt and Gifford demonstrates

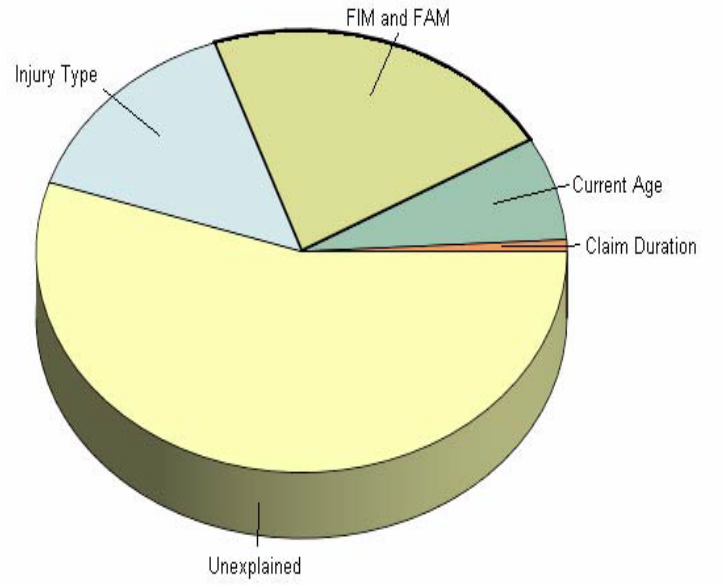

Figure 1: Key Long Term Care Claims Cost Drivers (from Prevatt and Gifford 2007)

Their analysis of anecdotal evidence from scheme managers suggests that family circumstances and claimant community participation activity are important drivers of claim costs.[17] Given that they make up the largest cost driver segment in this model, it is somewhat alarming that these risk factors are not being comprehensively managed.

Currently operating compensation schemes are not designed to understand or address these risks or take substantive steps to address the support families need, or generate community and employment participation.

[17] M. Prevatt and D Gifford, "Statistical Case Estimation for Long Term Claimants- Uncovering Drivers of Long Term Claims Cost in Accident Compensation". Presentation to the Presented to the Institute of Actuaries of Australia, XIth Accident Compensation Seminar 1-4 April 2007 Grand Hyatt Melbourne, Australia: 30.

WA has a unique opportunity to “design in” and promote social inclusion mechanisms, rather than just fund one dimensional disability services that are virtually impossible to substitute for genuine community connection and engagement.

3.2 Common law

WA'S No Fault CTP Scheme should be structured like the highly successful Victorian Transport Accident Commission (TAC), with lifetime no-fault benefits for care and support, loss of earnings payments and dependency benefits, as well as retention of common law rights for the heads of damage of economic loss and pain and suffering.

By retaining common law rights, the Victorian TAC enables injured individuals to seek legal redress – an important civic right. By providing no-fault benefits for care and support, it also enables the rapid mobilisation of resources to promote early intervention that can maximise recovery and provide certainly, timeliness and equity.

3.3 No Exclusions

The Alliance does not support exclusions for access to no fault care and support benefits in the design of the scheme. While exclusions play to the desire of some in the community to blame and punish, the integrity of a no-fault model will be undermined if such exclusions are entertained in the new scheme. Genuine need for lifetime care and support cannot be suppressed bureaucratically. Excluding people from this scheme will not save money, but merely shift the cost elsewhere – and sometimes to higher cost alternatives.

Where a person is seriously injured while driving an unlicensed vehicle, is injured in the process of committing a crime, or is an unlicensed driver, it may be reasonable, however, to have some exclusions to common law benefits. The precise nature and extent of these exclusions would need to be defined as part of the consultation process.

3.4 Inclusions

Because this kind of important reform does not happen often, it is imperative that the current opportunity is seized to make the scheme it be inclusive as practicable so that the benefits to the community can be maximized – dependent on cost and transition arrangements.

There is a stated intention across governments in Australia to add other injury types as the NIIS progresses. Before this happens in Western Australia, a basic infrastructure for dealing with this ongoing reform, as well as indeed the individual claims, will need to be established.

The new scheme should aim to go as far as it can to include injuries from as many types of vehicle related injuries. In this, WA could take a national leadership position in regard to the further development of the NIIS.

How premium income can be derived from other vehicle related injuries is something that needs to be considered in the next consultation phase. Leaving people out when there is some capacity to design them in only serves to continue the inequity, unfairness and cost shifting that presently exists.

WA's no fault CTP scheme should, like the TAC scheme, include people injured in train and bus accidents. People seriously injured in these kinds of accidents will have the same recovery, rehabilitation and lifetime support needs as those injured in accidents involving other registered motor vehicles and should be able to access the same levels of funding and access to services.

The Alliance would like to see some mechanism for inclusion of people injured in non-farm off road accidents, motor sport and also marine accidents. Given the recreational activities engaged in by West Australians and the risk of catastrophic injury associated with vehicle use, it is important that coverage be in place for all vehicular use.

Cyclists ideally should also be included. But given the complexities of the debate about bicycle registration and premium collection for this group, it may be more appropriate for a sister no-fault insurance product for cyclists to be developed as an interim measure alongside the scheme. For example, having the TAC in Victoria has enabled Bicycle Victoria to offer a product to its members as part of their membership package that provides the TAC's cover for injuries received in all cycling accidents.

In working through the options for inclusions for the scheme, it is important that a longer term strategy is agreed to manage the needs of those that are eventually deemed to be outside the scope of the scheme at this time. Essentially this means devising a plan and timeline for the implementation of the full NIIS in WA; how all types of catastrophic injuries will be progressively brought in; and how their needs will be met in the interim by existing systems and programs.

3.5 Independent review mechanism

The WA CTP Scheme needs an independent merits review process through which decisions of the scheme can be challenged. This is an important mechanism for ensuring that the legislation, policy and decision making of the scheme is sound and an opportunity for external review is available.

This is an important design feature of the NDIS and while the NDIS' external review is via the Commonwealth's Administrative Appeals Tribunal, a matching process for WA's no-fault scheme through the WA State Appeals Tribunal is most appropriate.

3.6 Benefit types

The Scheme should define the types of benefits and services it will fund for their recovery, rehabilitation and provision of disability supports for eligible injured people. These benefits should be uncapped and determined by a 'reasonable and necessary' test similar to that used by the NDIS and other no-fault catastrophic schemes. This allows for maximum individualisation of benefits and also applies the necessary tension to claims or planning decisions.

As well as the traditional suite of disability services (e.g. attendant support, equipment, residential support, therapy, home and vehicle modifications,

community access etc.), the scheme should include capacity for cross-sector coordination[18], family support, as well as policy and service development. These latter activities may or may not be related to individual claims, but relate to improving the citizenship opportunities for people with disability in WA and the objectives of the National Disability Strategy. This higher level activity is important to achievement of the Scheme's goals and to protect against cost shifting to the Scheme by mainstream programs.

3.7 Differential premiums

It is important that the pricing of premiums includes concessional rates for people on low incomes. This is consistent with other government concessions for essential services, and would also be a defensive strategy to minimize non-payment of premiums and vehicle registration. The Victorian TAC has different pricing and payment options for people on pensions and concessions, which work successfully.

3.8 Road safety

Given the critical impact road safety has on prevention of serious injury and claims costs for CTP schemes, the new scheme has a significant leadership role to play in a Statewide approach to road safety. An overall statewide strategy should involve all relevant government agencies such as health, justice, planning and infrastructure, as well as the Department of Transport and DSC.

As the Victorian Parliament's Road Safety Committee's *Inquiry into Serious Injury* indicated, this is an area of public health that needs continual refinement and innovation as well as cross agency collaboration with intelligent data systems. The Inquiry's report declared

> *The integration of road safety policy into broader government objectives around health, planning, justice, transport, environment and education is considered the key to significantly reducing road trauma. This is particularly important given the rise of alternative modes of travelling in Victoria, specifically bicycling and motorcycling. While these transport modes are of increasing concern in road safety, they also represent positive opportunities in terms of improved accessibility to employment and social activities, as well as health*. [19]

Given the historical low levels of community knowledge of the CTP scheme design, and the political difficulties of raising premiums to implement a no-fault scheme, it is important to highlight the significance of catastrophic injury in the life of West Australians so that the value proposition a no-fault scheme is understood.

Community awareness is also an important element of a road safety strategy. While reporting the death toll from road accidents has been a default position for all States

[18] For more detail on the nature and function of cross-sector coordination for people with high and complex needs, see YPINH Alliance and Sydney University, *Cross Sector Service Coordination, Harnessing Existing Evidence*. Sydney 2014.

[19] Parliament of Victoria Road Safety Committee, *Inquiry into Serious* I*njury*, Melbourne May 2014: xix.

and Territories, in many ways, doing so has masked the incidence and costs of catastrophic injury suffered in vehicle accidents. This is commonly referred to as 'the hidden toll'[20] or in more formal terms, the *serious injury burden*.

The Victorian Inquiry into Serious Injury addressed the community profile of serious injury burden as one of its terms of reference.

> *The Inquiry's ToR (f) specifically referred to raising the profile of the serious injury burden as an example of how to manage long-term reductions in serious injuries. Consequently, it was a matter commonly discussed in submissions and among Inquiry participants, with many agreeing with the need to do so. For example, the TAC submission advised that the community should be kept aware of the serious injury burden and the part they can play to avoid serious injury crashes. It also proposed investigating the potential impact of community pressure to initiate more drastic road safety actions.*
>
> *Similarly, Ms Chika Sakashita, a project manager at the George Institute for Public Health, stated in her presentation to the Committee:*
>
> *Best practice would be to have the profile of serious injuries raised, and this will help us raise community awareness of their risk of serious injuries and also community demand of the government to do more for road safety.*[21]

In the context of developing the NIIS, raising awareness of serious injury is not only beneficial for reducing road trauma, but also for building a community appetite and expectation for other injury types to be brought into the NIIS, including the levying of further premiums to do so.

3.9 Governance

The Scheme's governance arrangements are an important part of overall scheme design. While the public accountability, insurance and financial interests of the scheme need to be reflected in its governance structure, the need for the Scheme to be integrated across government and the community must also be addressed through its governance structure.

As noted earlier, the social and financial success of the Scheme will depend on its ability and that of its participants, to access services and supports from across the community and to participate in public policy initiatives.

To ensure this is a core feature of the scheme, the Alliance recommends that the scheme be given a legislated mandate to

- Pursue objectives consistent with the *Minimum Benchmarks for Motor Vehicle Accidents*, as well as those of the NDIS

[20] For example see http://www.abc.net.au/catalyst/stories/s715056.htm and the Victorian Transport Accident Commission's 'The Hidden Toll' road safety campaign highlighting the consequences of serious injury at https://www.youtube.com/watch?v=Z-j-ePhMxAo

[21] Parliament of Victoria Road Safety Committee, *Inquiry into Serious Injury*, Melbourne May 2014: 284.

- Collaborate across government and the WA community
- Undertake public policy development and
- Positively engage with participants and their representatives and organisations.

Rather than being under the direct control of a Minister, the Scheme's legislation should establish it with an independent board made up of Directors General from key government programs, particularly from the Health, Disability, Justice and Transport portfolios; representative community members; and skilled insurance and financial industry representatives.

This would promote structural cross-government interest in the sustainability and success of the Scheme and its engagement with key programs, and give these other portfolios 'skin in the game' of the scheme's strategy and operation. This kind of integrated governance structure has been absent from every other catastrophic injury scheme in Australia and the Alliance believes that this has contributed to these schemes being relatively isolated from important public policy initiatives in the States and Territories.

In addition and in keeping with the NDIS' governance arrangements, the Scheme should constitute an advisory structure so that key stakeholder groups can provide real time advice and feedback to the Scheme. This must include injured people, families, advocates, community organisations, service providers and the legal community.

3.10 Must be a monopoly provider in WA

Having worked with a number of different catastrophic injury schemes, we believe the WA Scheme must be constituted as a single monopoly government run scheme.

Given the high levels of specialization required, and the centralized collection and management of premiums, this scheme does not lend itself to being contracted out to private agents. We believe the Victorian TAC is the gold standard model that works well as a monopoly in this regard.

For more detail on the Alliance's position on this issue, see our submission to the recent Financial System Inquiry.[22]

3.11 Retrospectivity

The Alliance recognises that there are people currently outside the scope of WA's existing fault based scheme who have significant unmet needs for rehabilitation and lifetime care and support. Many are living inappropriately in aged care and other institutional settings. The issue of bringing those people into the scheme is problematic, particularly since there is no premium base to fund their support.

[22] YPINH Alliance, Submission to the Financial System Inquiry, Melbourne, September 2014, accessed at http://fsi.gov.au/files/2014/09/YPINH_National_Alliance.pdf

Because of this, the Alliance is of the view that this group needs to be given a high priority status to access all disability and health programs in WA, including the NDIS trial site. A joined up initiative must be established as a matter of urgency across health, disability and aged care, to deliver the support these people have been denied to date; and to create the cross-program infrastructure that the new no-fault scheme will need to access with its future participants.

We believe there is a strong case for making provision in the costing of the Scheme to include individuals who sustain non-compensable catastrophic injuries in vehicle accidents that are within the Scheme's scope, but occur during the Scheme's transition and prior to its formal start date (ideally from January 1 2015).

Given the high profile this issue has generated in WA through cases like that of Warwick Proudlove; and the fact that the State will have to pay for their support in any case, it is reasonable to make this provision. In the intervening period the joint initiative described above must meet their immediate health and other support requirements until the Scheme begins.

Section 4: Summing up

There is an urgency to deliver this scheme in Western Australia. Notwithstanding Premier Barnett's indication that the scheme is likely to be in place within 2 years,[23] it is critical that work begin on Scheme design as soon as practicable after this Green Paper consultation concludes.

By ICWA's own estimates, a 2 year wait would see 88 people left with minimal or no publicly funded support. This will cost the WA community significantly through direct, indirect and social costs as the Warwick Proudlove case has so vividly demonstrated.[24] Knowing the devastating consequences of these types of injuries, there is no excuse for undue delay.

This consultation process presents a unique opportunity to generate far reaching reforms for Western Australia that go well beyond the CTP environment itself. Having developed a disability support system that has greatly influenced the design of the NDIS; and established the underpinnings of useful cross sector collaboration through initiatives such as the WA Health Senate and the Health Disability Network, Western Australia can continue to show policy leadership through the design and implementation of a future focused, no fault lifetime care and support CTP scheme.

The next step in this process is to undertake a public consultation on Scheme design and an independent review of the costing. The Government should capitalise on the excellent public campaign for this no-fault reform led by WA's National Disability Services to continue the dialogue with West Australians about the scheme and the NIIS more generally.

The Alliance is keen to participate constructively in any subsequent consultation in Western Australia around this essential public health reform. We are also happy to have this submission published on the ICWA's website.

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[23] http://www.abc.net.au/news/2014-11-26/no-fault-insurance-scheme-being-considered-in-wa/5919672
[24] See for example http://www.abc.net.au/news/2014-11-20/warwick-proudlove-case-sparks-calls-for-wa/5906460

Appendix A

2007 National Summit on No Fault Catastrophic Injury Insurance

Embargoed till Wednesday October 3, 11.30am

National Summit on No Fault Catastrophic Injury Insurance

Melbourne, 3 October, 2007

RESOLUTION

The National Summit calls for:

1. **Multi-government commitment to implement no fault catastrophic injury insurance that:**
   - acts on the 2005 State and Federal Ministerial commitment to work together on development of a scheme
   - provides funding for life time care services for Australians with catastrophic injuries, regardless of cause
   - reduces inequity of access to lifetime care resources
   - reduces further admissions of young people to aged care nursing homes

2. **The development of a sustainable and equitable lifetime care strategy to meet the current and future needs of Australians with disability through the following key actions:**
   - placing lifetime care and support on the Council Of Australian Governments (COAG) agenda
   - harmonising existing personal injury insurance schemes to an agreed benchmark to deliver comprehensive lifetime care and support
   - expanding coverage to include other catastrophic disabilities needing lifetime care and support
   - making provision for future lifetime care and support liabilities to guarantee service availability and ensure no cost shifting to future generations of taxpayers

3. **A national working party be established to:**
   - enable all stakeholder organisations to work in partnership with government and each other on the design and implementation of a catastrophic injury scheme
   - keep a public policy focus on issues faced by people living with non compensable catastrophic injury
   - maintain effort with regard to agreed strategies
   - act as a clearinghouse of information that
     - ⇨ links technical information with consumer need
     - ⇨ forms partnerships and ensures agreed actions occur
     - ⇨ maintains a media and policy focus that ensures the development of a catastrophic injury scheme takes place

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