

**The Department of Treasury and
Finance – Victoria**

**National Competition Policy Review of
Victoria’s Transport Accident
Compensation Legislation**

20 December 2000

Executive Summary

This report presents the analysis and recommendations of the independent Review Team that conducted the National Competition Policy (NCP) legislation review of Victoria's transport accident compensation legislation. The Review Team comprised personnel from the PricewaterhouseCoopers Economic Studies & Strategies Unit (ESSU), the PricewaterhouseCoopers Health and Casualty Unit (HCU) and MinterEllison Lawyers.

The review covers the following Victorian transport accident compensation legislation and associated regulations:

- the *Transport Accident Act 1986* (the Act);
- the *Transport Accident (Charges) Regulations 1986*;
- the *Transport Accident Regulations 1996*; and
- the *Transport Accident (Impairment) Regulations 1999*.

Together these form Victoria's transport accident compensation scheme and the Transport Accident Commission (TAC), which administers the scheme. The scheme has some features of an insurance product, and is sometimes referred to by Victorian motorists as third party personal insurance or compulsory third party (CTP). However, as this report explains, the current scheme is not a simple insurance product.

Public consultation occurred as part of this review. On 12 August 2000 the Victorian Minister for WorkCover called for submissions in relation to this review. This was advertised in the *The Age* and *Herald Sun* newspapers. Members of the Review Team held discussions with a number of parties, including those that made submissions.

1 Legislation review

Legislation review arises under Clause 5 of the Competition Principles Agreement (CPA), which is one of the inter-governmental agreements underpinning NCP. Under Clause 5, Australia's Governments have committed to review, and where appropriate reform, all legislation (including subordinate legislation such as regulations) that restricts competition. The guiding principle underlying legislation review is that legislation should not restrict competition unless it can be shown that the benefits of the restriction to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

However, NCP legislation review does not require that the pursuit of competition should take precedence over public policy objectives. An important component of the various processes agreed to under the CPA involves assessing whether existing provisions and proposed reforms will produce a net public benefit.

Each jurisdiction has produced guidelines to assist persons conducting legislation reviews. In Victoria these are the *Guidelines for the Review of Legislative Restrictions on Competition* (The Victorian Guidelines). The Review Team was also guided by a Terms of Reference (Appendix A). In accordance with the Victorian Guidelines, the Review Team has developed recommendations that seek to provide the greatest potential public benefit.

It is also important to recognise what is not covered by an NCP legislation review. In particular, the Review Team has not been asked to analyse whether the transport accident compensation scheme itself generates a net public benefit or whether alternative schemes might perform better. Further, this is not a review of the performance of any agency or organisation. Thus while a description of the functions of the TAC is provided, this is solely for the purpose of clarifying the range of activities undertaken and to understand the range of activities to which the restrictions on competition might pertain.

2 Objectives

The Review Team's first task was to clarify the objectives of the legislation under review and examine their ongoing relevance. The objectives, as outlined in Section 8 of the Act, are:

- to reduce the cost to the Victorian Community of compensation for transport accidents;
- to provide, in the most socially and economically appropriate manner, suitable and just compensation in respect of persons injured or who die as a result of transport accidents;
- to determine claims for compensation speedily and efficiently;
- to reduce the incidence of transport accidents; and
- to provide suitable systems for the effective rehabilitation of persons injured as a result of transport accidents.

Further, the objectives for the TAC contained within section 11 of the Act are:

- to manage the transport accident compensation scheme as effectively, efficiently and economically as possible;

- to ensure that appropriate compensation is delivered in the most socially and economically appropriate manner and as expeditiously as possible;
- to ensure that the transport accident compensation scheme emphasises accident prevention and effective rehabilitation; and
- to develop such internal management structures and procedures as will enable it to perform its functions and exercise its powers effectively, efficiently and economically.

The Review Team found no evidence to suggest that these objectives are no longer relevant, although it is noted that there are natural limits to the ability of a no fault transport accident compensation scheme alone to reduce the incidence of transport accidents.

3 Restrictions on competition

The Review Team, with the assistance of participants, identified three key restrictions on competition arising from the legislation under review. These are:

- the compulsory requirement for vehicle owners in Victoria to pay a premium to fund the transport accident compensation scheme;
- the establishment of a single manager for the transport accident compensation scheme; and
- the centralised premium setting role in the legislation.

4 Recommendations

The Review Team conducted a public benefit assessment of each restriction on competition, including an assessment of one or more alternative approaches. The alternatives examined included ways of introducing more competition, either by abolishing or modifying the existing restriction on competition.

The final recommendation in each case is that which the Review Team considers will provide the greatest potential public benefit. In some cases observations are made of additional matters that the Victorian Government may wish to consider. These observations provide important context to the recommendations.

The following table summarises each restriction on competition and presents the Review Team's recommendations in respect of that restriction. The detailed analysis of each restriction on competition and the derivation of the recommendations can be found in the body of the report.

Restriction on Competition	Recommendations
<p>The Compulsory Charge: The Act makes it compulsory for all vehicle owners to pay a transport accident charge (paid at the time of registration of their vehicle). This is commonly seen as a compulsion to purchase third party personal insurance (though no insurance policy is purchased).</p> <p>The transport accident charge is the premium that funds the transport accident compensation scheme, which provides:</p> <ul style="list-style-type: none"> • a statutory benefits scheme for injured persons; and • indemnity from common law damages. 	<p>The Review Team recommends that the compulsion to pay a transport accident charge be retained.</p>
<p>Single Manager: The Act establishes a single manager (the TAC) for the transport accident compensation scheme. This is, in effect, a legislated monopoly.</p>	<p>The Review Team recommends that the single manager arrangement be retained at this time.</p> <p>However, the Review Team notes that the Victorian Government may wish to consider the scope for improved market testing of some of the services provided.</p>
<p>Centralised Premium Setting: The Act provides for the transport accident charge, or premium, to be determined by the TAC, subject to provisions in the Act and its regulations and subject to approval by the relevant Minister.</p>	<p>The Review Team recommends that the Act be amended to require that an independent third party review of the TAC's proposed premiums occur prior to Ministerial approval.</p> <p>The review of proposed premiums should be made public prior to the Minister's decision.</p> <p>The review should examine and report on the premium</p>

	<p>methodology, ensuring that the overall level of proposed premium collections is sufficient to cover the long term liabilities of the transport accident compensation scheme. The review should also examine and report on cross subsidies within the premium structure to ensure that the community is fully aware of those cross subsidies.</p>
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Clearly the Review Team has recommended the retention of some key restrictions on competition at this time, particularly the retention of the single manager. The Review Team recognises that, technically, it would be possible to permit a range of approved insurers to write insurance policies in a manner that would appear, at face value, to be in accordance with the current transport accident compensation scheme.

However, the Review Team has been mindful that it has been asked to assess legislative restrictions on competition only, not the fundamental design of the entire transport accident compensation scheme. The Review Team is also mindful that the Victorian Guidelines require it to prepare a report with recommendations that seek to provide the greatest potential public benefit. The Review Team is firmly of the view that a move to competitive provision at this time would not provide the greatest potential public benefit. This view is based upon a number of considerations that are outlined in the report. Key issues include:

- the transport accident compensation scheme creates a statutory benefits scheme for persons injured in transport accidents that is akin to a welfare system of benefits. Access to that part of the scheme is automatic, and does not depend in any way on the payment of a premium by any person. As a result it is incorrect to describe the scheme as an insurance product. A move to multiple private insurers would require a significant change to the very nature of the current transport accident compensation scheme – as access to the benefits would then be reliant on the purchase of an insurance policy;
- the transport accident compensation scheme provides some injured parties with access to the benefit stream for an entire lifetime. Unlike most insurance products there may be no end point, no final settlement. This long tail of claimants requires a long term commitment to the provision of benefits;

- past experience with competitive provision in Victoria has shown that private insurers move out of the market, leaving the government to step in and cover the whole market;
- past and current experience also shows that insurers tend to limit their exposure by avoiding acceptance of high risk classes of customer, even where they are required by law to accept all applications; and
- the Review Team is aware of developments with competitive provision in other states. Some of these developments are very recent, and it is too early to determine their merits. Thus the Review Team is of the view that it is rational for Victoria to wait until those arrangements are tested (over the next 2 to 3 years), at which time additional investigation will be able to determine whether there is merit in changing the nature of the Victorian transport accident compensation scheme and hence following suit.

The Review Team also notes that while it has examined each restriction on competition separately, it has recognised that the transport accident compensation scheme involves many complex inter-relationships. Thus change in any one area will impact upon the way the rest of the scheme operates. As such, the Review Team has sought to be mindful of the possible system wide effects of its recommendations.

Contents

1	Introduction	8
	1.1 Introduction	9
	1.2 Report Structure	10
2	Legislation Reviews under National Competition Policy	11
	2.1 Legislation Reviews and the Competition Principles Agreement	12
	2.2 What NCP Reviews do not cover	15
3	The Review Process	16
	3.1 Consultation and participation	17
	3.2 The analytical process	18
	3.3 Transitional Issues	22
4	Overview of Transport Accident Compensation Schemes	23
	4.1 Development of vehicle insurance	24
	4.2 Structure of transport accident compensation schemes	25
	4.3 Balance between social and economic policy	26
	4.4 Worldwide schemes	28
5	Background to the Review	29
	5.1 The general insurance industry in Australia	30
	5.2 Legislative history of transport accident compensation in Victoria	32
	5.3 The functions of the TAC	37
6	The Claims Process	40
	6.1 The claims process in Victoria	41
7	Objectives of the Legislation Under Review	44
	7.1 Clarifying legislative objectives	45
	7.2 Relevance of the objectives of the Act to current social and economic conditions	49
8	Market failures and government intervention	53
	8.1 Market failure and government intervention	54
	8.2 Insurance markets: A special case?	59
9	Analysis of Restrictions	63
	9.1 Compulsory premium	65
	9.2 Single manager	81
	9.3 Central premium setting	102
	9.4 Further Matters	117

Appendices

A	Terms of Reference
B	Consultation
C	Summary of transport accident compensation provision interstate and internationally
D	TAC organisation chart
E	Schedule of Transport Accident Charges - Effective 1/7/2000

Introduction

1.1 Introduction

This report presents the findings and recommendations of the independent Review Team conducting the National Competition Policy review of the Victorian *Transport Accident Act 1986* (the Act) and its associated regulations:

- the *Transport Accident (Charges) Regulations 1986*;
- the *Transport Accident Regulations 1996*; and
- the *Transport Accident (Impairment) Regulations 1999*.

The legislation forms the basis of Victoria's transport accident compensation scheme, sometimes known by motorists as the compulsory third party personal insurance system for transport accidents. Elsewhere such schemes may be known as compulsory third party (CTP) schemes.

The Review Team comprises personnel from the PricewaterhouseCoopers Economic Studies & Strategies Unit (ESSU) and the Health and Casualty Unit (HCU) and MinterEllison Lawyers. It was appointed by the Victorian Department of Treasury and Finance (the Department). The appointment and the subsequent review process were overseen by a Steering Committee.

The findings and recommendations contained within this report are those of the Review Team only. They have been formed after consultations with a number of interested parties, consideration of written submissions made by a variety of participants and analysis of information from other sources. The analytical framework upon which these findings and recommendations are based is that provided under the National Competition Policy. Further guidance on the conduct of this review is found in clause 5 of the Competition Principles Agreement, the Terms of Reference for the review (see Appendix A) and in the Victorian Government (1996) *Guidelines for the Review of Legislative Restrictions on Competition* (the Victorian Guidelines).

1.2 Report structure

This report is set out as follows:

Chapter 2 describes the role of legislation reviews under National Competition Policy.

Chapter 3 describes the review process, including key dates and the consultation process adopted for this review.

Chapter 4 gives an overview of the history and some characteristics of transport accident compensation schemes.

Chapter 5 provides an overview of insurance markets and transport accident compensation schemes in Australia, an overview of transport accident compensation scheme in Victoria and the background to the formulation of the prevailing legislation.

Chapter 6 outlines the claims process that is undertaken by affected parties in Victoria.

Chapter 7 clarifies the objectives of the *Transport Accident Act 1986* and the objectives for the TAC as outlined in the Act.

Chapter 8 provides a discussion of the economics of market failures and special features of insurance markets.

Chapter 9 identifies the potential restrictions on competition that arise from the legislation under review and presents the Review Team's analysis of the costs and benefits of each restriction. Alternative courses of action are also presented for discussion and recommendations made. A brief discussion of Ministerial Direction is also provided in this chapter as a point of interest for the Department.

The Appendices contain:

- Appendix A presents the Terms of Reference for the review;
- Appendix B presents details of the consultation process;
- Appendix C presents a table summarising the features of transport accident compensation schemes interstate and internationally;
- Appendix D presents the organisation chart for the TAC; and
- Appendix E presents the Schedule of Transport Accident Charges as at 1 July 2000.

**Legislation Reviews under National
Competition Policy**

2.1 Legislation Reviews and the Competition Principles Agreement

In April 1995, the Commonwealth, State and Territory Governments agreed to implement the National Competition Policy (NCP). In practical terms, this represented a commitment by all Australian Governments to adopt a consistent approach to improving the competitiveness of the Australian economy. Part of the Agreement to Implement the National Competition Policy between the Commonwealth, States and Territories includes around \$5 billion of payments from the Commonwealth to the States and Territories, with payment depending upon suitable progress being made in terms of implementation.

As part of the process the Governments signed the Competition Principles Agreement (CPA). Under the CPA the Governments committed themselves to undertaking a number of competition reform processes. These include:

- prices oversight of government business enterprises;
- competitive neutrality between government and private businesses;
- structural reform of public monopolies;
- legislation review; and
- access to services provided by significant infrastructure facilities.

The legislation review component of the CPA commits Governments to review and, where appropriate, reform all legislation (including subordinate legislation such as regulations) that restricts competition. Subclause 5(1) of the CPA states that the guiding principle of legislation review is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The process of legislation review does not imply that the pursuit of competition should take precedence over public policy objectives. Restrictions on competition commonly exist in legislation in order to achieve aims that are of public benefit. Legislation review provides an opportunity for these restrictions to be revisited and to determine

whether they are still the most appropriate means of achieving the intended aims.

This occurs through the examination of public benefits as part of the legislation review process and the other processes arising under the CPA. Subclause 1(3) of the CPA requires that, in assessing public benefit, a broad range of matters be taken into account where relevant, including:

- ecologically sustainable development;
- social welfare and equity;
- occupational health and safety (OH&S);
- industrial relations;
- access and equity;
- economic and regional development;
- consumer interests;
- business competitiveness; and
- the efficient allocation of resources.

Many of these matters are relevant in the case of traffic accident legislation.

The Victorian Guidelines provide more specific guidance for those conducting legislation reviews in Victoria. It is clear from the Victorian Guidelines that a legislation review should consider both the public benefits of and the need for any restrictions on competition, as per subclause 5(1) of the CPA. However, the Victorian Guidelines also specify that the recommendations in the report should seek to provide the greatest potential public benefit. The clear message is that while the preference should be for competitive outcomes, it is not intended that public benefit be sacrificed in the pursuit of competition.

The CPA also allows for legislation reviews to be conducted on a national basis. Specifically, subclause 5(7) provides for Governments to conduct a national review where the review has a national dimension or national effects on competition.

The CPA provides guidance as to an appropriate terms of reference for a review. Subclause 5(9) provides that a review should:

- 1 clarify the objectives of the legislation;
- 2 identify the nature of the restriction on competition;
- 3 analyse the likely effect of the restriction on competition and on the economy generally;
- 4 assess and balance the costs and benefits of the restriction; and

- 5 consider alternative means for achieving the same result including non-legislative approaches.

The Terms of Reference for this review set out eight steps, based upon the five from the CPA:

- 1 clarify the objectives of the legislative arrangements and determine whether these objectives remain relevant;
- 2 identify the nature and extent of any restrictions on competition contained in those legislative arrangements;
- 3 analyse the likely effect of any restrictions in the legislative arrangements on competition and on the economy generally;
- 4 identify any alternatives to the legislative arrangements, including non-legislative approaches, that achieve the objectives of the legislative arrangements;
- 5 assess and balance the benefits, costs and overall effects (public interest) of the legislation and alternatives;
- 6 determine a preferred option for regulation, ie. whether the legislation should be repealed, modified, or maintained, and if modified, the suggested modifications;
- 7 identify changes in legal obligations liabilities, and revenue to Governments that might be expected to arise out of the preferred option for regulation; and
- 8 advise on any transitional arrangements which might be necessary in implementing the preferred option.

The Terms of Reference required that consultations with groups likely to be affected by the legislation be undertaken as part of the review process. Details of consultation are contained in Appendix B to this report.

2.2 What NCP Reviews do not cover

As outlined above, NCP reviews are designed to analyse and assess if, how and why provisions contained within the legislation provide a restriction on competition. Specifically, NCP reviews are designed to provide commentary on identified restrictions, a discussion on the costs and benefits to the community of each restriction identified and provide a view on whether or not the net benefit to the community is greater than the net cost of having that restriction in place.

Although some provisions in the act may lead to a restriction on competition through stipulated operational processes of regulatory and managing bodies, NCP reviews generally do not set out to make recommendations in regard to the specific structure or design of operational processes. Rather, an NCP review seeks to address the restrictions and make recommendations regarding how the legislation may be altered should it be found that the net costs to the community outweighs the net benefit of that restriction.

Further, an NCP legislation review such as this does not examine whether the complete legislative package provides a net public benefit. In the case of this review, there is no attempt to determine whether the transport accident compensation scheme itself provides a net public benefit. Such matters are outside the scope of this review.

The Review Process

3.1 Consultation and participation

In accordance with the Terms of Reference (presented in Appendix A) the Review Team has undertaken a series of consultations in order to assist in the development of this report. The key stages of the consultation process were:

- notification of the review and a call for submissions was advertised in the Herald Sun and The Age on 12 August 2000. Submissions were due by 13 September 2000; and
- targeted consultations, which were conducted in late September and early October. Not all parties visited presented submissions.

The list of organisations visited and key details of the process are included in Appendix B. Submissions are available on the Department of Treasury and Finance website at the following web address:

www.vic.gov.au/treasury/ncpvwatac.html

3.2 The analytical process

The eight stages of the Terms of Reference describe in broad terms the analytical process the Review Team has used in developing its findings. The major analytical elements can be summarised into the four steps outlined below.

3.2.1 Clarifying legislative objectives

The objectives of legislation are found in policy statements, parliamentary speeches and sometimes are explicitly stated in legislation itself. Clarifying objectives enables the Review Team to understand the types of outcomes, and hence benefits, that the legislation is intended to provide. It is not the purpose of the review to question the merits of the objectives of the legislation. Rather, the review provides an opportunity to examine whether the objectives of the legislation are being pursued efficiently.

3.2.2 Identifying restrictions on competition

There are many ways in which legislation may restrict competition. The second stage of the legislation review process is to identify where and how restrictions on competition arise in the legislation under review.

The Terms of Reference for this review identified a number of matters for the Review Team to consider in identifying restrictions on competition. Specifically, the Terms of Reference require that the Review Team consider the following issues of:

- the need to protect the interests of drivers, passengers and third parties involved in transport accident causing personal injury, and to maintain the affordability of the transport accident compensation arrangements;
- the effect of the current insurance arrangements have or might have on the activities of insured parties;
- the effect of the current internal cross subsidies between classes of motorists;
- the performance of both commercial and regulatory functions by the TAC; and
- the outcomes of similar reviews in other jurisdictions.

Further guidance is provided in the Victorian Guidelines, which describe a number of common restrictions on competition that may

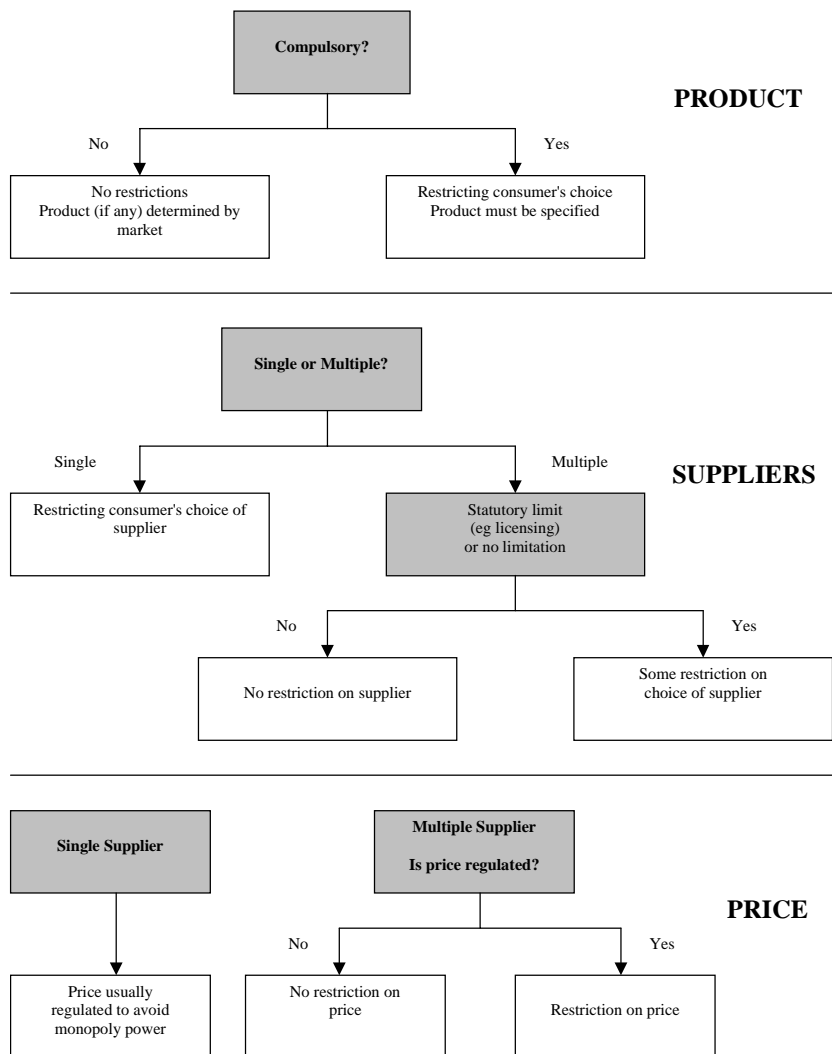
arise from legislation. The existence of a legislated monopoly is one example that is relevant to this review.

Having examined the legislation, the Review Team considers that the main restrictions that arise under the legislation are:

- the compulsory requirement for vehicle owners in Victoria to pay a premium to fund the transport accident compensation scheme;
- the establishment of a single manager for the transport accident compensation scheme; and
- the centralised premium setting role in the legislation.

The decision process is described in Figure 3.1.

Figure 3.1 Schematic of Restriction Identification



The Review Team also took note of the recent publication by the National Competition Council (NCC) on Compulsory Third Party Motor Vehicle Insurance¹ as this may also have provided guidance on the identification of restrictions on competition and the assessment of public benefits. Upon examination it was evident that much of the discussion was premised on the view that transport accident compensation schemes are insurance products. However, this is not the case for the Victorian transport accident compensation scheme, where access to statutory benefits for injured parties is not linked to the payment of a premium.

3.2.3 Public benefits and costs

There are a number of ways in which to assess whether a restriction on competition produces a net public benefit. The Victorian Guidelines explain some of the matters to be considered for some particular circumstances that may be encountered. By its nature, a public benefit analysis considers the balance of both costs and benefits created by a restriction. Sometimes these may be measured quantitatively, for example in terms of dollars lost or gained. However, there are many situations in which only some of the costs and benefits can be measured quantitatively. This often occurs in the case of transport accident compensation, where the costs and benefits involve health and social policy issues. Qualitative measures are used in such circumstances.

In this review a mix of qualitative and quantitative information was available and is presented. Detailed quantitative analysis such as econometric modelling was not relevant to this review and hence was not used by the Review Team.

The various costs and benefits encountered may also be distributed unevenly across the community. As a result, the Review Team has sought to identify both where the cost or benefit arises and upon whom the burden (or the benefit) falls. For example, the analysis may identify commercial and administration costs, which are the costs to government of running a regulatory system.

The approach to determining public benefit assessment depends upon the nature of each restriction on competition being assessed. The analysis presented in Chapter 9 of this report utilises a range of economic approaches to help the Review Team in this respect. Chapter 8 provides an outline of the economic approaches relevant to transport accident legislation.

¹ National Competition Council 2000, *Compulsory Third Party Motor Vehicle Insurance*, NCC Community Information 2000.

Chapter 7 clarifies the objectives of the transport accident legislation. It is expected that the objectives seek to address policy issues in a way that creates a net public benefit.

However, it is important to recognise that an NCP review does not necessarily examine whether the objectives achieve a net public benefit. An NCP review confines itself to examining restrictions on competition and the need for and public benefit of those restrictions. Thus the Review Team has not analysed whether the transport accident compensation scheme itself generates a net public benefit or whether alternative schemes might perform better.

Further, this is not a review of the performance of any agency or organisation. Thus while a description of the functions of the TAC is provided, this is solely for the purpose of clarifying the range of activities undertaken and to understand the range of activities to which the restrictions on competition might pertain.

3.2.4 Alternative approaches

The Terms of Reference asks the Review Team to consider alternative approaches to achieving the objectives of the legislation under review, including non-legislative alternatives. Such alternatives are sought as it is recognised that it may be possible to achieve the objectives in lower cost ways, preferably without restricting competition. The net public benefit analyses conducted as part of the review process provides a relatively objective basis for comparison of the merits of the various alternative courses of action available.

3.3 Transitional issues

The Terms of Reference asks the Review Team to advise on any transitional arrangements which might be necessary in implementing the preferred option.

It is particularly important to identify and carefully consider transitional arrangements where the Review Team recommends an alternative to the current legislative scheme be introduced. This is because the removal of the existing scheme may significantly impact upon the existing rights and obligations of individuals and groups in the community and it is essential to ensure that the transition from the existing to a new scheme is properly managed. For example, if the recommendation was to remove the compulsory obligation to pay the transport accident charge, it would be necessary to ensure an appropriate legislative framework existed to manage the rights and obligations of parties that arose prior to the change.

Where a recommendation is to maintain the present system but make some minor changes, it may be possible to amend the present legislation to incorporate the changes. For example, if the recommendation was to make a licensing scheme more transparent, it may be possible to introduce amending legislation to specify those matters which are to be taken into account by the regulating body in issuing a licence or require the regulating body to provide written reasons for its decision.

**Overview of Transport Accident
Compensation Schemes**

4.1 Development of vehicle insurance

Insurance is an old phenomenon dating back to 4000-3000 BC, initially based on insuring against the loss of shipments at sea. Vehicle insurance was written to a very limited extent before 1890, but after the introduction of the motor car, the level of motor vehicle insurance increased rapidly².

In modern times, there are two distinct types of motor vehicle insurance, specifically:

- ‘Comprehensive’ cover, which insures the owner of the vehicle against loss of or damage to that vehicle; and
- ‘Third Party Personal’ which insures the owner and authorised drivers of the vehicle against legal liability for injuries sustained as a result of the negligent or otherwise blameworthy use of the vehicle.

Comprehensive insurance is not regulated by the legislation under review.

In most industrialised countries, some form of third party personal insurance is required by law. The level of cover that is compulsory varies. In some states of the United States of America, a policy is not required if the driver can prove that they have the financial ability to meet any liability they might incur.

In some countries, including Australia and New Zealand, compensation is available to persons injured in transport accidents on a ‘no-fault’ basis. The injured party does not have to prove negligence or other wrong doing on the part of the owner or driver of the vehicle involved or anyone else. Compensation is available simply because the injury arose from a road accident.

² Britannica.com

4.2 Structure of transport accident compensation schemes

Most transport accident compensation schemes worldwide seek to provide cover for persons injured in transport accidents.

There are several differences in the product, the main ones being:

- which injured parties are covered;
- whether the issue of fault is relevant;
- what benefits are provided to injured parties; and
- how disputes are resolved.

For the majority of countries in North America and Europe, the cover normally applies to the driver rather than the vehicle. However in both Australia and New Zealand, the policy follows the vehicle.

As mentioned above, some jurisdictions operate with ‘no fault’, which means that the injured or affected parties are compensated, regardless of who caused the accident. For jurisdictions where the matter of fault is considered, there are different types of fault systems:

- no threshold system, which means that all victims can sue the at-fault driver for pecuniary loss and/or pain-and-suffering;
- monetary threshold, where victims can sue the at-fault driver for pecuniary loss and/or pain-and-suffering if the economic loss exceeds a fixed dollar threshold; and
- injury threshold where victims can sue the at-fault driver for pecuniary loss and/or pain-and-suffering if the victim’s injuries meet specific descriptive criteria or in the event of a death.

The level of benefits vary according to the environment.

As follows from the no-fault versus fault structure, the reason for disputes and the frequency for disputes varies according to the design of the scheme. The three most common ways of dealing with disputes are:

- settled between underwriter (being a private insurer or government entity) and insured;
- independent arbitration or assessment; and
- determined by a tribunal.

4.3 Balance between social and economic policy

There are a range of social and economic aspects that transport accident compensation schemes and legislation are designed to address. There are economic issues as the schemes are designed to complete the market through providing services that private markets may not provide. In addition, there are social interests involved such as achieving fairness and equity amongst the community and protecting those harmed in transport accidents from the significant financial losses they may face.

The emphasis by governments on the social policy aspects of having transport accident compensation schemes varies considerably. The key issues that have been considered are:

- the balance between making premiums affordable for the public, while still being fair in regards to relative risk weightings;
- the balance between having the private market involved, with the risk of insurers becoming insolvent;
- the link, if any, between access to compensation and the purchase of a policy or the payment of a charge;
- the level of regulation; and
- what responsibility for accident prevention the insurer should have.

In this context, we note that parties consulted indicated that if male drivers 25 years of age were to pay a fully risk adjusted premium, then the cost would be close to unaffordable, and potentially act as a disincentive for the driver to take out insurance. Therefore, the approach sometimes adopted in some jurisdictions acts to balance premiums across certain groups in order to assist in maintaining affordability³.

Combined with making the cover affordable, most schemes also have some type of regulation to ensure that the cover is taken ie. compulsory cover. Examples of actions are to link the insurance to the registration of the vehicle, to the renewal of drivers' licences and to yearly vehicle inspections.

Most governments have initiated different prevention strategies to reduce the number and extent of injuries as a result of traffic accidents. These actions are carried out by different means such as:

³ Such commentary was noted in the consultations with various parties. The larger risk associated with young drivers, and therefore the fact that a risk reflective system would result in young males paying more, is noted in the ICA's Submission.

- specific authorities (RTA in NSW) that are separated from the body that manages the insurance product;
- programs run by the body that also regulates the insurance product (road safety campaigns in Tasmania);
- in co-operation with local government (British Columbia);
- in co-operation with Police (such as Victoria); and
- in co-operation with insurers (Ontario)⁴.

The key focus for the activities are road safety, vehicle safety, tougher road rules, tougher monitoring of the rules and education/information.

⁴ *Canadian Insurance E-News* 27/1/99; www.insurance-canada.ca/insurecan/gopher/archive.html

4.4 Worldwide schemes

Transport accident insurance schemes in the USA are serviced by competitive insurers with different levels of regulation. In Canada there are both schemes with the government as a monopoly provider and competitive schemes. In Europe, the majority of the schemes are sold as part of comprehensive insurance packages for motor vehicles and they are delivered by the private sector with some regulation of the pricing.

In Australia there is a mixture of monopoly and competitive environments. In New Zealand the market is serviced by a single provider, the Accident Compensation Corporation (ACC). Appendix C contains further detail regarding international schemes that the Review Team has investigated as a part of this review.

Background to this Review

5.1 The general insurance industry in Australia

In its early days in Australia, the insurance industry comprised mainly branches of British insurers and underwriters, State Government insurers and mutual life insurers. Progressively, local insurers appeared, along with local branches of American and European insurers.

In more recent times, the industry has seen considerable activity in the areas of privatisation of State Government insurers, demutualisations, mergers and acquisitions and an increase in listed insurers.

The regulatory framework for the general insurance industry is outlined in the *Insurance Act 1973*. The Australian Prudential Regulation Authority (APRA) took over on 1 July 1998 as the prudential regulator of insurance companies, as well as authorised deposit taking institutions, superannuation funds and friendly societies.

Australia has one of the “softest” insurance markets in the world with many players and a small population base. In 1997, there were 150 non-life insurers in Australia with a premium income of AUD \$14,048m. That equates to 60% of the number of all insurers, but only 39% of the premium dollars at the time⁵. The five largest operators account for approximately 60% of the general insurance market.

General insurance is sold direct or via insurance brokers or agents. It is mainly the commercial lines, including workers’ compensation, that are sold via brokers, whereas personal lines, including third party personal, are often sold direct.

Compulsory third party insurance is nationally the 3rd largest line of general insurance as can be seen in the piechart in Table 5.1.⁶ This shows an approximate distribution of products based on available information about private and publicly underwritten schemes for all general insurance products.

⁵ PricewaterhouseCoopers, *Asia Pacific Insurance Handbook* (internal publication), June 1999, pp 15

⁶ PricewaterhouseCoopers, *Insurance facts & figures 2000*, June 2000, pp 31

Table 5.1 Major Lines of Insurance in Australia

Insurance Line	Net written premium 31/12/98 (\$m)	Percentage of total industry
CTP motor vehicle	2,343.9	13
Workers compensation	4,024.7	23
Motor vehicle (domestic & commercial)	3,697.0	21
Houseowners/ householders	1,914.0	11
Other	5,889.0	32
Total	17,868.6	100

The nature of third party personal insurance is different to other general insurance products since the cover for the policy is dictated by legislation and the right of injured parties to access benefits may not depend upon the purchase of cover. Other aspects that are legislated are the prescribed benefits, and who is allowed to carry the risk.

All states in Australia have a transport accident compensation scheme of some type. However, the provision of the insurance is different in each state. A detailed state by state summary of the programs can be found in the table contained in Appendix C. A comparison between other country's transport accident compensation schemes can also be found in Appendix C.

5.2 Legislative history of transport accident compensation in Victoria

In 1941 the *Motor Car Act 1941* (Vic) ('MCA') was introduced. This created Victoria's first compulsory third party insurance scheme for transport accidents. Previously, only persons who were able to prove that their injury was caused by another person's fault could recover damages against that person by bringing a court action. The injured person also had to consider whether the negligent person could meet the court's order to pay the awarded damages or whether that person was impecunious.

The 1941 scheme required all owners of motor cars to obtain a policy of insurance which indemnified them against damages awarded against them for fault. This third party personal insurance also insured all drivers of the registered motor car. The insurance was available from a number of private insurers or one state owned insurer all of whom were approved by statute. These authorised insurers were required to charge a set premium and only enter into standard contracts of insurance.

In 1973 the *Motor Accidents Act 1973* (Vic) ('MAA') was introduced. This created Victoria's first no fault accident compensation scheme which operated together with the requirement to obtain third party personal insurance. Under this scheme any person who was injured as a result of a transport accident was able to recover the cost of certain medical benefits and compensation for their loss of earnings regardless of whether any person was at fault or whether the injured person had contributed any money towards the scheme.

The Motor Accidents Board (MAB) was established to administer the payment of statutory benefits and compensation. A levy was imposed on all existing third party personal insurers to fund the no fault compensation. By 1976 the State Insurance Office (SIO) was the only provider of third party personal insurance in Victoria and was the only contributor to the cost of the no fault scheme. The State Government was therefore funding all payments of damages for persons at fault and the payment of no fault benefits to injured persons.

In 1986 the system was criticised as 'being unable to provide accident compensation and rehabilitation efficiently and effectively in the current era of mass motor vehicle usage'⁷. By 30 June 1986 it was estimated that the Victorian third party personal scheme had:

⁷ Transport Accident Compensation Reform, Government Statement, May 1986, pp 3.

- an outstanding claims liability estimated at \$2.54 billion;
- an estimated unfunded liability of \$1.6 billion, or 62% unfunded;
- a projected average premium per vehicle of \$156, which represented only 45% of the \$349 average premium required to fully fund liabilities;
- increases in the number of MAB and SIO claims per registered vehicle of 7% and 8% per annum respectively, and a real growth rate of 10% per annum in the average cost per common law claim for the 5 years to 30 June 1985;
- a projected cash flow shortfall of \$91 million in the 1985/86 financial year; and
- an increase in the ratio of outgoings to income from 49% in 1979-80 to 117% in 1985-86.⁸

In addition to the scheme's financial trouble, the scheme's combination of no fault compensation together with an unrestricted ability to sue at common law for damages was publicly criticised. In May 1986 the Victorian Government endorsed the views of the New South Wales Law Reform Commission in its report on a transport accident compensation scheme for New South Wales, LRC 43 1984. The New South Wales Law Reform Commission had expressed concerns about:

- the failure of negligence actions in providing any compensation for a large proportion of transport accident victims;
- the problems in assessing damages on a once and for all basis;
- the difficulties in assessing non-economic loss;
- the adverse effects of negligence actions on rehabilitation;
- the delays in receiving damages awards; and
- the cost to the court system and community at large of the negligence action.

5.2.1 The Transport Accident Bill

In 1986 the Victorian Government introduced the Transport Accident Bill. This Bill proposed a compensation scheme with access to similar types of no fault benefit as available under the MAA but expanded the ability for injured persons to claim compensation for total or partial loss of earnings and impairment benefits. The most controversial feature of the Bill was its total elimination of the right to sue at common law for injuries sustained as a result of a transport accident.

⁸ Transport Accident Compensation Reform, Government Statement, May 1986, pp 32.

In 1986 the Law Institute of Victoria released its report 'Government Faults - Where the Transport Accident Bill takes turns for the no fault worse' which criticised the Transport Accident Bill. The Law Institute regarded the right to sue as fundamental to a proper system of compensation. There was also similar criticism from the Victorian Bar Association and Victorian State Opposition. As a result of the criticism the Victorian Government reintroduced into the Transport Accident Bill the right to sue for common law damages where a person had suffered serious injury as a result of a transport accident.

5.2.2 The Transport Accident Act

The *Transport Accident Act 1986 (Vic)* ('Act') was introduced in 1986 and became effective on 1 January 1987. The Act created the Transport Accident Commission (TAC), a statutory corporation whose objectives (at the time of the Act being enacted) were to:

- manage the Transport Accident Compensation Scheme as effectively, efficiently and economically as possible;
- ensure that appropriate compensation is delivered in the most socially and economically appropriate manner and as expeditiously as possible;
- ensure that the Transport Accident Compensation Scheme emphasises accident prevention and effective rehabilitation; and
- develop such internal management structures and procedures as will enable it to perform its functions and exercise its powers effectively, efficiently and economically.

The Act also set up the scheme where individuals may access both no fault benefits and common law damages if they met the definition and eligibility requirements set out in the Act.

Under the Act, all owners of registered vehicles are required to pay the TAC a transport accident charge applicable for that motor vehicle. Under the Act, the TAC is required to receive and assess all claims for compensation made by persons injured as a result of a transport accident. The TAC applies statutory formulae to determine the amount of compensation to which a person is entitled.

The bulk of the premium funds are applied to the Transport Accident Fund, which the TAC manages. As a statutory body the Victorian Government underwrites the fund.

The TAC is required to indemnify persons who are owners or the driver of a registered motor vehicle in respect of common law liability

in respect of an injury or death of a person arising out of the use of the motor vehicle.

5.2.3 Regulations of the Act

The Regulations that arise under the Act are as follows:

- the *Transport Accident (Charges) Regulations 1986*, which outline the prescribed periods that the premium is relevant for, the periodical payment timing, the transport accident charges and the three risk zones (including the post codes that are relevant to each zone);
- the *Transport Accident Regulations 1996* which provide the forms that must be completed in the claims process and the prescribed number of hours for the purpose of calculating average weekly earnings of a traffic accident victim that needs to be subsidised; and
- the *Transport Accident (Impairment) Regulations 1999* which outline impairment benefit formulae.

5.2.4 Amendments and significant events

In January 1993, the Victorian Government announced plans to dismantle the TAC and sell it to private insurers. However, due to public concern and the strong financial performance of the TAC the Government abandoned its plan. In December 1993 the Government announced plans to restructure the TAC by:

- establishing 3 competing claims which would compete against each other on cost, efficiency and service delivery;
- appointing a compulsory third party insurance commissioner to provide independent advice to the Treasurer on social and prudential performances of the TAC; and
- establishing the Victorian Funds Management Authority to manage the investment of surpluses in the Fund.

At the time of introducing the plans to restructure the TAC, the Government also introduced the *Transport Accident (General Amendment) Act 1994*. This Act addressed a number of community concerns about the scheme's operation. It enhanced the range of benefits provided under the scheme to include:

- funding for family counselling in cases where a road fatality had occurred;

- extending coverage to cyclists colliding with the open doors of stationary vehicles;
- simplifying compensation provisions in accidents where details of vehicles are not known or in accidents where vehicles are not indemnified; and
- removed the excess on medical costs where claimants are hospitalised as a result of their injuries.

5.2.5 Further amendments to the Act

Other significant amendments to the Act include the *Accident Compensation (Common Law & Benefits) Act 2000* which requires the TAC to reimburse the Victorian WorkCover Authority (VWA) and any workplace accident self insurer for compensation paid under the Accident Compensation Act to persons for injuries sustained from a course of employment transport accident. This Act also requires the TAC to reimburse the VWA for any damages awarded against the VWA for any common law liability of an insured employer for injuries arising out of a course of employment transport accident.

5.2.6 Observations

Upon examining the development of the current transport accident compensation scheme, it has become apparent to the Review Team that in 1986 the Victorian Government made a clear decision to alter the fundamental approach to transport accident compensation. In particular, the scheme signalled a shift from compensation being delivered via an insurance product, to being delivered as more of a welfare scheme. Two key features of the current scheme are critical in reaching this view:

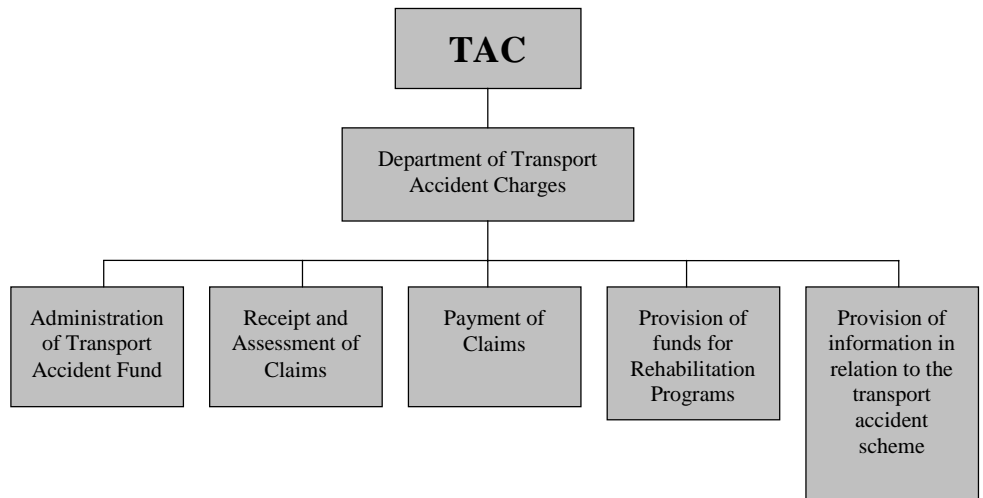
- with few exceptions access to benefits for injured parties in no way depends upon any purchase of an insurance policy or even the payment of the transport accident charge by any person; and
- while protection from common law damages is dependent upon the payment of the transport accident charge in most, though not all, circumstances, the TAC still takes on the liability in most cases and can then countersue the vehicle owner for that liability.

The Review Team has therefore formed the view that the current transport accident scheme, while colloquially referred to as third party personal insurance, displays only some features of an insurance product. Essentially it is now more akin to a welfare system.

5.3 The functions of the TAC

The functions of the TAC are outlined in section 12 of the Transport Accident Act 1986. The following diagram outlines the functions that the TAC is responsible for in the delivery and assessment of claims.

Figure 5.1 Functions of the TAC



The TAC is responsible for a number of functions in regard to transport accidents. A brief description of each of the primary functions of the TAC as single service provider of transport accident insurance in Victoria is outlined below. The Act permits the TAC to delegate any or all of its functions to one or more parties. For example, the collection of premiums is undertaken by VicRoads. The functions of the TAC give some identification to the nature of the restrictions on competition addressed in this report. However, the key restrictions identified relate more to the management of the scheme than the delivery of particular services within it. As a result, the Review Team has not adopted a functional analysis as a basis for identifying restrictions on competition.

Determination of Transport Accident Charges

Preceding all other functions is the determination of the premiums that are to be charged to fund the transport accident compensation scheme. The premiums require approval by the relevant Minister.

Administration of the Transport Accident Fund

The funds collected through the premium form the Transport Accident Fund. This is the basis for all spending activities of the TAC, including administrative, rehabilitative, common law and long tail care payments.

Receipt and assessment of claims

All transport accident compensation claims are lodged to the TAC. The TAC is then responsible for the assessment of the eligibility of the claim.

Payment of claims

Once these claims are considered to be eligible by the TAC, they are then processed and paid directly by the TAC. In terms of rehabilitation service providers, the TAC provides payment directly to the service provider. The affected party receives loss of income benefits directly if the TAC assess that they are necessary.

Provision of funds for rehabilitation programs

The TAC is responsible for providing funding for rehabilitation programs as defined in section 12, subsections 3 and 4 of the Act. Under these provisions, it is the TAC's responsibility to provide funds for a program that has been designed and promoted by the TAC to secure early and effective medical and vocational rehabilitation of persons injured as a result of transport accidents.

Provision of information and advice in relation to the Victorian Transport Accident Compensation Scheme

The TAC is also responsible for the provision of information and advice in relation to the Victorian Transport Accident Compensation Scheme to the community and the Minister. The TAC also funds and undertakes transport accident prevention measures, through advertising and funding certain activities including assisting police.

It is important to note that these functions are specified in the Act, and the enactment of all of these functions act to establish the TAC.

Compensation and benefit delivery is perhaps the largest service area, comprising the delivery of benefits classified into the following categories:

- treatment and rehabilitation;
- loss of income benefits;
- impairment benefits;
- death benefits;
- long term care benefits;
- other no-fault benefits;
- common law – serious injury;
- common law – interstate and other; and
- old schemes claims.⁹

The distribution of funding between these claims is available for 1998/99 and is shown in Table 5.2 below.

Table 5.2 Breakup of Payment of Benefits by type 1998/99

Benefit Payment Type	Percentage of Total Payments
Common Law Schemes– Serious Injury	31%
Treatment and Rehabilitation	26%
Loss of Income	10%
Common Law – Interstate and Other	9%
Death	8%
Impairment	6%
Long Term Care	4%
Other No Fault Claims	4%
Old Schemes Payments	2%

The largest payments are made to common law claimants, with 31 per cent of all claims paid out being common law claims. Treatment and rehabilitation payments are the next largest, accounting for 26 per cent of overall payments, with loss of income being the third largest factor for claims paid by the TAC. 2 per cent of all payments made are from old schemes, and account for the smallest portion of payments.

The claims process is outlined in Chapter 6 of this report.

⁹ Transport Accident Commission, 1999 Annual Report, pp 18

The Claims Process

6.1 The claims process in Victoria

Under the current regime, all persons who are injured or who die as a result of a transport accident may apply to the TAC for compensation. A person's entitlement under the Act to compensation does not depend upon whether the owner or driver or the injured person has paid a charge to the TAC. The nature and amount of compensation payable is regulated by the Act.

Under the Act, a seriously injured person may also seek recovery for damages against a negligent party through common law remedies. TAC is required to indemnify owners and drivers of registered vehicles against any potential liability at common law in respect of transport accidents. If the negligent party is a driver of an unregistered vehicle, the injured person may recover against the TAC directly, and TAC may seek reimbursement from the negligent party.

The TAC is required under the Act to pay all compensation and indemnity amounts out of the transport accident fund. It is also required to pay into the fund all amounts it receives by way of transport accident charges, penalties for offences against the Act, income from the investment of any money credited to the fund, any money borrowed by the TAC and all other money the TAC receives under or for the purposes of the Act.

Prior to any claims being lodged with the TAC, the incident from which the injury has been incurred must have been reported to the police. If the incident, however minor, has not been reported, then the claim is ineligible for payment by the TAC. This applies for all incidents, excepting those which occur on public transport. In this instance, the incident must be reported to the tram, bus or train operator, so as the TAC may verify that the event occurred. From this stage, the claims process is completed in a number of steps. The following is a simplified outline of the claims process.

Step 1 Lodgment of a claim form

At the commencement of the process, a claim form must be lodged in the specified form. The claim form is contained within the *Transport Accident Regulations 1996*, and can be lodged at Australia Post, a TAC Hospital Liaison Officer or over the counter at the TAC customer service centre. The claim is then assessed at a preliminary level as to whether or not the claim is eligible for acceptance. This includes the TAC conducting a check to see if the form has been

completed properly. If not, the form is returned to the claimant with the outstanding details required outlined in an accompanying letter.

If there has been enough information provided, for example a police report has been filed, then the claim is assessed for eligibility according to defined criteria. If there has not been enough information provided at the initial phase, further information is required prior to the assessment for eligibility. If enough information fails to be provided or the defined criteria for assessment have not been met, then the claim is denied at this first stage.

Once the claim is accepted, there are a number of forms that the claim can be created in so that it is referred to the appropriate team. These include:

- fatal claims;
- interstate claims;
- WorkCover claims;
- major injury – defined (MID) claims;
- long hospital stay claims;
- orthopaedic claims;
- soft tissue claims; and
- low risk claims.

Following the determination of eligibility and the classification of a claim, it is then allocated to a team or division.

Step 2 Allocation of the claim

Stage two involves the allocation of the accepted claim to a division or team. There are three main teams or groups that the claim may be allocated to:

- low risk;
- restorative, which includes:
 - soft tissue injuries;
 - orthopaedic; and
 - long hospital stays;
- major injury, which includes:
 - acquired brain injury (ABI);
 - spinal injuries; and
 - fatal.

Once the case has been referred to a team, then the claim is assessed at this stage for payment eligibility.

Step 3 Determination for the eligibility of payments

Where the claimant is a non hospital claimant, the claim is assessed to determine whether the medical excess has been reached. If not, then the commencement of payment is delayed until a determination can be made. If the medical excess has been reached, then medical rehabilitation and like payments are commenced, and the claim is managed by the TAC until the recovery and rehabilitation process is complete.

Simultaneous to this process, the claim is also assessed to determine whether the claimant is eligible for a loss of earnings payment. If not, the claim is denied, but if the claimant is found to be eligible, then payments for the loss of earnings are commenced. The claim is then managed in conjunction with medical and rehabilitation payments and processes.

Objectives of the Legislation Under Review

7.1 Clarifying legislative objectives

The objectives of legislation are sometimes found stated in the legislation itself. However, sometimes objectives must be clarified through an examination of policy statements relating to the legislation. In the case of the *Transport Accident Act 1986*, objectives are stated in the Act. Section 8 of the Act states that these objectives are:

- to reduce the cost to the Victorian Community of compensation for transport accidents;
- to provide, in the most socially and economically appropriate manner, suitable and just compensation in respect of persons injured or who die as a result of transport accidents;
- to determine claims for compensation speedily and efficiently;
- to reduce the incidence of transport accidents; and
- to provide suitable systems for the effective rehabilitation of persons injured as a result of transport accidents.

From time to time, it is necessary to clarify whether the objectives of the Act are effectively fulfilling the needs of the community, and if they are not, to look to whether the objectives are no longer relevant or whether the application of policy is hindering their achievement.

Reducing cost of compensation to the community

The most obvious cost of compensation to the community is the charges payable by motor vehicle (and rail and tram network) owners to TAC. Those charges are set by TAC in order to fund its obligations to compensate and indemnify persons under the Act. This cost to the community is affected by a range of factors, but particularly:

- the number and type of transport accidents occurring in Victoria;
- the assessment of claims for compensation in accordance with the requirements of the Act;
- the conduct of common law claims;
- the cost of TAC's internal administration;
- the investment performance of the Transport Accident Fund; and
- the cost of rehabilitation.

Provide suitable and just compensation in most socially economical manner

The TAC has the function of receiving, assessing, accepting and rejecting claims, paying compensation to person's entitled to compensation, and defending proceedings relating to claims for

compensation. Defining the meaning of suitable and just is not a simple task and normally involves the government deciding on what level of benefit should be provided.

At present, the objective of providing suitable and just compensation in the most socially economical manner is pursued through:

- ensuring that only those persons who have a proper claim for compensation should receive compensation. Persons who have returned to work after receiving compensation are required to notify TAC of their return to work so the TAC may cease making payments to that person. Persons who fraudulently obtain or attempt to obtain a benefit under the Act will commit an offence and must repay that amount of compensation to the TAC. The Act also ensures that some persons who have placed themselves or others at danger should not be able to obtain the same amount of compensation for an injury as a person who had not engaged in the risky conduct. For example, the Act reduces a driver's entitlement for compensation if the driver's blood alcohol reading was over a prescribed level; and
- prescribing statutorily determined benefits and amounts of compensation. This reflects that although circumstances of each transport accident will be different, the TAC recognises the need for consistency in the general administration of benefits as part of its role under the Act. Although the Act contains uniform benefits these are often expressed as a formula to take into account the individuals pre-accident earnings. This reflects the balance that must be achieved between having a consistent approach to the payment of compensation whilst taking into account the individual circumstances of each particular claimant.

Determine claims speedily and efficiently

The objective to determine claims for compensation speedily and efficiently is reflected in the obligations imposed on the TAC to accept or reject claims within a prescribed time period. Claims which have not been rejected within this time are deemed by the Act to be accepted. This encourages the TAC to respond promptly to all claims. Where the TAC has determined that compensation is payable under the Act but is unable to determine the actual amount of compensation, TAC may make an interim payment to the claimant. This ensures claimants have access to some compensation under the Act rather than delay the payment until the matter is settled. The Act also contains a number of prima facie rules in relation to the giving of evidence by the TAC which can enhance the efficiency of resolving claims.

During the 1998/1999 financial year the TAC reviewed how it could improve its delivery of benefits to claimants. The Operational Efficiency Project indicated ways to re-engineer existing work practices to improve efficiency and quality of service. The TAC introduced a fast track process for relatively minor claims (usually up to \$1,000 in benefits). In its Annual Report, the TAC reported that 99.6% of these fast track claims were accepted on the day of receipt.

No compensation is payable for very minor claims. For example, in most circumstances the TAC is not liable to pay the first \$443 of medical expenses.

The TAC has also undertaken reviews of its claims processing procedures to enhance efficiency in the delivery of benefits. The TAC introduced a new claim form in 1999 which was designed to improve the quality of information the TAC received at the beginning of a claim. This was intended to reduce the need to contact claimants for further information.

The TAC has also established a Claimant Relations Branch to enhance its ability to respond to claimants' needs.

Provide suitable systems for effective rehabilitation of claimants

The Act provides that it is the TAC's duty to design and promote, as far as possible, a program designed to secure the early and effective rehabilitation of persons injured as a result of a transport accident. Persons who are rehabilitated are encouraged to rejoin the workforce at the earliest possible time which reduces the financial burden on the TAC Fund and enhances the claimants' ability to rejoin the community.

Under the Act the TAC is given the power to authorise services to be classified as rehabilitation services or persons to provide services to TAC claimants. As claimants are able to seek reimbursement from the TAC for the reasonable cost of rehabilitation services there is a financial incentive for the TAC to establish relationships with rehabilitation providers. In the past the TAC has appointed rehabilitation providers to a preferred panel as a result of a formal competitive tender process.

As outlined in Chapter 6 the TAC has divided its claims management business into injury specific divisions. Claims are allocated to a particular division depending on the type and severity of injury sustained. This is intended to ensure that the injured person will be

assisted by a claims officer who is familiar with the type of injury and its needs and the most appropriate rehabilitation providers.

Reduction of transport accidents

The TAC's functions include to promote the prevention of transport accidents and safety in use of transport. The TAC works in conjunction with the Victoria Police, VicRoads (including through the Black Spot program) and others to target road safety issues. The TAC has adopted an educational approach to reducing the incidence of transport accidents. It has continued to focus on the key crash causes of drink driving, speed and driver fatigue. The TAC has also targeted high risk groups such as youths and, in the past, elderly persons.

It should be noted that these activities are functions that the TAC is required to undertake as an organisation. The ability of the transport accident compensation scheme itself to reduce transport accidents is probably limited.

7.2 Relevance of the objectives of the Act to current social and economic conditions

The purpose of the Act is to establish a scheme of compensation in respect of persons who are injured or die as a result of transport accidents¹⁰. The Act was therefore introduced to address a specific social and economic problem where a significant number of persons were injured or died as a result of transport accidents, suffering economic and emotional losses as a result.

As set out above, it is sometimes necessary to clarify whether the objectives of the Act are effectively fulfilling the needs of society or if they are not, to consider whether the objectives continue to be relevant.

Reducing cost of compensation to the community

There is still a social and economic need to reduce the cost of compensation to the community. The level of TAC's premiums impact on all owners of registered vehicles. The TAC's 1999 Annual Report stated that the TAC's premiums have remained low in a volatile environment. The growth in the average premiums for metro vehicles (estimated at 1 January 2000) was 2% since 1994/1995. This is in contrast to the growth over the same period in metro premiums in other states:

- ACT 15%;
- Northern Territory 13%;
- Queensland 11%;
- Tasmania 10%; and
- NSW 8%.¹¹

This objective therefore remains socially and economically relevant.

Provide suitable and just compensation in the most socially economical manner

As mentioned above, this objective is pursued through:

- ensuring that only persons who have a proper claim for compensation receive compensation; and

¹⁰ *Transport Accident Act 1986 (Vic)* section 1

¹¹ *TAC Business Update*, July 2000 pp 10.

- prescribing statutorily determined benefits.

To ensure that the amount of compensation paid is suitable and just, the TAA allows claimants to lodge an appeal against TAC claims decisions. In the 1998/1999 financial year TAC reported a 26% reduction in the number of appeals lodged¹².

The obligation to provide suitable and just compensation in an economical manner remains relevant.

Determine claims speedily and efficiently

In the 1998/1999 financial year TAC provided benefits to over 40,000 accident victims who in total received \$469 million in benefits.

TAC reported in its 1999 Annual Report a 50% improvement in the speed of loss of earning payments. It also reported:

- the establishment of a Claimant Relations Branch to improve benefit delivery;
- the appointment of a Review Manager to improve dispute resolution; and
- the introduction of a new claim form¹³.

Provide suitable systems for effective rehabilitation of claimants

As stated above, TAC has divided its claims management business into injury specific divisions and allocates claims to the relevant division at the time of receiving the claim. This is intended to ensure that claimants receive the proper type of rehabilitation services from the earliest time.

Rehabilitation is essential to ensure that appropriate claimants can return to their pre accident employment and cease relying on compensation to fund their loss of earnings. In 1998/1999 TAC paid \$48.7 million in loss of income benefits. As reported in the 1999 Annual Report, TAC has introduced a range of improvements to its internal processes to ensure a more consistent and systematic approach to the management of return to work claims. The initiatives included:

- increased use of work trails in assisting claimants return to employment;

¹² TAC 1999 Annual Report, pp 3

¹³ ibid

- the creation of a specialist team to deal with issues relating to soft tissue injuries; and
- individual file reviews to identify specific vocational requirements.

The objective in the TAA to provide suitable systems for the effective rehabilitation of claimants remains highly relevant.

Reduction in transport accidents

The TAC's 1999 Annual Report stated:

'Despite the progress made in accident prevention over the past decade, road trauma is a real and continuing blight on our society. Every day on average, someone dies on Victoria's roads. There is a severe Acquired Brain Injury every four days and every eight days someone suffers a severe spinal injury resulting in paraplegia or quadriplegia. In total, one Victorian is injured on our roads every 26 minutes. In many cases, the results of those injuries will last a lifetime'.¹⁴

As at September 6 2000, the Victorian road toll stood at 279, up 8% compared with the same period in 1999. Thirty people had died on Victorian roads in August 2000 compared to 26 for August 1999. Fatalities for the 12 months to August 2000 were up slightly compared to the previous 12 months. Police reported serious casualties for the 12 months to June were up 6% compared to the previous 12 month period and minor casualties were up 4%.¹⁵

The TAC continues to direct its current activities towards reducing the frequency and severity of transport accidents. For example, in the 1998/99 financial year, the TAC applied \$23.4 million towards preventing transport accidents¹⁶, which includes the funding of accident black spot initiatives and the provision of funding to the Victoria Police for the purchase of new equipment designed to prevent transport accidents. In addition, the TAC is also a stakeholder in the Victorian Trauma Foundation. This Foundation has been established in the belief that the outcomes from traumatic injury can be improved by better co-ordination and improved infrastructure and research within Victoria's trauma system. The Foundation aims to reduce death and permanent disability through ongoing improvement to the State's trauma system.

¹⁴ TAC 1999 Annual Report pp 12

¹⁵ TAC Road Safety Monthly Summary, September 2000 Issue, pp 2.

¹⁶ TAC 1999 Annual Report, pp 46

The Review Team has found no evidence to demonstrate that the objectives of the Act have ceased to be relevant.

Market failures and government intervention

8.1 Market failure and government intervention

Government intervention in the form of legislative and policy initiatives often exists to address market failure and imperfections. Market failure is characterised by those situations where freely operating markets fail to provide the most desirable and achievable outcomes for society as a whole. Market failures come in various forms and may be addressed by way of different forms of regulation by government. Particular to the provision of transport accident compensation, there are several market failures that may arise. These may need to be addressed by government through regulatory mechanisms in order to provide an effective and efficient mechanism for the provision of under or un-provided services.

The Review Team has considered the issue of market failure in the context of insurance, as third party personal insurance can be delivered as an insurance product. However, the Review Team notes its observation earlier that the current Victorian transport accident compensation scheme has only some characteristics of an insurance product.

The most common market failures that can arise in the provision of insurance type products, such as third party personal insurance, include:

- monopoly power through the existence of a single service provider;
- externalities;
- incomplete markets; and
- information asymmetries, in particular:
 - adverse selection; and
 - moral hazard.

It is important to note that the existence of market failure is not a sufficient justification for government intervention. Government intervention imposes its own costs, and may be subject to failure. The best outcome therefore requires assessment and evaluation regarding the merits of government intervention.

It is also important to note that social equity is often a relevant consideration when governments select a response to market failures. As the previous Chapter identified, social equity is relevant to consideration of transport accident legislation.

It is usually very difficult to define equity, as what is fair, equitable and just will often depend upon circumstances and perspectives. However, it is well understood that equity considerations may conflict with other economic considerations. As a result, equity decisions are often left to political processes. However, there are elements of NCP that can improve equity considerations. In particular, one of the key elements of much of micro-economic reform over the last two decades has been improvement in transparency. This means the provision of clear and honest information so that political decision making processes can operate in a fully informed environment.

Monopoly

Monopoly is a case where there is a single provider of particular goods or services the market. A monopoly may occur from either of the following situations:

- natural monopoly, where it is only efficient for one party in the market to provide the good or service; or
- legislative monopoly, where legislation deems that only one party can be the provider of the good or service to the community.

The implications of the existence of a monopoly provider reflect the fact that the provider has no threat of competition. Monopoly providers tend to show the characteristics outlined in Table 8.1 below, unless appropriately controlled or incented.

Table 8.1 Monopoly characteristics

Private Monopoly	Public Sector Monopoly
<ul style="list-style-type: none"> • inflated costs • high prices • limited incentive to innovate • poor service • profit maximising 	<ul style="list-style-type: none"> • inflated costs • high prices • limited incentive to innovate products or processes • poor service • budget expansion

Some of the behaviour of a public sector monopolist may be as for a private sector monopolist. However, many public sector agencies are unlikely to have a profit motive. Instead, these agencies may seek to maximise revenues either to the government or to their own budget.

In the case of the provision of third party personal insurance to motorists, it is often the case that a legislative monopoly is created by

government in order to provide this service if it is not profitable for the private market to do so, suggesting that third party personal insurance may have natural monopoly characteristics. The inherent risk of formulating such a monopoly is, however, that the statutory authority may act in a similar manner to a private monopolist. That is, by being the sole service provider (and regulator) of the compensation scheme, there may be little incentive for the authority to improve processes or act in a manner that mirrors those competitive conditions as they are assured of their market position, re-enforced by the legislation.

It is important to note, however, that the creation of a monopoly is not the only way in which to deal with a private market's failure to provide such insurance services to the community. Other avenues for the government to ensure that these services are provided to the community are explored in Chapter 9 to this report.

Incomplete markets

An incomplete market arises when certain goods or services are not provided by the market despite the fact that the cost of providing the good or service is less than what the consumer is willing to pay.

This market phenomenon occurs particularly in the market for third party personal insurance as the private insurance market could provide the service but may prefer not to or just does not provide it. Private insurers choose to avoid or ignore some sectors in the market for a variety of reasons, prompting the possible need for intervention at some level by the government to ensure that this service is provided to the community.

Externalities

Externalities arise when the actions of one participant impacts upon others in the market. The impact on other parties is external to the intended effect of the action (hence the effect is called an externality), and can be either positive or negative. In the case of positive externalities, the party that has imposed the externality does not receive any reward or payment from the recipient of the benefit provided by the action. Similarly, in the case of a negative externality, the affected party does not receive compensation from the market for the negative effect that the action has imposed upon them. In many instances, government intervention seeks to provide this compensation.

Third party personal insurance aims to compensate parties who are the victims of transport accidents, whether they are directly involved in the accident, or are relatives of those seriously injured or killed in a transport accident. In this case, the majority of parties are recipients of a negative externality imposed upon them by other drivers, that is, they are injured or killed as a direct result of the actions of another individual. Through a third party personal insurance scheme, the government can seek to internalise the impact (or remove the externality) by providing compensation to those affected by transport accidents. However, it should also be noted that access to common law is another way of internalising the externality.

Information asymmetry

Where service providers in a market cannot observe the actions of consumers easily, there is said to be an information asymmetry (an absence of perfect information). This lack of access to information prompts service providers in a market to either not provide some services or provide the services in a way which may not be the most efficient or socially equitable as they cannot observe the actions of consumers. Particular to the market for insurance, there are two common problems that stem from the existence of information asymmetries:

- adverse selection; and
- moral hazard.

Adverse selection

Adverse selection is a problem of hidden information and is common to insurance markets. It occurs where the actions of participants in the market are not observable by the insurance company, leaving the firm to guess or anticipate the quality or type of behaviour that participant may undertake. This inability to observe actions may lead insurance companies to classify individuals into categories based upon assumptions made about the consumer's broad characteristics.

A clear example of this type of behaviour is demonstrated by the market for car insurance. As the actions of the applicant are not clearly observable by the insurer, an assessment is made by the insurer based upon some broad risk characteristics of the individual in order to determine what level of premium the applicant will be charged. Some of these factors include:

- age group;

- sex;
- place of residence;
- suburb of residence; and
- previous insurance records.

In the case of third party personal insurance, the classification of individuals into broad risk categories by private insurers, such as those used for general car insurance, may not be socially optimal. Private provision could either see the extremes of the market (ie inexperienced and elderly drivers) charged highly for being at much greater risk, or private companies failing to provide the service altogether. In the latter case, a government provider may have to step in to ensure those high risk extremes. Government intervention to ensure that all sectors of the community are insured may be necessary due to the risk of the actions of market participants.

Moral hazard

Moral hazard is the instance in which the actions of the participants in the market are hidden from the firm, and again, commonly occurs in the insurance industry. In this instance, the insurer cannot observe whether the participant is undertaking actions to prevent loss or damage as agreed by the two parties, risking that the individual consumer may undertake action solely for the purpose of obtaining an insurance payout. It is also the instance where there is a perverse incentive created by the market for insurance, i.e. insured parties are more likely to take less care as they know that they are insured.

The risk of an individual undertaking an action in order to obtain insurance benefits is the moral hazard factor. In the case of third party personal insurance, a perverse incentive is created through the provision of such insurance, as drivers may be more inclined to be careless when they drive as they know that they are insured.

Each market failure outlined above demonstrates a potential need for government intervention where there may be a failure by the private market to provide a good or service because there may be little incentive to do so.

8.2 Insurance markets: A special case?

Insurance, particularly transport accident compensation insurance, is a product with a number of special features that make it a candidate for effective regulation.

First, transport accident insurance is often compulsory, a result of the government's role in protecting members of the community with respect to public health and safety. This feature may function as a "positive externality", in that society as a whole may benefit from the fact that vehicle owners purchase transport accident compensation insurance.

Second, most buyers of accident insurance never have a claim, and thus may never need the fundamental service they are purchasing. This is a peculiar information deficiency in that most consumers cannot actually know first hand what they are buying with their premiums, and may serve to prevent insurers from competing on service. The government may have a role to ensure that purchased potential claims service conforms to a reasonable standard, again in its role of overseeing issues of public health and safety. A related regulatory duty may be to ensure that any required medical or rehabilitation services are provided competently and effectively.

Another peculiar feature of insurance is that the cash flows of the insurance product are reversed from those of most "normal" products. For example, a soap manufacturer ordinarily pays for the cost of raw materials, plant, labour and distribution up front before selling its product. On the other hand, an insurance company collects premiums for coverage first, sometimes years in advance of actually servicing the resulting claims. The ultimate cost of these claims is not actually known in advance, and companies must rely on actuarial projections of future cost to set current prices and reserve levels.

A particular feature of transport accident insurance is the existence of 'long tail' care cases. The long tail refers to cases where the payment stream to a recipient occurs over a long period, sometimes over a lifetime. Thus not all claims are settled by just the one payment or short term payments in terms of immediate treatment. Long tail payments are particular to those injuries that are permanent, such as acquired brain injury and paraplegia.

Such lifetime care needs can place a massive burden on the care system due to the frequency of treatment that such injuries generally require. Private markets may be less willing to provide long tail

treatment services, or the funding for such due to the large costs that they impose upon the company and the ongoing financial commitment that they require.

This is an information constraint on market efficiency. Thus, while for a manufacturing or retail goods company the main balance sheet risk is the value of assets (inventory), the balance sheet risk for an insurer is mainly the value of liabilities (claim reserves), and is much larger. There may be a case for consumers needing regulatory intervention to ensure that the promise of future claims service can be kept, and government responds to this by introducing an artificial barrier to entry, in the form of specialised insurance capital and solvency regulation. Thus, while private insurers may compete on price, they would not do so to the extent of undermining their own financial position.

Another important feature of insurance is that the unit product cost depends on the buyer. Again, consider the soap example. The cost of a bar of soap is fixed, independent of the buyer. In contrast, the cost of an insurance policy is based on the particular risk characteristics of the buyer. On top of this, in what has been called the “double whammy”, the buyers whose premiums are the highest are often those who can least afford to pay (consider, for example, inner-city youths purchasing third party personal insurance). Governments must balance the objectives of competitive free-market pricing principles with social equity considerations and the objective of full coverage.

It is interesting to note that the uncertainty of future unit costs for insurance led to the unique regulatory treatment of insurance in the United States, where insurance is the only industry which is exempt from particular aspects of federal competition laws. This exemption was provided by the *McCarren-Ferguson Act*, which exempts insurance from the *Sherman Anti-trust Act* provided that it is specially regulated by the individual states. This exemption was provided in recognition of the need for insurers to pool claims information in order to generate class rates, as individual insurers could not at that time develop enough claims experience to rate on the basis of their own portfolios. The individual states must ensure that this pooling of data does not result in price-fixing or other unfair trade practices.

The variability of unit production costs leads to an important feature of private insurance markets, that of competitive underwriting selection. Many insurance companies achieve success by underwriting risk portfolios which, on average, are of better quality than is generally recognised in market pricing. They do this by carefully evaluating and selecting each risk in their portfolio. This behaviour can lead to availability problems in some segments and may

raise concerns of social equity, especially considering the compulsory nature of accident compensation schemes.

There is a corresponding incentive for private insurers to act to minimise risks within their portfolio. However, there is no incentive to minimise risk in the broader market, and indeed a disincentive to minimise risk outside their portfolio as higher risk will increase the overall market size and potentially damage their competitors.

The issue of rating variables has been the focus of considerable research. It is generally recognised that in a free pricing market, an insurer will tend to use as many as practicable statistically valid rating variables in pricing or it will be subject to adverse selection, which will ultimately lead to its failure. However, it is socially unacceptable and often illegal to use certain rating variables such as race, and sometimes gender or marital status. Regulation of this principle is difficult, as availability problems often ensue once the government restricts the use of certain variables in pricing. In addition, full pricing of risk provides incentives for safety, and this socially desirable incentive can be reduced when the impact of rating variables is restricted.

Another subtle problem concerning insurance pricing is the low explanatory power of known rating variables. Research in the US has shown that less than half the variance in transport accident claims costs for drivers are explained by the combined effect of the commonly used standard rating variables. The conclusion sometimes drawn is that it is fundamentally unfair to rate individuals according to their demographic groups. To illustrate this issue, consider two groups of drivers, the first being young urban males and the second being middle-aged suburban females. The “fair actuarial” premium for the first group (based on demographic rating factors) may be three to four times the “fair actuarial” premium of the second.

However, most of the drivers in both groups have never had an accident and will not have an accident in the policy period. Is it a violation of social equity principles to charge the “safe” drivers in the first group multiples of the second group’s premium (especially for a compulsory coverage)? This argument sometimes arises in the context of workers compensation insurance, with employers arguing that “safety conscious” employers in high-rate industry classes should not be charged more than low-rated classes.

In statistical terms, for workplace and transport accident insurance rating classes, *the within-class variation is often larger than the between-class variation*, which shows inherent weakness in the pricing approach. Unfortunately, no better approach than the current

standard has yet been discovered, as it is not easily possible to measure whether an individual is a “good driver” or an employer “safety conscious”, whereas demographic variables are easy to measure and verify. Appendix E contains a summary of the premiums currently charged to different classes of vehicles in Victoria.

Analysis of Restrictions

Identifying restrictions on competition

This section identifies the major potential restrictions on competition that the Review Team considers are contained in the *Transport Accident Act 1986* and its associated regulations. The main areas that directly provide restrictions on competition are:

- the compulsory requirement for vehicle owners in Victoria to pay a premium to fund the transport accident compensation scheme;
- the establishment of a single manager for the transport accident compensation scheme; and
- the centralised premium setting role in the legislation.

These restrictions were identified as a part of the examination of the three components of the scheme as outlined in the schematic diagram of the restrictions contained in Chapter 3 to this report.

In addition to these, a general discussion on Ministerial Directions has been included as section 9.4 to this chapter. The Review Team considers that this area is not currently a significant issue, however, should be highlighted as an area for general consideration that could become prominent in the future.

9.1 Compulsory premium

9.1.1 The restriction on competition

Section 109 of the Act compels each person who owns (and hence registers) a motor vehicle which the owner wishes to use on public roads to pay to the TAC an amount for the transport accident charge. Ordinarily this is paid at the time of registration. In simple terms this could be seen as a compulsion to purchase a third party personal insurance policy, with the restriction arising from the lack of choice to not purchase the policy or to elect another way in which to manage one's transport accident risks.

However, the structure of CTP in Victoria is not a simple purchase of an insurance policy. Indeed, no policy is purchased. Coverage under the transport accident compensation scheme does not depend on payment of the transport accident charge. Instead, the restriction on competition arises in several steps, outlined as follows:

- there is compulsion for vehicle owners to make a payment to the Transport Accident Fund, which funds the various aspects of the transport accident compensation scheme;
- all persons are covered under the transport accident compensation scheme for compensation for the effects of transport accidents. This universal coverage does not depend upon the person having paid a transport accident charge (for example, cyclists do not make a contribution on behalf of their bicycle); and
- all owners and drivers of registered vehicles have their common law liabilities for transport accidents taken over by the TAC, that is, the TAC assumes liability on their behalf.

One element of the scheme that does depend upon payment of the transport accident charge is that of common law indemnity coverage. Where a person causes or contributes to a transport accident (hence giving rise to a liability) in an unregistered vehicle (regardless of whether they are the owner of that vehicle or not) then the TAC may sue that party to recover its assumed common law liabilities.¹⁷

It is also important to note that under the Act common law liabilities only exist when the injured party experiences a 30% or greater whole person impairment.¹⁸

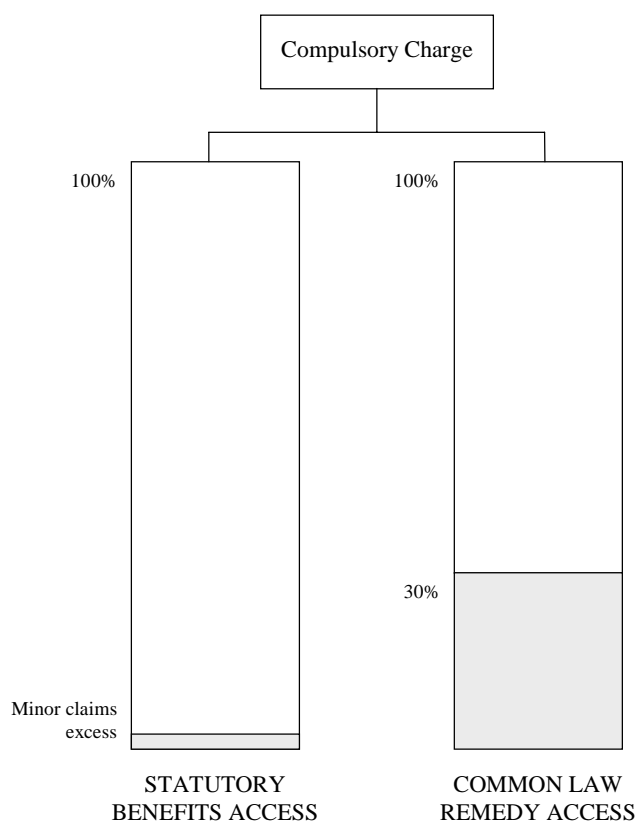
¹⁷ Current TAC guidelines note that TAC will not countersue the driver if the driver had reasonable grounds to believe that the vehicle was registered and insured.

¹⁸ As assessed under the AMA Guidelines (4th edition).

As such there is a compulsion for certain persons to pay a 'premium', and there is a universal coverage under the transport accident compensation arrangements. The net effect of these provisions is that most (but not all) road users are required to purchase what they see as a compulsory insurance product, with alternative courses of action that could be adopted not available.

The dual nature of the product supplied by TAC and funded by motor vehicle owners is described in Figure 9.1 below.

Figure 9.1 The Structure of the Compulsory Charge



The compulsory nature of the charge

Section 109 of the Act requires that the “owner of a registered motor vehicle must...pay to the Commission the transport accident charge applicable to that motor vehicle for that period.” Therefore, payment of the premium is compulsory before the vehicle will be registered in Victoria. This section only applies to registerable vehicles (ie, not skateboards and bikes etc) to be used on public roads.

It is important to note that buses, trams and trains also pay a premium to the TAC in the interests of protection of users of public transport system, and that injuries arising from the use of public transport vehicles are covered. In regards to this, it should be noted that injuries sustained whilst travelling on public transport (for example, falling over on a tram or bus whilst it is moving) are also covered.

Commonwealth vehicles need not be covered under the scheme, but the Commonwealth Government may chose to pay a premium for their vehicles inclusion in the scheme. Currently, the Commonwealth Government self insures its vehicles.

Sections 4 and 6 of the *Transport Accident (Charges) Regulations 1986* outline the prescribed periods that the premiums will cover vehicle owners for and when the premium payment is due to the TAC respectively.

Due to the nature of the transport accident charge, it is arguable whether the charge is a premium or a tax. Compulsory payments levied upon the community to fund social welfare programs and/or policy objectives would normally be classified as a tax. In this case the charge funds a product that displays some characteristics of an insurance product, and some of a welfare program.

As the payment is levied upon all purchasers of motor vehicle registration in Victoria, the amount paid could be classified as a tax rather than a premium, as the payer of the registration fee and transport accident charge does not get a policy and the payments are used to fund the transport accident compensation scheme, which, in effect, essentially provides services that would normally be provided through a social welfare policy. However, there is a slightly closer linkage between the payment of the charge and the receipt of the common law protection.

The RACV acknowledges that the classification of the compulsory charge is an issue in that:

“While present TAC premiums vary for urban and rural location and vehicle type, it does not totally reflect the costs of each risk group...[t]he current system can therefore be likened to a form of taxation rather than to a transport accident compensation premium.”¹⁹

The NRMA also considers that the premium displays more quasi-tax features than the features of an insurance premium:

“The benefit structure contains an element of cost-shifting to the public health and income support systems which disguises the true cost of the scheme...the scheme has more in common with the welfare safety net than the accident compensation arrangements in place than other jurisdictions – a characteristic consistent with the tax-like funding mechanism.”²⁰

Therefore, the nature of the charge, and whether it displays features consistent with that of an insurance premium or a tax are necessarily components of the question of the elements of the compulsory charge.

The elements of the compulsory charge

Section 12 of the Act stipulates that a function of the Commission is “to pay compensation to persons entitled to compensation” under the Act. These payments are the statutory benefits that comprise the first part of the compulsory charge.

Section 93 outlines the rights of individuals to access common law remedies, and sets out that:

- “(1) A person shall not recover any damages in any proceedings in respect of the injury or death of a person as a result of a transport accident...except in accordance with this section.*
- (2) A person who is injured as a result of a transport accident may recover damages in respect of the injury if*
 -
 - (a) the Commission has determined the degree of impairment of the person...*
 - (b) the injury is a serious injury.*

¹⁹ Submission by the Royal Automobile Club of Victoria on the Review of Transport Accident Compensation Legislation, October 2000, pp7

²⁰ NRMA Insurance Limited Submission to the review of the Transport Accident Compensation Legislation, September 2000 pp 4

(3) *If -...*

(b) *the degree so determined is 30 per centum or more –*

the injury is deemed to be a serious injury within the meaning of this section.”

The compulsion to pay effectively limits the consumers choice to not only pay, but also to choose what they are paying for. The compulsory nature of the scheme imposes fixed costs upon motorists and public transportation providers, removing the motor vehicle owner’s choice of whether or not to participate in the scheme, and to what extent the consumer participates. The owner is required to contribute to both the ‘no-fault’ benefit scheme and the indemnity scheme for common law liability.

9.1.2 Benefits

The compulsory nature of the scheme provided in Victoria addresses the possible failure of the private insurance market to provide this service, effectively making the third party insurance market ‘complete’.

Compulsory participation in the transport accident scheme may reduce pressure on welfare systems, particularly social support and public health care, that may arise from transport accidents. The combination of increased medical costs and loss of earning capacity may create substantial additional pressure on the public welfare system through affected parties requiring replacement income and additional medical assistance from the public health care system. In the case of more severe injuries and long tail care cases, the need for such additional support would necessarily be greater.

The use of common law remedies rather than a compulsory scheme to address the need for compensation by affected parties may also result in increased pressure being put onto welfare systems as people wait for their claim to be decided. This may also occur in the instance that parties are not able to recover the compensation that they are seeking. Common law systems also necessarily require that one party is proven to be at fault, whereas some benefits are available under the present scheme on a no-fault basis. Delays in hearing an increased number of common law cases may also provide additional pressure on social welfare systems.

The social requirements outlined in section 8 of the Act may be met through the compulsory premium payment by vehicle owners. Compulsory schemes can also offer equal protection to all individuals covered by the scheme, rather than charging a different rate for the provision of certain services.

Owners and drivers of registered motor vehicles are not liable to other parties under common law remedy, as the TAC stands in place of the party believed to be at fault. Should the affected party be awarded damages, then the TAC has the right to recover damages paid from the party deemed to be at fault if they have not paid their premium.

A compulsory scheme provides equal coverage amongst all users of motor vehicle transportation and infrastructure, including pedestrians, cyclists and passengers on public transportation. Compulsory premiums may also provide a simpler way to raise funding for road safety programs, trauma related services and other welfare programs in the community to ensure that 'best outcomes' are achieved by governments across a number of sectors. It is important to note, however, that funds can be raised by other means, such as through the taxation system, and that a compulsory scheme is not necessary for the collection of such funds. Government provision of transport accident compensation can provide an incentive to adequately fund and support preventative programs and measures.

9.1.3 Costs

The combination of the compulsion element and the charge levied upon vehicle owners effectively prevent consumers from actively choosing to participate in the scheme through the requirement that payment must be made if they wish to register their motor vehicle. Restriction of consumer choice through legislation may be in the interests of public safety and welfare, however, it does not allow the consumer to act in a manner that reflects the conditions of a competitive market. In a competitive market, consumers have the option of whether to participate in insurance schemes or risk that they will not be involved in transport accidents. This right to choose to participate is removed.

Under a compulsory scheme, fixed costs are imposed onto individuals who wish to operate vehicles registered in Victoria. This may result in additional fixed costs being imposed upon vehicle owners and difficulties in payment for individuals from lower socio-economic backgrounds, possibly preventing some individuals from being able to register their cars. This could in turn impact upon employment prospects, health and other social welfare issues.

The motor vehicle industry may also be directly affected as a result of a compulsory charge being levied onto potential owners of vehicles. This is likely to increase the cost of purchasing a motor vehicle by having to pay the premium at the time of registering, and may act as a disincentive for consumers to purchase vehicles. Detrimental effects on sales may be experienced by this market.

A compulsory system on its own may not provide consumers with additional incentives to drive safely as the owner (or driver) is aware that they are insured in the instance that the vehicle is involved in an accident. This is a demonstration of potential moral hazard that arises directly from the compulsory nature of the scheme. However, the Review Team recognises that there are many other factors that provide incentive for safe driving, such as the preference to avoid injury, traffic fines and the potential loss of no claim bonuses on private car insurance.

Compulsory premiums could also be slow to provide feedback to the premium setting body as the market is unlikely to provide an appropriate indicator through consumption patterns. Consumers are not given the opportunity to provide signals about the appropriateness of the price being charged and the services being offered under the transport accident compensation scheme.

A limit on the choice of the individual to seek compensation from parties responsible for damages may see inequities arise in the system and affected parties not being appropriately or adequately compensated. The current scheme draws a distinction between injuries, and potentially makes some injuries 'less important' in the eyes of the law as compared to others.

9.1.4 Alternatives

There are several alternatives to the current model of compulsory payment and participation that should be considered in order to determine whether there may be a better model for ensuring that the objectives of the scheme are delivered. The Review Team considers that the following alternatives are available:

- move to permit self insurance;
- alter the compulsory payment to only cover statutory benefits rather than including common law; and
- make the system voluntary rather than compulsory.

These alternative options are discussed in detail below.

Alternative 1 Introduce self-insurance

The option of self insurance is an alternative that may essentially be limited to corporations that own and manage fleets. This option would require that the fleet owner must be able to prove that they have access to enough funding in order to meet current and potential liabilities that may arise from transport accidents in vehicles owned by the fleet. These obligations include long tail care obligations, the costs of which may be significant to the self-insurer.

The Review Team is not aware of any instances in which this occurs in a market where a single service provider exists. However, the Commonwealth Government self-insures its vehicles. The Review Team notes that self-insurance often arises in workers' compensation insurance systems.

Benefits

Self insurance provides financial incentives to the self-insurer to effectively monitor the activities of fleet cars, and provide safe driving incentives. The financial risk is borne by the company or the fleet manager rather than the public system, providing potential benefits for the community through reduced administration costs of public sector services. There may also be financial incentives for individuals to drive in a safer manner, as they may have to contribute to the pool of funds held by the self-insurer.

Costs

The removal of the universal component of the present scheme may disadvantage affected parties who are not a part of the scheme. There is also the risk that despite financial checks, the self-insurer may not be able to adequately provide compensation or cater for the long term needs of affected parties. Negligent parties who have caused any degree of injury may also be open to common law claims, potentially exposing either the individual or the self-insurer to large settlement claims. This may also put increased pressure onto social welfare systems and lead to self-insurers inability to pay claims through reduced funds availability, should they decide to include common law protection as a part of their scheme.

In a self insurance system, there would be a need to allocate 'no-fault' losses where there is no requirement for allocation now. An allocation system would need to be developed which may incorporate a notion of fault, even though no-fault benefits are being allocated. This would

inevitably lead to disputes which do not arise under the current scheme. Some of these may lead to litigation.

There is the potential for an increase in the level of claims disputed through common law avenues if self-insurers either refuse to pay compensation or do not pay an adequate amount, introducing an element of fault to the no-fault scheme. Parties ineligible for self-insurance schemes would still need to be insured by some insurance system, making it necessary for the compulsory element to remain.

It is also possible that only high risk individuals will not take out self-insurance due to the complete knowledge that they have regarding their risk. Investing in self-insurance would not be worthwhile to such parties, who would rely on the alternate system for ineligible parties. This would mean that the premium is likely to increase for the remaining pool. Increased monitoring of self-insurers to ensure compliance with legislative obligations would be necessary, potentially increasing costs to the community.

Despite the fact that only larger corporations may be permitted to self-insure, some parties may remain inadequately compensated. This could arise either due to the large financial risk (as the corporation might not have adequate assets to cover costs if the accident is serious), or that the corporation may not be managing the claim appropriately. The claims frequency for traffic accidents in Victoria is very low, approximately 5.4 no-fault claims per 1,000 registered vehicles as at 30 June 2000²¹, and it would therefore be difficult for a corporation to be experienced in dealing with claims. This might lead to inconsistencies in claims management and compensation.

Alternative 2 Compulsory insurance for statutory benefits only

This alternative model requires that the compulsory charge paid would only be applicable to funding the statutory benefits portion of the scheme. This would leave vehicles owners, or indeed any particular class of person, to choose whether or not to purchase an insurance product covering common law liabilities.

The Review Team is not aware of any systems that currently use this method of regulation.

The Review Team also notes that this option would entail a fundamental change to the nature of the Victorian transport accident

²¹ PricewaterhouseCoopers, *Outstanding claims liability as at 30 June 2000*, pp 6

compensation scheme as it would abolish one side of the scheme. It is not within the scope of this review to recommend such an action. Such a recommendation would require analysis of the relative merits of the whole transport accident compensation scheme, not just restrictions on competition.

Benefits

Common law expenses constituted 40% of total costs for traffic accident claims in Victoria during 1998/99²². It is therefore possible that a separation of the statutory benefits and common law claims could reduce premiums below current levels. The provision of a compulsory scheme for such benefits may also allow the universal component of the scheme to still exist, ensuring that the objectives of the Act are still met.

Exposure to common law remedies may also encourage safer driving as the liability is passed onto the individual, who is aware of their financial resources to support common law claims that may be brought against them. Consumer choice may also be enhanced by this system, as they may be able to reduce their premiums through opting out of the common law coverage, rather than being compelled to pay for the two components of the charge.

Costs

In a system that offers choice to consumers, there may be a risk that vehicle owners would consider themselves to be “safe drivers” and therefore not take out cover for common law. This may result in affected parties not receiving adequate compensation for the effects of incidents if the negligent party does not have sufficient funds, and may in turn increase pressure on the litigation system. Should this often occur, there may be increased pressure put onto social welfare systems in order to support not only minor injuries and aggrievances, but of greater concern, the long tail care cases. Costs to the community could increase through this additional pressure as social welfare systems will require additional funding.

In addition, such a system may result in a duplication of a number of activities, potentially increasing the overall cost of the scheme. For example, if both the insurer of the statutory benefit scheme and an insurer of the common law liability both had an interest in the one claim (and their interests would necessarily conflict to some extent) they may separately arrange investigation and assessment of the claim, including multiple medical examinations of the injured party.

²² Transport Accident Commission, *1998/99 Annual Report* pp 18

Alternative 3 Voluntary product

The extreme opposite of the current system is making the charge and the two products offered by payment of the premium voluntary. A voluntary scheme would allow consumers the choice of whether or not to participate in either or both the no-fault and common law indemnity parts of the scheme.

The Review Team notes that currently, there are some states in the United States of America where it is voluntary to take out third party insurance, including Colorado, Hawaii and Pennsylvania. It is, however, a requirement under these schemes for the owner to show a financial ability to pay for potential claims, which is akin to self-insurance.

Benefits

The benefits that stem from this alternative arise from the fact that this type of market theoretically mirrors competitive conditions. In this model, the consumer, or vehicle owner, is given the ability to choose whether or not to acquire insurance for statutory benefits or common law liability, or a combination of both, effectively allowing demand and supply conditions to dictate the price and products supplied by the insurance market. Safe driving practices may be induced through the consumer having to fund their own insurance as a competitive market is likely to utilise risk based premiums rather than the socially equitable ones presently used by government providers.

Reduced costs may also accrue to the consumer through increased choice and competition in the market, as allowing consumers choice provides incentives the insurer to act in the most efficient manner possible in order to attract custom. It is possible that in a voluntary system other forms of insurance will fill any gaps that the third party insurance schemes may miss in their provision.

Costs

Many costs of this alternative are similar to those that are outlined in the compulsory insurance for statutory benefits scheme outlined in Alternative 2, including:

- the possibility that unsafe drivers may consider themselves safe and not take out insurance;

- the possibility that negligent parties may not be able to adequately compensate affected parties, potentially increasing pressure on welfare systems; and
- potential increased pressure on the litigation system.

In addition to these, a lack of universality may be an effect of the imposition of consumer choice, as it is the individuals choice to insure themselves. In this case, the scheme may not be able to offer the benefits currently offered to all individuals, but rather may be limited to insured individuals only. This scheme is therefore unlikely to achieve the social welfare objectives of the Act.

There is the potential that the government may also become the insurer of last resort if the higher risk parties that wish to be insured are declined by private insurers. There may also be a reduction in social equity, as those persons who can afford to insure will do so, whilst others will not. Similar to private health insurance, the diminishing pool of insured parties is likely to increase the costs on insurance, accentuating the problem of higher costs charged to consumers.

Recommendation

Victoria's first compulsory third party insurance scheme was established under the *Motor Car Act 1941*, which required that owners of motor cars obtained insurance that indemnified them against fault. The introduction of the *Motor Accidents Act 1973*, saw the establishment of the first no-fault compensation scheme to be added to the already existing compulsory insurance. Under these two Acts, private insurers provided the compulsory insurance with a standard insurance contract, with a single government provider also acting in the market as an insurer of last resort. Compulsory third party personal insurance has therefore been the most common form of provision of Victoria's transport accident compensation.

The Review Team notes that all jurisdictions in Australia and New Zealand currently have compulsory payment by vehicle owners under their respective transport accident compensation schemes. In Canada and many of the countries we have reviewed in Europe (UK, Ireland, Denmark, Finland and Sweden) cover is also compulsory, with minimum levels for liability cover. There appears to be a consensus that compulsion to pay is desirable in achieving the outcomes of transport accident compensation schemes.

The compulsory aspect of the legislation is aimed at achieving the objective of providing in the most socially and economically

appropriate manner, suitable and just compensation in respect of persons injured or who die as a result of transport accidents. Universality may be achieved by the scheme through the compulsory element by imposing participation upon vehicle owners. In the absence of compulsory transport accident insurance, then it is unlikely that:

- the universal coverage that the scheme currently offers will remain in place;
- all owners of motor vehicles will purchase third party insurance and participate in the scheme for a variety of reasons; and
- all persons adversely affected by transport accidents would be adequately compensated by negligent parties.

The lack of adequate compensation is therefore likely to place increased pressure on social welfare and litigation systems through an increase in the number of individuals seeking compensation not only from negligent parties, but also to cope with long term care needs and loss of income. The scheme currently offers the community universal coverage as compulsory contributions accrue what is potentially a greater amount of funding from the community directly than might be provided by an alternative model of provision. Universal coverage is perhaps the most poignant and necessary factor for the system to achieve each of the objectives contained in the Act.

Table 9.1 displays the payments that the TAC has made to claimants over the 1998/99 period. These payment include hospital and medical and loss of earnings payments, and can be seen to represent the potential savings for social welfare systems in regards to the monies that would be required by affected parties. It is important to note that social welfare systems are not likely to offer the extent of compensation that the transport accident compensation scheme currently does in terms of best matching loss of earnings payments and providing assistance to families of victims. They would however, be able to provide ongoing support for long tail care cases.

Table 9.1 Value of Payments made by the TAC 1998/99

Payment Type	Value (\$m)
Common Law – Serious Injuries	143.2
Treatment and Rehabilitation	120.4
Loss of Income	48.7
Common Law – Interstate and Others	44.2
Death	37.0
Impairment	26.7
Other No-fault	19.2
Long Term Care	18.9
Old Scheme Payments	10.4

Therefore, the funds and support provided by the transport accident compensation scheme over the 1998/99 period represented savings to welfare systems of \$281.3 million. This total saving represents the total payments made, not including common law payments.

In its submission, the Royal Automobile Club of Victoria (RACV) notes that:

“Motorists benefit in two ways from the compulsory nature of [the scheme]...First, it means that all accident victims have access to compensation...Second, if [third party personal] insurance was not compulsory, some individuals may choose not to take out insurance, making the scheme financially unstable.

Further,

“Third party personal transport accident insurance should continue to be compulsory for the benefit of members and the stability of the fund.”²³

The NRMA also acknowledges the use of compulsion in order to achieve the social objectives of such programs. It cites that:

“Compulsory third party coverage is common to all Australian jurisdictions and indeed most of the developed world and has been an accepted part of the social fabric for much of the past century.”²⁴

²³ Submission by the Royal Automobile Club of Victoria on the Review of Transport Accident Compensation Legislation, October 2000, pp 5

²⁴ NRMA Insurance Limited Submission to the review of the Transport Accident Compensation Legislation, September 2000, pp 7

These comments highlight the fact that the compulsory payment of a premium is common worldwide, and acts in the interests of the achievement of social interests across different communities, cultures, and environments.

Similar to the RACV, the Insurance Council of Australia (ICA) believes that the system would ultimately fail if the payments were no longer compulsory due to the risk adversity of private insurers. They note that:

“Universal participation is necessary since those paying for the premiums are not those who receive any direct benefit. If compulsory payments by owners of all registered motor vehicles were not required to finance transport accident compensation, there would be such a high degree of ‘adverse selection’ that the market... would fail.”²⁵

Therefore, the general consensus amongst respondents is that the compulsion upon vehicle owners to pay a premium in order to fund the compensation scheme is the best way of providing a universal scheme to the community, and achieving the objectives of the Act.

However, it is important to note that making the charge compulsory is not the only way in which social policy objectives may be achieved. Rather, the use of compulsory contributions to fund and meet social policy objectives facilitates a process that may be easier to administer, and could be more politically justifiable than other forms of fund raising, such as increasing other taxes, like fuel excise.

The Review Team reached the view that a compulsion for vehicle owners to make a contribution to the cost of the transport accident scheme through payment of the transport accident charge delivered a net public benefit. The key elements of this conclusion were:

- the statutory benefits under the scheme are universal and in most cases automatic, with no link to payment of the charge. If payment were voluntary in such a scheme it is very unlikely that the scheme could be funded;
- while the statutory benefits are universal, the compulsory charge is a means of ensuring that the funding contributions are made by persons with a close connection to the scheme and the risks it relates to (vehicle owners) rather than by general taxpayers; and
- compulsion to pay delivers close to universal coverage for those elements of the scheme that do implicitly depend upon payment

²⁵ ICA Submission to the Victorian NCP Review of Workplace and Accident Compensation Legislation, 13 September 2000, pp 38

of the charge (for example the common law coverage for drivers).

In light of these views and the alternative models presented, the Review Team makes the following recommendation.

Recommendation 9.1

The Review Team recommends that the compulsion to pay a transport accident charge be retained.

As the Review Team recommends that the compulsion remain, no transitional arrangements are necessary to implement this preferred option.

9.2 Single manager

9.2.1 The restriction on competition

Part 2 of the Act establishes the TAC as the single manager of the transport accident compensation scheme, and single provider of many of the services within that scheme. The services or functions of the TAC arise in Section 12 of the Act and were explained in Chapter 5. They include:

- administration of the Transport Accident Fund;
- the receipt, assessment and acceptance or rejection of claims for compensation, and the payment of compensation to those persons entitled;
- the determination, collection and recovery of transport accident charges;
- the provision of advice in relation to the transport accident compensation scheme;
- to commercially exploit knowledge and expertise in compensation schemes and their administration;
- to provide funding for programs designed specifically to secure the early and effective vocational rehabilitation of persons injured as a result of transport accidents to whom or on behalf of whom the TAC is or may become liable to make any payment under the Act;
- the collection and assessment of data and statistics relating to transport accidents in Victoria; and
- the provision of advice to the Minister regarding matters that are specifically referred to the TAC by the Minister, and generally in relation to the administration of the Act and the compensation scheme under the Act.

The Review Team has noted that while the Act creates a single manager, it does not necessarily restrict the provision of associated services to the TAC, or to any particular party. Indeed, section 22 of the Act provides that “*the Commission [TAC] may, by an instrument under its official seal, delegate to any person any function or any power of the Commission under this Act*” (other than the power of delegation).

As an example, the TAC retains VicRoads to collect its premiums having regard to s109.

As a result, the Review Team is of the view that the most significant restriction in this category is the creation of a single manager of the transport accident compensation scheme. This is, in effect, a legislated monopoly. The existence of a legislated monopoly can lead to issues of over or under pricing of goods or services, poor service and the other possible monopoly characteristics outlined in Chapter 8.

A barrier to entry also exists through the combination of the creation of the transport accident compensation scheme and the appointment of the single manager. This effectively blocks insurance companies from seeking to offer insurance products that might seek to emulate some aspects of the Victorian transport accident compensation scheme. However, the nature of the scheme means that it would require fundamental changes to overcome this restriction. This would include changing the scheme into an insurance product by altering:

- the existing policy decision that transport accident compensation should entail automatic entitlement to benefits without purchase of a policy; and
- government underwriting of the scheme (TAC may be the underwriter in the first instance but as a public agency the insurance risk is ultimately borne by the government).

Such changes might be technically possible, but are beyond the scope of an NCP legislation review as they involve changes to the product and benefits provided rather than mere changes in delivery.

The Review Team also recognises that there may be some indirect restrictions created through having the single manager, as it is then a choice for the TAC to determine whether it or others will provide the services required under the transport accident compensation scheme. The services in question include, but are not necessarily limited to, those which the TAC currently provides as listed above and in Chapter 5.

In total, these services amount to the current functions of the single manager. However, as noted in Chapter 5 they themselves do not amount to restrictions on competition. It is possible to have some services delivered by either the TAC, or externally, or by a combination of both. The matter of a single provider would be a significant issue for this report if the transport accident compensation scheme itself were a simple insurance product. In this case, the single manager is the key restriction. However, issues of the single provider are addressed in this section where relevant.

9.2.2 Benefits

The creation of the single manager was part of the package of the creation of the transport accident compensation scheme and reflected the previous failure of the private insurance market to provide adequately a government defined benefits transport accident compensation scheme.

Prior to the introduction of the Act in 1986, the market for transport accident insurance comprised private insurers and the State Insurance Office (SIO) (the government participant) who were all required under the *Motor Accidents Act 1973* to pay a levy to fund the no fault compensation introduced by this Act.

However, by 1976, the SIO was the only remaining provider in Victoria, with the State Government funding payments for damages and no-fault compensation. Through discussions with various parties the Review Team has learned that the departure of the private insurers reflected, in part, the fact that in a defined benefits scheme the only way for private insurers to generate margins was to reduce exposure to high risk policy holders. This could not be done (at least not legally) as they were bound to accept all applications. The only grounds for competition were service, but as most vehicle owners would rarely, if ever, make a claim investment in service paid few dividends. Further, the long tail nature of transport compensation means that there is no short term response to the removal of exposures once a claim begins, other than to leave the market and hence sell those liabilities (at a negative price) to a remaining insurer.

Therefore, the private insurers left the market and left the SIO (hence the government) to carry the costs of the scheme. This is indicative of a structural issue facing a transport accident compensation scheme that provides both defined benefits and guaranteed access without any clear link to the payment of the transport accident charge.

The appointment of a single manager (and provider) may also provide access to some economies of scale. By centralising many activities, it is possible that the average cost (per vehicle) of providing the scheme may fall. This situation is referred to as the case of increasing returns to scale, where the single manager can increase the number of persons covered without increasing the average cost of provision. In a private market, costs of provision may be duplicated across bodies due to a number of insurers trying to provide the same product, thereby effectively increasing the average cost of provision. In effect, the public may end up paying a greater amount for the service through these duplicated efforts.

Economies of scope may also be captured by a single manager, where the organisation can reduce average costs by offering a range of services together compared to each service being provided separately. In the case of the TAC, by having centralised administration, premium setting, rehabilitation, legal and regulatory functions, the cost of providing services at each stage of the rehabilitation process may be decreased. Search costs for affected parties at each stage of the recovery process may also be reduced or not incurred.

The Review Team was unable to be conclusive on the existence of economies of scale and scope. If the transport accident compensation scheme were considered to be a simple insurance product, then observation of the insurance market shows that insurance companies exist at a range of sizes and offering a range of services. This suggests that there is no single answer on the issue of optimal size and scope. However, the Review Team did consider that there were benefits to the injured party of having a significant degree of scope captured within their 'insurer' (whether single or multiple providers) as search costs are reduced.

The creation and maintenance of a single manager processing compensation claims and assisting in the rehabilitation and return to work process of parties affected by transport accidents may assist in achieving a smoother process and lessen the administrative issues with which injured persons need to deal. Multiple processes undertaken by the TAC could lead to a faster delivery of services and compensation unlike alternative systems, such as common law, and may assist in rehabilitation through decreased stress upon injured parties of having to organise and co-ordinate matters amongst multiple bodies.

Monitoring costs, and corresponding compliance costs, will arise regardless of whether provision and/or management is single or multiple. However, monitoring costs are likely to be lower in the case of a single manager. Monitoring and assessment of multiple private providers will require more resources and be more time consuming, therefore increasing administration costs to the government. Increased cost efficiency due to processes not being duplicated across multiple bodies in the market may also be of benefit of a single manager. Through a legislative monopoly, compliance costs incurred by private insurers may also be decreased.

Accident prevention measures may be better delivered by a single manager a public interest element to investment in education and advertising campaigns. One of the objectives of the scheme relates to accident prevention and reduction. Private insurers are likely to fail to provide sufficient preventative measures or incentives in a competitive environment (regardless of whether the payment of the premium is

compulsory or not) due to the risk of a vehicle owner using the preventative incentives to seek insurance from another provider. Unless properly incented by government, private insurers would have little or no incentive to make such an investment as they cannot capture the return from it. A single manager will reap the rewards that come from safer driving practices through a decreased number of claims.

Better control of treatment service providers could result from control of the rehabilitation process being the responsibility of a single manager, as services provided to injured parties may be more closely monitored. Uniform treatment of claimants may also minimise disputes and aid in facilitating speedier claims and treatment processes. It may also ensure that claimants receive the treatment that they need rather than excessive or insufficient treatment that may otherwise be provided by health service professionals, and that they receive their treatment from a reputable service provider.

The Review Team considered the issue of cross subsidies that arise under the scheme and whether a single manager was a benefit or a cost in respect of those. However, cross subsidies, desirable or otherwise, exist across the economy and efficient policy responses are feasible regardless of whether a single manager or multiple provision occurs. Therefore the Review Team does not consider cross subsidies to be relevant to the single manager restriction. Cross subsidies are raised in the discussion on centralised premium setting as they may be more relevant to that restriction.

9.2.3 Costs

Potential consumers of third party personal insurance are restricted to paying a transport accident charge to a single manager upon registration of their vehicle, restricting consumer choice on how to manage their risk of liability. In effect, they have no access to third party personal insurance. The Act outlines that the TAC is responsible for the administration and undertaking of the entire claims and compensation process in regard to transport accidents. Such restrictions may not be in the best interests of the public, or parties affected by transport accidents, as the efficiency of processes may be compromised through a lack of choice.

This restriction of consumers choice may limit incentives for the TAC to innovate their products, improve claims and administrative processes, and to encourage individuals to protect themselves against personal and financial injury, as no threat of competition exists. Efficiency gains that can be made in competitive markets through the

threat of competition may be duplicated to some extent through government initiatives, such as benchmarking, but may not serve as a constant incentive to the TAC in the formulation of premiums and the administration processes in place. Through a lack of competition, there is no incentive provided by the market to reduce overhead costs and improve the efficiency of claims and administrative processes.²⁶

The separation of the transport accident compensation scheme from the insurance market also means that consumers are given no opportunity to choose to bundle their risk management choices. That is, they cannot bundle their insurances.

Insolvency of a statutory corporation is potentially worse for the community in economic terms than a private corporation as the government may need to redirect funding from other projects and departments in order to repay debts arising through insolvency. This funding may be redirected from other socially important programs, such as health, welfare and education, increasing costs to the community of the additional burden that must be borne through insolvency.

Diseconomies of scope may also arise in the case of the legislated monopoly where the cost of providing a range of services can be greater than if the services were provided incrementally by a range of other service providers. This may indicate that the legislated monopoly has cost inefficiencies arising from the centralised set of services that it provides to consumers, potentially increasing costs incurred by the community. As noted earlier, the Review Team has found it difficult to be conclusive on this matter.

The provision of all services relating to rehabilitation and compensation throughout the recovery process may impede upon competition in markets other than insurance, such as medical, rehabilitation, and legal services. By the TAC providing all of these services at each stage of rehabilitation, other markets ability to efficiently provide those services to affected parties is impinged upon, therefore having the competition in these other markets limited by the single service provider.

Increases in premiums or the reduction of benefits may be difficult due to the political and social nature of transport accident compensation schemes. Political incentives to use the pool of funds generated by the transport accident compensation scheme for purposes

²⁶ The Review Team notes that presently there is no benchmarking undertaken between States and Territories in order to examine and compare performance of the different schemes.

other than the scheme (as has occurred in the past) may also be a result of the large success of the scheme in raising funds.

9.2.4 Alternatives

A legislated monopoly provider is one option for the provision of the transport accident compensation scheme. The Review Team considers that the following alternatives are possible options for the reform of the market:

- the creation of a private tendered monopoly;
- accrediting insurers in a scheme regulated by a statutory body; and
- open competition.

These alternatives are discussed below.

Alternative 1 Create private tendered monopoly

The current regime is based upon the provision of transport accident compensation by a single manager. The TAC is a monopoly that has been created through the enabling legislation, hence the risk associated with the program is publicly borne, rather than privately borne by an insurance company.

An alternative option that may be available to the government would be the creation of a private tendered monopoly, which would effectively shift the risk from the public sector across to the private sector. The monopoly service provider would be determined through a competitive tendering process, enabling the regulatory body to select the private insurer that best suits the need of the legislative objectives. Theoretically, the completion of a tendering process to select the service provider would result in an outcome that effectively mirrors the result that may be achieved in a competitive market.

The Review Team notes that this regime currently exists in the ACT, where NRMA has assumed the role of the single service provider through a tendering process since the 1970's, when other insurers withdrew from the market. The premium setting by NRMA is regulated in so far that the Minister appoints a peer review of the actuarial report prepared by the NRMA's actuaries. Regarding road safety initiatives, the government collects \$1.50 per vehicle registration as a road safety contribution, with the NRMA matching this price and also paying \$1.50 for each registration. The funds

collected are placed into the NRMA – ACT Road Safety Trusts and used for road safety projects.

Benefits

As the creation of a private tendered monopoly may reflect many of the features of a legislated monopoly, the general economic benefits of the presence of a single manager and/or service provider have been discussed above. Specifically, these benefits include, but are not limited to:

- decreased compliance and monitoring costs borne by consumers through higher premiums;
- potential increased economies of scale and economies of scope; and
- uniformity of treatment of claims management.

In addition to these, there are however, further benefits that may arise from having a private single manager.

The shifting of risk from public to private sectors may be advantageous to the community in general through decreased costs of premiums and a potential decrease in other costs borne by the community to support the publicly provided scheme. The cost of monitoring a single manager may also be significantly less through the monitoring activities being focussed on one provider, rather than many activities of many providers.

The imposition of key performance indicators on a private single manager may give the government the opportunity when negotiating service agreements to meet community service obligations, allowing it to more effectively regulate the activities of private insurance providers, and may ensure the achievement of legislative objectives.

The formulation of longer term contracts with tenderers can encourage activities being undertaken that have long term benefits for affected parties. These longer term benefits may include improved long tail care processes and improved case management. Longer term incentives may be provided for vehicle owners through the insurance bundling and ‘good driving’ history.

Costs

As with the benefits to this alternative, many of the costs have already been outlined in the single manager section as there are some similarities between the models of service provision. These costs include:

- possible exercise of political influence, where accountability to parliament can have a long time delay;
- lack of competition to drive efficiency gains; and
- the potential occurrence of decreasing returns to scale and diseconomies of scope.

In addition, high costs of entry to the market for third party personal insurance may provide a disincentive to private insurers to tender for the position. Large capital set up costs, increased staff costs, transactions costs and changes to administrative processes could increase by more than the benefit that accrues to the service provider from joining the market. Long tail care cases may also provide additional case management needs and care in transitional arrangements.

In terms of the private service provider chosen, the government may face large administrative and other costs associated in conducting the tendering process equitably and appropriately. The government may also face increased costs at the time of re-advertisement, and in the transitional period between two service providers by potentially having to take over administrative processes and claims as part of the transition process.

A key element that must be considered is whether the market is large enough for a truly competitive tender process to be undertaken. If there are not enough service providers significantly large enough to provide the services offered, the tendering process may not appropriately mirror the outcome of a competitive market, potentially leading to a situation where the tenders offered may not provide the best outcome to the community. Similarly, there may not be enough incentive for a large enough service provider to competitively offer services as the threat of competition is not significant enough.

Alternative 2 Accredited private insurers

Accreditation of private insurance providers would necessarily mean setting up a licensing structure for the accreditation of the private insurers to provide the insurance services by a regulatory body. In contrast to what is currently available to consumers, the accreditation of private insurers would offer consumers a greater choice, whilst allowing the government to retain some control over the operation of the market through choosing insurers that are accredited to the scheme.

Currently, there are two systems of accrediting private insurers operating in Australia, in Queensland and New South Wales. Unfortunately, these examples of competitive underwriting have been introduced only recently and thus meaningful conclusions cannot be drawn as yet.

Benefits

An accreditation program allows regulators to effectively monitor the activities of the accredited providers through the threat of the provider potentially losing accreditation. The service provider may have obligations that they must necessarily fulfill as a part of their accreditation, potentially enhancing the government's ability to monitor the private insurer. Private provision may also enhance innovation in products and markets, as the competition that may result directly from the accredited pool of insurers may encourage other providers to act in a more competitive manner.

Transfer of risk from government bodies to private providers may ease cost based pressure that can result from a publicly provided program. Decreases in any such overhead costs of government departments can result in reduced costs to the community of the provision of social welfare programs. Consumers may also have the ability to bundle third party personal insurance along with other insurance products provided to them by their insurer of choice.

Costs

Currently, funding gathered by the TAC is pooled and then used for compensation, common law indemnities and preventative measures and programs provided by the TAC. A move to an accreditation system would potentially lead to issues of the pooling of funding and sharing arrangements between accredited insurance providers. Costs associated with accrediting and monitoring multiple insurers and maintaining the licensing program may also be significant for both insurers and the regulator.

The risk of private insurers becoming insolvent either as a direct result of the provision of third party personal insurance or otherwise may also be potentially harmful to affected parties, and may lead to the insurer of last resort picking up parties left by the insolvent insurer. Potential inconsistencies may arise in the uniformity of the treatment and management of claims, leading to issues of equity across processes. A greater number of disputes regarding financial benefits claims may also arise as private insurers may be incented to act in a manner that provides least cost to them.

Alternative 3 Open competition

In the case of opening the market to open competition, the market would be entirely responsible for the provision of the compulsory third party personal insurance product. The product minimum would still be defined in this model by the regulator. One particular model for this would be to have a government provider acting as a private insurer to act in the capacity of insurer of last resort, so that all members of the community have access to the compulsory insurance. Open competition would leave the market to operate freely in terms of premium setting, award of insurance policies and allowing consumers to choose the insurer that they believe best fits their needs. In essence, the market dictates the prices set and conditions under which it operates. This is the contrasting model to that which is already used.

This is the predominant market structure throughout Europe and the United States of America. Ontario, Canada also operates under this model.

Benefits

This model is similar to the previous model, but allows any private insurance provider in the market to offer the defined product. In contrast to the current model, this model would theoretically provide a significant amount of competitive pressure on insurers to act in the most competitive manner that they are able to in order to gain consumers in the market. Such competitive pressures can create an environment where innovation, administrative and process efficiency and competitive pricing are all features of the market for third party personal insurance. Consumers would also be able to choose the insurer that best fits their wants and needs.

Costs

An openly competitive market may also present many features that are socially undesirable and do not comply with the objectives of the Act that are outlined in Chapter 7 to this document. Again, as the private insurer is more likely to act in the interests of the shareholder rather than the stakeholder, there is a potential for the number of disputed claims to increase through affected parties not receiving adequate benefits for injuries or losses incurred. There may be little incentive for private insurers to provide preventative incentives and programs, such as the advertising campaigns that are currently undertaken by the TAC. Search costs to consumers are likely to increase in the search for an insurer that complies with their needs. Financial monitoring may also be necessary in order to ensure that private providers are capable of providing an adequate level of services to affected parties.

Private insurers will need a greater level of monitoring by the government, and there exists a potential for a lack of consistency between processes and claims management through differing processes that will necessarily exist across a number of private firms. Potential cherry picking of better insurance risks may be undertaken by private insurers, leaving the insurer of last resort to take the majority, if not all, high risk consumers.

There is also a potential reduction in scale economies, as services are duplicated across multiple insurers. Furthermore, the profit requirement of private insurers may impose an additional cost on consumers.

Recommendation

The single manager of the Victorian transport accident compensation scheme was established under the *Transport Accident Act 1986* following the decline and subsequent failure of the private market to provide third party personal insurance to the Victorian Community. The market comprised several private firms and a government insurer of last resort, which was, at the end of the previous legislation, left with a majority of the market. As noted above, third party insurance was compulsory, however, there was no specified provider that the service had to come from. The current regime was designed to overhaul the system completely and allow all Victorians access to third party insurance and its associated benefits, whilst relieving the pressure from the State Insurance Office as the only insurer to offer third party personal insurance since 1976.

In its 1986 Government Statement on Transport Accident Compensation Reform, the State Government conceded that:

“The present system of compulsory third party (CTP) insurance for motor vehicle accidents was introduced into Victoria in 1941, and reflects the circumstances of that time...[e]vents of recent years have demonstrated beyond doubt that the system established in the 1940’s...is no longer viable...[i]t has been unable to provide accident compensation and rehabilitation efficiently and effectively in the present era...[and] major reform is well overdue.”²⁷

The current system was then designed and enacted, and remains in essentially the same format as the 1986 Act.

²⁷ Government Statement - Transport Accident Reform, Victoria, May 1986 pp 3

There are four other jurisdictions in Australia, which are run by a legislated monopoly: South Australia, Western Australia, Tasmania and Northern Territory. The scheme in New Zealand is also a monopoly, where the Motor Vehicle Account is only one of four accounts that is managed in the no-fault 24-hour cover that exists.

The creation of the single manager of the transport accident compensation scheme is aimed at achieving the following objectives from the Act:

- to reduce the cost to the Victorian Community of compensation for transport accidents;
- to determine claims speedily and efficiently;
- to reduce the incidence of transport accidents; and
- to provide suitable systems for the effective rehabilitation of persons injured as a result of transport accidents.

In the absence of a single manager, it is unlikely that the market would provide a complete third party personal insurance scheme in a universal manner as it is currently provided by the TAC. More importantly, the current design of benefits would require fundamental change to make them amenable to delivery as an insurance product.

A market with multiple service providers may not:

- provide universal services in an efficient and equitable manner to all members of the Victorian community;
- have enough incentive to invest in accident prevention programs and related education campaigns;
- provide insurance to higher risk individuals; and
- provide adequate amounts of compensation or treatment payments to affected parties.

A competitive market may therefore result in an inappropriate or inadequate level of service provision and a reduction or cessation of preventative programs and measures due to the risk that may exist of consumers seeking insurance services from other companies.

Universal coverage may also suffer as a result of the markets potential disinterest in providing insurance to higher risk individuals, and the levels of benefit required by long tail care cases. A competitive market may require a greater level of monitoring of the activities of private insurers to ensure that they are meeting the required social, economic and legislative requirements.

The submissions received from various sources display contrasting opinions regarding the existence of a single service provider in the

market. However, it has been highlighted as perhaps the most pressing concern by most respondents to the review. In particular, the ICA states the concern that:

“...the fundamental restriction on competition is the monopoly position of the TAC which locks out market entry and consumer choice. The consequences are those that follow from any monopoly provider. The first is that...the monopolist will price its services to extract a rate of profit which greatly exceeds that which could be achieved in a competitive market...A second consequence that follows...is that it is difficult to demonstrate the effectiveness and efficiency of the providers performance in the absence of a ‘counterfactual’...”²⁸

Therefore, the ICA sees that there is not only an issue that may arise with regard to premium setting by a monopoly body, but also that the effectiveness and efficiency of a monopoly provider may be difficult to monitor in the absence of any other service provider to use as a benchmark.

In the absence of a single manager, there must still be a body present to monitor and regulate the scheme, which will still accrue costs to the government and therefore the community. In NSW, the monitoring and assessment of private insurers is undertaken by the Motor Accidents Authority (MAA). The MAA is funded by a levy on compulsory third party insurance premiums in NSW. This levy was increased from 0.5% in 1997/1998 to 1.0% in 1998/1999²⁹. The MAA’s role is less descriptive than the TAC’s in that its primary functions are to³⁰:

- monitor and analyse road trauma and claims numbers and costs;
- develop programs that promotes road safety and injury minimisation;
- identify treatment needs and develop programs to meet those needs;
- researches and develops policy initiatives;
- provides advice to the NSW Government; and
- provide information regarding the transport accident compensation scheme in NSW.

The cost to administer MAA was \$14.6 million during 1998-1999, with the main costs being³¹:

²⁸ ICA Submission to the Victorian NCP Review of Workplace and Accident Compensation Legislation, September 2000, pp 32

²⁹ Motor Accidents Authority, *Annual Report 1998-1999*, pp 73

³⁰ *Ibid.*, pp 3

³¹ *Ibid.*, pp 65

- grants, both for prevention and rehabilitation of \$7.6 million (52.2%);
- salaries and operating costs of \$4.15 million (28.3%); and
- other miscellaneous costs of \$2.8 million (19.5%).

MAA has 43 staff members which is the equivalent of 36.1 full time employees. This is a small organisation in comparison to the TAC who in 1998/99 had 619 full time employees³². The administration costs for the TAC are \$104.18 million³³. This includes a component for prevention of \$23.4 million, significantly higher than what is spent in NSW by the MAA on accident prevention schemes. Therefore, some costs will still accrue to the community through the administration of the scheme, and although the costs of administering the NSW program is far less, it must be noted that the MAA has a narrower brief than the TAC, and thus direct comparison is not appropriate.

The Law Institute of Victoria (LIV) also expressed concern to the Review Team regarding the use of the TAC's monopoly power in order to generate additional budgetary funding and revenues for the State Government. By pricing in the same manner as a monopolist, budget expansion activities might be possible.

The NRMA presented a similar concern as the ICA, questioning that public sector monopolies are inherently more capable of providing services to the community in an efficient manner:

“NRMA insurance agrees that Victorians have enjoyed a relatively high level of stability and certainty regarding transport accident compensation...[h]owever...[p]ublic sector monopolies have no inherent capacity to deliver no fault compensation more effectively and efficiently than private sector agencies.”³⁴

In effect, the NRMA has outlined that there is an issue with a single service provider being able to provide services to affected parties in a more efficient manner. Contrary to this opinion, however, data from the TAC indicates that the payment of initial loss earnings has in fact fallen from eighty percent of claimants being paid within 56 days in 1998³⁵ to eighty percent of claimants receiving their payments within 23 days as at the end of April 2000³⁶. Therefore, the single service

³² ³² TAC 1999 Annual Report, pp 33

³³ Ibid, pp 46

³⁴ Submission by the Royal Automobile Club of Victoria on the Review of Transport Accident Compensation Legislation, October 2000 pp 3

³⁵ ³⁵ TAC 1999 Annual Report, pp 21

³⁶ Transport Accident Commission *Benefit Delivery Report as at end of April*, June 2000

provider's performance in relation to claims settlement has increased dramatically over the last two years.

In contrast to the NRMA, the RACV noted that:

“RACV has previously expressed a strong public opposition to the dismantling of the TAC, and the introduction of a privatised or competitive system of transport accident compensation in Victoria while the TAC remains an efficiently run, well managed organisation, it will continue to have the RACV's support.

RACV believes that there is no need for any change in fundamental institutional arrangements of the current transport accident compensation scheme, and that the TAC should be retained essentially in its current form.”³⁷

In terms of other objectives achieved, the single manager arrangement allows for the efficient and thorough delivery of road safety initiatives, driver education and preventative programs. This is recognised by all respondents to the review, irrespective of their view on the existence of a single government manager in the market.

The provision of accident prevention measures and campaigns is also a fundamental issue that is central to the objectives of the Act. The private markets ability to provide these services to the community is questionable due to the benefits that might be recognised by competitors in the market. The RACV finds that the single service provider structure delivers such initiatives in a manner that is beneficial to all sectors of the Victorian community.

“RACV believes that the TAC, as a monopoly provider...is the most efficient and effective way to ensure that road safety issues are addressed as a priority of the scheme...”³⁸

Further,

“The public good nature of transport safety warrants a government role in promoting road safety over and above that which would be undertaken solely by a transport accident insurer...RACV believes that the TAC's road safety campaigns, combined with many other road safety initiatives, have had an important role in reducing Victoria's road toll...[i]f transport accident compensation was open to competition, and the monopoly was disbanded, this would put into

³⁷ ibid pp 1

³⁸ ibid, pp 2

question the level and motivation of individual private providers to actively support road safety initiatives... ”³⁹

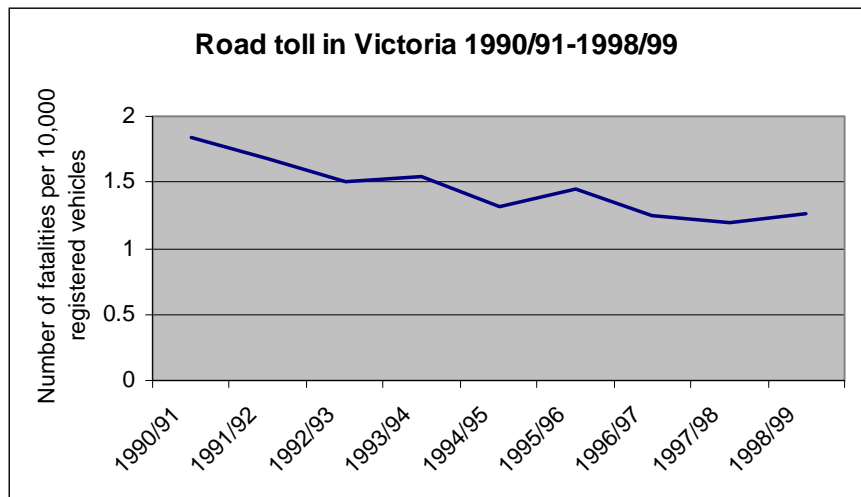
The Victoria Police also outline the importance of the TAC’s role in providing funding and equipment to the police as a part of road safety initiatives:

“TAC has been a key partner in the Victorian road safety strategy “Safety First” between 1995 – 2000...during the late 1980’s and early 1990’s TAC contributed to the establishment of two key areas of the enforcement part of the program – the Booze Bus program and the Speed and Red Light Camera program...[t]he funding of these two programs is a testament to the value of their contribution.

The purchase of detection and enforcement equipment over the last ten years, funded by the TAC, has resulted in Victoria remaining at the forefront of enforcement practices...TAC has supported a variety of police operations targeted specifically at reducing road trauma.”⁴⁰

Figure 9.2 below shows the reduction in the death toll in Victoria over the last 9 years. Death toll statistics are possibly a good indicator of the relative success of preventative campaigns. A declining death toll could indicate that the campaigns are an effective tool for encouraging drivers to act in a socially responsible manner, effectively reducing the moral hazard in the market.

Figure 9.2 Victorian Road Toll, 1990/91 – 1998/99



³⁹ *ibid*, pp 9 - 10

⁴⁰ Victoria Police Submission, pp 1-2

Therefore, the Review Team acknowledges that the presence of a single manager of the transport accident compensation scheme appears to provide a significant incentive for investment in accident prevention schemes. As noted earlier, multiple private investors would have a limited incentive to make such investments. However, the Review Team recognises that it would also be feasible, and indeed necessary, to provide such services through an organisation such as the MAA in NSW, if an alternative arrangement to the single manager were adopted. Governments could also look to other organisations to make these investments, as is seen with fire prevention activities in Victoria, which are undertaken by the State's three main fire services.

The restructure or removal of a single manager and service provider in the market for compulsory third party insurance may therefore result in the following outcomes:

- implicit restrictions on the award of compensation through profit motivation;
- a larger number of disputed claims through a lack of adequate compensation provided;
- decreased incentives to undertake road safety initiatives;
- an increase in monitoring costs for the government through the need for regulation of private service providers; and
- cherry picking of lower insurance risks, which may lead to the government becoming the insurer of last resort as was previously the case prior to the introduction of the present system.

Therefore, in the absence of a single manager, the costs of the claims process may be increased as well as premiums and costs to the community, with a decrease in the achievement of social objectives that are outlined by the Act.

Despite the fact that the costs of introducing competition to the market appear to be outweighed by the benefits in terms of the achievement of social objectives, the Review Team notes that section 22 of the Act provides that "*the Commission may, by an instrument under its official seal, delegate to any person any function or any power of the Commission under this Act*" (other than the power of delegation), allowing for the referral of the management of particular functions, such as premium setting to other parties. TAC already retains VicRoads to collect its premiums having regard to s109, and believe that this method or the exploration of such may provide either:

- an incentive for the TAC to behave in the most efficient manner possible in terms of service delivery and premium setting; or

- allow for a better method of service provision to the community through the delegation of tasks to parties other than the TAC.

The examination of a devolution of functions could be explored as a way of ensuring the efficiency of services currently provided by the TAC.

The Review Team notes that it is good practice to market test the functions of a single provider. This may necessarily achieve two objectives:

- the provider is pressured (in an indirect way) to act in a manner that is in the best interests of the community, where appropriate outcomes are achieved. These appropriate outcomes would ideally mirror those that might be achieved in a competitive environment; and
- should the Government wish to revisit the decision on whether to move to competition, it would then have access to data regarding performance and costing of private service providers.

The Review Team recognises that, technically, it would be possible to permit a range of approved insurers to write policies that would appear to accord with the current transport accident compensation scheme.

However, the Review Team has been mindful of the requirement to seek to provide the greatest potential public benefit. The Review Team is of the view that a move to competitive provision at this time would not provide the greatest potential public benefit. Further, a move to competitive provision would require changes to the nature of benefits available under the transport accident compensation scheme. This view is based upon a number of considerations:

- the transport accident compensation scheme creates a statutory benefits scheme for transport accident victims that is akin to a welfare system of benefits. Access to that part of the scheme is automatic, and does not depend in any way on the payment of a premium by any person. As a result it is incorrect to describe the scheme as a simple insurance product. Introduction of competition would require the government to alter the nature of the scheme to convert access to benefits into an insurance product. Recommendations of this nature are outside the scope of an NCP legislation review. In addition, there is a long tail of claimants who may require access to the benefits for an entire lifetime;

- past experience with competitive provision in such a scheme has shown that private insurers move out of the market, leaving the government to step in and cover the whole market;
- past and current experience also shows that insurers tend to limit their exposure by avoiding acceptance of high risk classes of customer, even where they are required by law to accept all applications; and
- the Review Team is aware of developments with competitive provision in other states. Some of these developments are very recent, and it is too early to determine their merits. Thus the Review Team is of the view that it is rational for Victoria to wait until those arrangements are tested (over the next 2 to 3 years), at which time additional investigation will be able to determine whether to follow suit.

In light of the views presented in the submissions and consultation process, and the costs and benefits outlined throughout this section to the report, the Review Team makes the following recommendation in regard to the single provider status awarded to the TAC.

Recommendation 9.2

The Review Team recommends that the single manager arrangement be retained at this time.

As the Review Team recommends that the single manager arrangement be maintained for the transport accident compensation scheme in Victoria, no transitional arrangements are necessary to implement this preferred option.

The Review Team recognises that for so long as there remains a single manager, there will remain some doubt as to the efficiency with which its services are provided. The next section, which discusses the central premium setting function, addresses some of these concerns. The Review Team is satisfied that the benefits of the single manager outweigh the costs at this time. However, the case for retention of a single manager may change over time.

TAC currently contracts out some services, which provides the opportunity to 'market test' the price for those services. The Government may wish to consider whether any other (and if so which other) functions of the TAC should be 'market tested' in an appropriate manner. The experience of market testing could provide data for analysis in any future examination of the case for retention of the single provider.

The Review Team also notes that the retention of a single manager may also call into question certain structural issues. Structural issues are a central matter for National Competition Policy, with Clause 4 of the Competition Principles Agreement devoted to *Structural Reform of Public Monopolies*. A structural review would address such issues. However, structural reform is not a matter for a Legislation Review under Clause 5, unless the structural issue is also a restriction on competition.

9.3 Centralised premium setting

9.3.1 The restriction on competition

Section 110 states that the charge applicable to a motor vehicle is the amount prescribed or determined as prescribed by the TAC, and that it shall be varied in respect of the beginning of each financial year in accordance with the formula contained in part 2, Section 110.

Subsection 6 provides for the amount or a method of determining the amount of the transport accident charge applicable to a motor vehicle and that the amount prescribed may be more or less than an amount previously prescribed by the regulations.

Section 5 of the *Transport Accident (Charges) Regulations 1986* sets out the formula for the transport accident charge to be applied to different scenarios, and also defines the risk zones whereby the three different premiums are applied. These three zones are classified into high, medium and low risk areas by postcode (geographical region). Metropolitan areas are considered to be high risk, and country areas low. Schedule 1 of the Regulations outlines the amount of the transport accident charge payable for all classes of vehicle in each risk area. The current dollar values of the premiums for each vehicle and discount category are outlined in Appendix E to this report.

As defined by the TAC, *“The current premium rates are based upon:*

- *Class of vehicle (23 categories broadly falling into passenger transport, goods carrying, motor cycles, miscellaneous and special purpose vehicles);*
- *Risk Zone in which vehicle is garaged (High – Melbourne, Medium – Outer Melbourne and Geelong or Low – Country areas); and*
- *Pensioner / non-pensioner status of the owner (as defined under State Concessions Act.)*

This structure has been in place since the TAC commenced and is fixed by the Transport Accident (Charges) Regulations 1986...previous reviews have considered different methods of rating, but the vehicle type has remained the basic unit.”⁴¹

Under the current premium structure, non-pensioner vehicles in high and medium risk zones subsidise pensioner vehicles and other classes of vehicle, specifically involving:

⁴¹ Cross Subsidies in TAC Premiums, Board Meeting No 166, 14 March 2000, item 6.3

- a significant cross subsidy to medium to large motorcycles;
- a significant cross subsidy to prime movers;
- goods carrying vehicles under 2 tonnes; and
- hire and drive vehicles.^{42,43}

The TAC is however, in principle, limited to increasing the premium by no more than the increase in CPI. If the TAC needs to increase the premium by more, an application needs to be made to the Government, justifying the reasons behind the application.

Permitting a single manager to set their own price could raise queries as to whether an efficient price has been set. This in turn has welfare, equity and fairness issues relating directly to the price of the premium. Division of the state into three areas and three charges also has implications for equity across groups, as does cross subsidisation that occurs as a result from metropolitan to country areas.

Centralised price setting can give rise to a restriction on competition to the extent that it may be used to inhibit market entry. The Review Team has also identified this issue in the context of its previous recommendation to retain the single manager arrangement.

9.3.2 Benefits

Consistency in the principles and formulation of the premium on a yearly basis may result from the responsibility of the formulation of the premium resting with one body. Equity issues may be effectively dealt with by having the same body determine the premium on a yearly basis by application of the same or similar principles. The payment of the same premium also offers all individuals involved in transport accidents with Victorian vehicles equal protection and offer them similar benefits as those affected by transport accidents in Victoria. This may reduce volatility and allow for increased monitoring by the government in the premium setting process.

Sharing of the risk burden by the Victorian community is achieved through the formulation of a statutory premium rate for the three geographical areas defined in the Regulations. Fairness and equity issues are addressed through the adoption of this method due to the fact that all people in the same geographical area pay the same rate for their premium, and cross subsidise those areas that are considered to be high risk due to a number of factors.

⁴² Ibid

⁴³ The Review Team did not have access to the details of the cross subsidies.

The TAC is not given the option to refuse individuals on the basis of certain characteristics or charge consumers considered to be greater risks a higher premium. There is no price exploitation by firms profiteering from charging those considered to be a greater risk more. Informational asymmetries that cause incomplete provision of services that arise in the private market are also addressed by formulating the one premium rate for the three areas.

Economic objectives can be achieved and balanced with political and social objectives, allowing the flexibility of the system to alter the premium set such that it reflects current social and economic needs. Access to a more complete set of data on which to base the premium is also made easier by having the full range of data throughout the rehabilitation and claims process.

Community rating principles may be simpler to implement than more complex ratings that examine the profiles of owner/drivers of vehicles. Social equity issues in the provision of third party personal insurance are addressed more effectively through community ratings, and may not provide rewards to any specific class of driver as all drivers are treated equally by the system, and are classified on geographical locations.

9.3.3 Costs

Equity questions regarding the fairness of the premiums set raise issues regarding the rate at which premiums are set. Those who live in areas that are defined as being of greater risk (ie metropolitan areas) pay a greater premium than those who reside in lower risk areas (ie in country areas due to there being less density of motor vehicles), despite the fact that the costs of compensating individuals in these two areas with comparative injuries would be similar.

Driver profiles and the frequency of the use of the vehicle are not given any consideration as they may be in a commercial environment, leading those who infrequently use their vehicles to effectively 'cross-subsidise' those who are frequent users of their vehicle. This again leads to issues of fairness and equity for those in society who are less frequent users in metropolitan areas, and therefore may be less of a risk, paying the same amount as those who are frequent users. It should also be noted that the cross-subsidies are not transparent. Cross subsidies are also easier to maintain, potentially reducing the incentive for the TAC to alter their price setting behaviour.

Potential price exploitation by the TAC may arise as the revenue generated from the collection of premiums forms a significant portion

of the budget. There may be little incentive for the TAC to improve processes and innovate their actions where they can recoup the costs of such from an increase in the premiums.

Benchmarking the transport accident charge against others is not possible within Victoria, given that there are no insurance products in Victoria that emulate the transport accident compensation scheme. The only data that the TAC can use from Victoria is historical prices.

Alternatively, interstate benchmarking could be used. However, the charge in each state reflects the type and arrangement of benefits that each state's scheme provides. As shown in Appendix C there is considerable variation between the schemes, meaning that there would be no reason that the charges need bear any resemblance to each other.

There remains the possibility that they may be either under or over pricing. There is also little transparency in this process, and the TAC's decision must be relied upon, along with final Ministerial adjudication.

Set premiums do not take into account the frequency of use of the vehicle, where the majority of driving is to be completed or the drivers experience profile, rather imposing a yearly fixed cost on the owner based upon the address of the principal place of residence.

9.3.4 Alternatives

It is the Review Team's opinion that there are various ways in which the premium could be set. The options that the Review Team consider to be available are:

- maintain status quo, with the premium set by the TAC;
- have the premium set by an independent regulator;
- have the premium set by the TAC, but reviewed by an independent body;
- have the premium set by the market, but the principles and rate setting is reviewed and approved by the regulator (similar to privatised utilities); and
- have premiums that are set purely by private insurance providers.

These options are discussed in detail below. Maintaining the status quo would result in the same costs and benefits as outlined above.

Alternative 1 Set by independent regulator

This alternative involves the setting and determination of the premium by a regulator that is separate to the regulatory and administrative body. This model is consistent with the current model of service delivery, as it assumes that there is a monopoly body delivering the services required, and removes the premium setting task so as to prevent potential abuse of the premium setting function for budgetary gain by government or the single service provider. The independent regulatory body may provide a premium that is more reflective of that which may be set by a competitive market for transport accident compensation schemes.

The Review Team is not aware of any examples that currently use this method of premium setting.

Benefits

An independent regulatory body setting the premium may allow for the appropriate achievement of objectives to maintain a fully funded scheme that appropriately meets the needs of the all care recipients without the additional funds collected that are over and above the needs of the delivery of the scheme which may lead to budget expansion. Through an independent regulator setting the premium, there may be greater transparency in the decision making process, and some cross subsidies that are not in the interests of the greater community may be eliminated or altered, potentially making them more socially equitable. Accountability may also be clearer as a result of the independence of the party setting the premium.

Less interference from the regulator in achieving other social and policy objectives may result from an independent regulator assuming responsibility for premium setting activities.

Costs

There may be an increase in the administrative costs of the scheme due to additional costs incurred by the independent regulator setting the premium through increased staff costs and administrative processes, because they may have to recreate processes already in existence within the TAC. Correct social welfare policies that are consistent with the objectives of the Act may not be appropriately considered or given weight to by a regulator that is not party to the other stages of the rehabilitation process. The regulator may not have access to the range of data that the TAC has available to it on major factors to be considered as a part of the premium setting process, such as injury type and frequency. Other factors that the TAC currently

takes into account, such as the fluctuation in costs, injuries becoming prominent later in life or long tail case care needs may also not be appropriately considered by an independent regulator.

In terms of competition, as the premium is still being set by a regulator, the premium is still being set by non-market participants, potentially leading to the premium still not reflecting competitive conditions. Similar to the current regime, this system may also disguise trends and consumer signals regarding the price of the premium. Should the charges not be set at politically appropriate levels, there may also be a degree of political interference due to the nature of the premium setting body still being associated with government.

Alternative 2 Independent premium review

As previously outlined, under the current system the TAC is responsible for the setting of the third party personal insurance charge levied upon vehicle owners at the time of registration. Currently, the Minister approves and examines the premium and the principles that are applied by the TAC in the premium setting process. Under this alternative, the TAC would retain the responsibility of formulating the premium, however, the premium and associated process in setting it would be reviewed by an independent third party in order to verify that the methodologies and principles used in setting the price of the charge meets with both competition policy interests and the objectives of the Act, as outlined in chapter 6 to this report.

The Review Team is not aware of any other transport accident system using this method, however, it is a model that is used for workers' compensation in a number of states in the United States of America. This approach is commonly used for the regulation of utility businesses across Australia, for example gas, electricity and telecommunications.

Benefits

Similar to Alternative 1 above, an independent reviewer being appointed to evaluate the premium that is set by the TAC should lead to greater transparency in the premium setting process and highlight cross subsidies that are currently used. Public reports that provide a comparison between the principles that the regulator has used and those that the independent body believes should be used may better ensure that a more transparent process occurs. Premiums may also be reduced as a result of the increased ability of the public and the private

insurance market to scrutinize the methods used by the TAC in premium setting.

This alternative may also increase the incentive of the scheme to price the premium appropriately to service delivery rather than to budget expansion through the increased transparency of the process.

Costs

An increase in administration costs may be two fold in this model:

- increased costs to the government through additional resources required by the third party to conduct the review; and
- potential increased costs to the TAC through a potential change in premium setting processes in order to make the process more transparent.

An increase in such administrative costs may again fall to the community, which may in effect increase the premium paid to the TAC in order to pay for the independent reviewer and the increased costs incurred by the TAC.

Time lags may also arise in the approval process, potentially necessitating a process that is a fall back if the premium is not approved in time for the first registration payment of the year. This fall back system may result in a wrong or inconsistent premium being charged to the community for the year.

Alternative 3 Market sets the premium subject to regulator approval

This model allows private insurers to set the charge for the third party personal insurance premium within guidelines set by the regulator. The regulator also has the final approval for the rate that the insurer proposes to charge. It should be noted that this model would only be applicable if the Review Team had recommended to replace the monopoly provider with a competitive model, however, as the recommendation made maintains the monopoly provider, this option is not viable. Rather, the Review Team has included it for completeness.

This system is currently used in New South Wales, where each insurer submits a premium to the Motor Accidents Authority with selected rating factors. From the rate that is approved by the regulator, the insurer is permitted to offer discounts and impose loadings ranging

between –15% and +35%. Insurers are able to make use of different rating factors, however, there are two factors that cannot be used:

- race; and
- geographical location (beyond that which is already structured into the rates).

Several states in the United States of America also use this system, such as Colorado. The system is referred to as a “file and use” system in Colorado, where the insurer submits the structure of the rate, rating data and expense provisions, with detailed requirements that the insurer must comply with when setting the premium.

Benefits

Under this regime, insurers may have an incentive to set premium rates to ensure that the scheme is fully funded, as the regulator is more easily able to monitor the activities of private insurers. Transparency of the premium setting details and processes may be achieved, which may also lead to a reduction in the use of cross subsidies. Incentives offered to consumers may reduce the incidence of transport accidents by encouraging safe driving practices through such incentives.

Costs

Administration costs may be potentially increased through the regulation and administration of a number of market participants. Assessment and monitoring of various market set premiums may also increase administration costs to the government through the need to review the premium setting process, in turn increasing costs to the community. Political interference may occur through the power of the regulator to either approve or disapprove of the premium set and the process followed.

Alternative 4 Private insurance providers set premium

This alternative model allows private market participants to set their own prices dependant upon factors that they determine to be the best way in which to set the price. This structure is the direct opposite to the current system. It should be noted that this model would only be applicable if the Review Team had opted to replace the monopoly provider with a competitive model. However, as the recommendation made maintains the monopoly provider, this option is not viable. Rather, the Review Team has included it for completeness.

The Review Team notes that this system is currently used in the United Kingdom, Ireland, Denmark and Finland.

Benefits

Perhaps most importantly, in the market setting the premium for the insurance, the charge would not be used as a quasi-tax, as occurs in the current regime. This may reduce the costs of insurance to some individuals in the community. Financial risk would also be transferred to the private market, potentially lessening the financial burden placed on the community. Competitive provision of the product may encourage product innovation and competitive premium setting activities in the market. Bundling of insurance activities may arise, again potentially decreasing costs to consumers of insurance products.

Costs

A possible reduction in reported claims may arise as it may be cheaper for the insured party to bear the risk than to make a claim under their insurance policy. There may also be an increased level of claims disputed as private insurers may have less incentive to adequately pay claims, which, in turn, may have a negative effect on social security systems. Search costs to consumers may also increase through the selection of an appropriate service provider.

Recommendation

The TAC has been responsible for the setting of the premium rate since the imposition of the *Transport Accident Act 1986*. Section 110 outlines that this responsibility, and provides guidelines for the setting of premiums each financial year.

The Review Team notes that where there exists a single service provider, the most common structure is to have centralised premium setting. Examples of overseas schemes exist in Ontario and British Columbia in Canada. In Australia, Victoria, South Australia, Western Australia, Tasmania and Northern Territory utilise this method of premium setting.

The centralised premium setting process has been formulated in order to achieve the following objectives of the Act:

- to reduce the cost to the Victorian Community of compensation for transport accidents; and

- to provide, in the most socially and economically appropriate manner, suitable and just compensation in respect of persons injured or who die as a result of transport accidents.

Retention of the single manager means that it is impractical to have any competitive premium setting. Therefore this discussion confines itself to the most appropriate means of premium setting under a single manager approach.

The options are:

- the status quo, where the TAC determines the premiums;
- premiums determined by an independent party; or
- premiums determined by TAC but reviewed by an independent party.

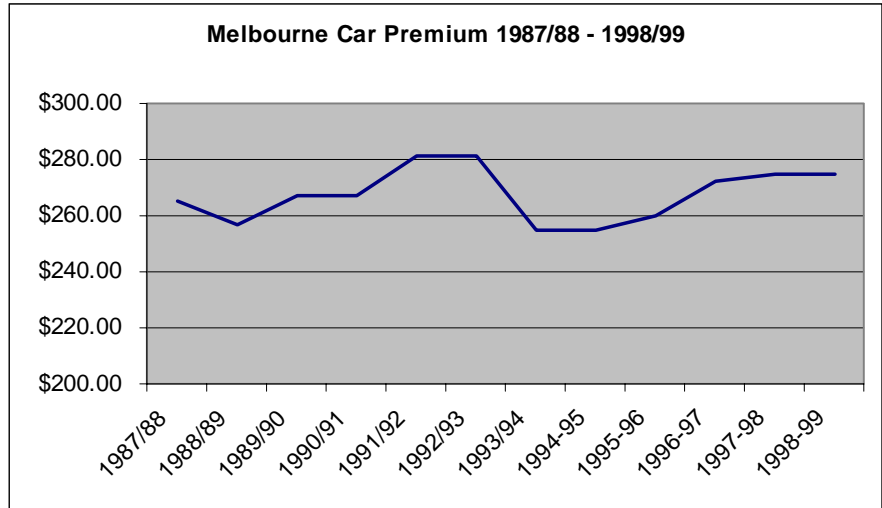
In each case Ministerial approval remains.

Key considerations for each option include:

- whether the premiums can be set in accordance with the Act;
- whether premiums can remain at appropriate levels to cover the scheme and continue affordability; and
- whether informational asymmetries will enable and incent accurate assessments to be made, particularly seeking to avoid excessive fluctuations.

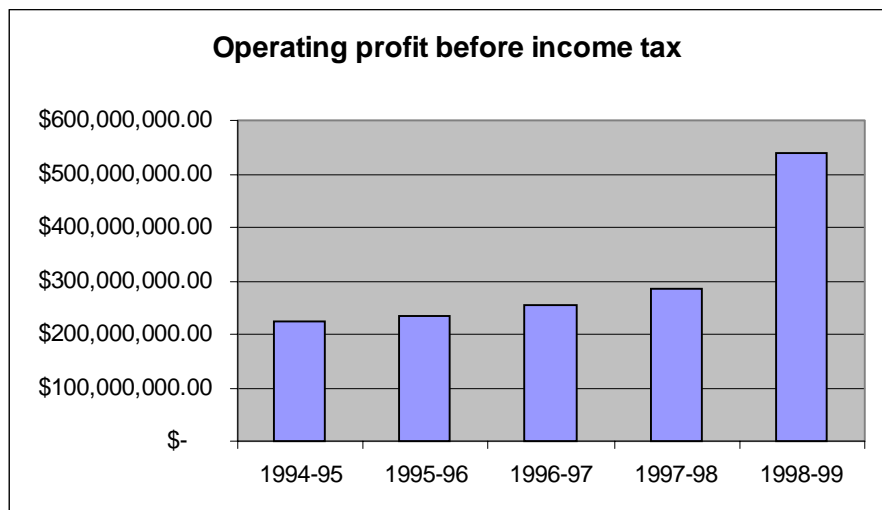
Fluctuating premiums have been avoided in the current arrangements. As shown in Figure 9.3 the nominal price fluctuations over the last decade have been contained in the range of \$255 to just over \$280.

Figure 9.3 Nominal Premium for Melbourne Car Owners, 1987/88 – 1998/99



A broader issue is the appropriate level of collections in a single manager environment, given that single manager may have an incentive to set too high a charge. Figure 9.4 outlines the profit before income tax of the TAC over the 1994/95 to 1998/99 period.

Figure 9.4 TAC Operating Profit Before Income Tax, 1994/95 – 1998/99

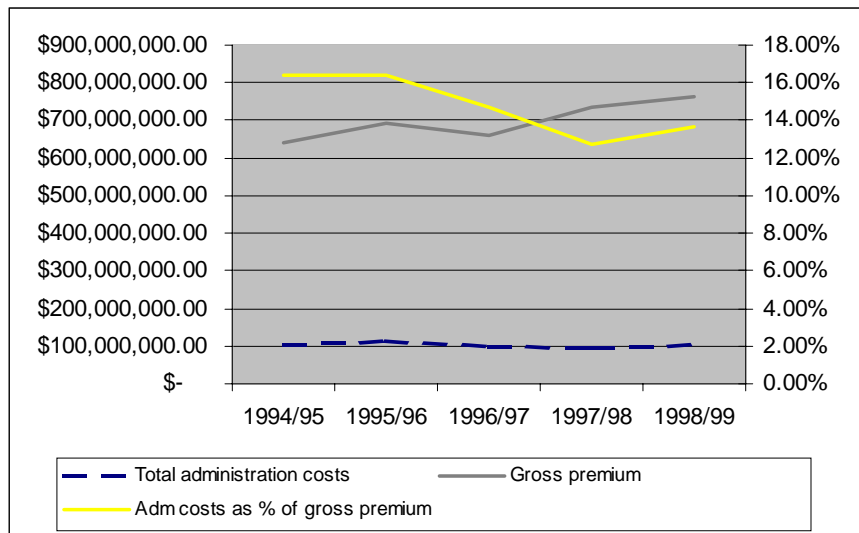


The ICA noted in its submission that the returns made by the TAC are ‘substantial’. The suggestion may be that premiums have been set too high. However, it is difficult to be conclusive in this as returns can

reflect changes in accounting policy, better investment performance or even improved road safety activities. The key point is that it would be desirable for premiums to cover the long run requirements of the scheme, in a manner that provides relatively stable premiums.

Figure 9.5 demonstrates that the administration costs have also been at a relatively stable level, with a decrease in relation to the premium set over the last 5 years, demonstrating that there has been a reduction in the use of administration costs in proportion to the gross premium.

Figure 9.5 TAC Administration Costs as a Percentage of Gross Premium



The issue of centralised premium setting provoked a large amount of response from submissions. In general, the respondents were of the opinion that centralised premiums setting methods were inappropriate and did not provide an adequate levels of transparency to the community regarding the actual methodology and principles applied in setting the premiums. The RACV believes that centralised premium setting undertaken by the TAC:

“...allows for cross subsidisation and produces inefficiencies in the scheme. The introduction of a system of risk based pricing would increase the transparency of the premium setting process and improve the efficiency of the TAC as a provider of transport accident compensation.”⁴⁴

Further, the RACV concludes that:

⁴⁴ opcit - RACV Submission pp 8

“There should be a mechanism for determining TAC premiums which is independent, transparent and accountable.”⁴⁵

The ICA also believes that there are fundamental flaws in having a centralised premium setting process undertaken by the regulator. Specifically:

“...it should be recognised that some social objectives of the government do impose costs and shift them between various members of the community. Under current arrangements, the nature and extent of these imposts and shifts are not clear.”⁴⁶

The NRMA encourages the use of more risk reflective ratings for the premium in that:

“It is wrong to regard risk-rating premiums as socially regressive or encouraging non-compliance.”⁴⁷

All respondents looked favourably upon the use of more risk reflective premiums, or altering the process in order to make the premium setting mechanisms more transparent.

The Review Team notes that there is a process by which a Parliamentary check of Ministerial directions is made. This process, however, does not necessarily perform the functions that are necessary for ensuring prudential premium setting processes are in place.

Further, a key element in many of the submissions was a lack of transparency in the premium setting process. Transparency refers to the degree to which parties are able to observe and understand the decision making process. This includes members of the public, as well as parties with other direct interests. Improving transparency of processes and decisions has been an important element in many reforms flowing from NCP. This is because transparency tends to impose rigour into decision making processes and requires decision makers to justify their actions.

In the case of the transport accident charge, transparency could be improved simply by having all of the detail of the current decision making process tabled in Parliament. However, the technical nature of premium determination means that the information would remain inaccessible to many people. In these circumstances it is common for transparency to also be improved by the introduction of an

⁴⁵ *ibid*, pp 2

⁴⁶ *opcit* - ICA submission pp 37

⁴⁷ *opcit* - NRMA Submission, pp 10

independent expert, who's opinion can add to the assurance that a decision is sound and that due processes have been followed.

Therefore the Review Team formed the view that while the current arrangement for the setting of premiums could provide a net public benefit in terms of having efficient premiums set, there was insufficient certainty of this outcome. Further, there were strong suggestions by some participants that premiums had been too high for many vehicle classes for some years. The main contributing factor is a lack of transparency.

Therefore the Review Team is attracted to the idea of an independent third party checking process to ensure that the premiums adopted are delivering best outcomes to the community through the most efficient pricing level possible being set.

Specifically, the Review Team sees the role of an independent review party being similar to that of a pricing regulator. The role of a pricing regulator involves the assessment of three key factors:

- the methodology for premium setting;
- the overall level of premiums; and
- the structure of the premiums, for example identifying cross subsidies.

It is not envisaged that review body would be able to over-ride premium proposals from the TAC. Rather, an independent report and the TAC proposals would be placed before the Minister for consideration.

However, the Review Team is of the view that it is important that the independent review report be made public before any decision is made in order to put greater transparency into the premium setting process. This will encourage the TAC to justify both the premium setting process and the premiums that it proposes in any given year. Should the Minister choose to ignore elements of the independent report, then this would be a public decision.

There are of course many particular arrangements that can be designed to introduce independent oversight and transparency into the premium setting process. However, the Review Team has chosen to recommend a simple example of how and when this could occur in this case. Practical needs of any process include:

- that the independent third party have access to the information necessary to complete its task;

- that the independent third party have the skills and resources to examine the information;
- that the independent third party have clear terms of reference or other set of directions defining its task;
- that the report of the independent third party be made public; and
- that the report of the independent third party be included in the decision making process.

Recommendation 9.3

The Review Team recommends that the Act be amended to require that an independent third party review of the TAC's proposed premiums occur prior to Ministerial approval.

The review of proposed premiums should be made public prior to the Minister's decision.

The review should examine and report on the premium methodology, ensuring that the overall level of proposed premium collections is sufficient to cover the long term liabilities of the transport accident compensation scheme. The review should also examine and report on cross subsidies within the premium structure to ensure that the community is fully aware of those cross subsidies.

It will be necessary for the government to identify an appropriate body to undertake the independent review. Part 7 of the Act would have to be amended to incorporate the review mechanism.

9.4 Further Matters

Ministerial directions

Description

Under section 14 of the Act the TAC is required to exercise its power and perform its functions under the Act subject to:

- the general direction and control of the Minister;
- any specific written directions given by the Minister in relation to a matter or class of matter specified in the directions; and
- in relation to its functions and powers under Part 2A (Victorian Government Security Bonds), any specific written directions given by the Treasurer in relation to a matter or class of matter specified in the direction.

The powers given to the Minister under the Act are very broad. The only limitation is that the Minister cannot direct the TAC to act beyond the statutory powers of the TAC as set out in the Act.

Accordingly, there is the potential for the Minister to direct the TAC to act in a manner which may result in a restriction on competition.

It should be noted that the potential to restrict competition through a Ministerial direction is somewhat limited, given that the TAC is the compulsory provider of transport accident compensation benefits and insurance under the Act in any event. However, potential Ministerial directions which may involve restrictions on competition could include:

- directions to the TAC in relation to the approval of persons to provide housekeeping duties or care of a child or services of a domestic nature; and
- directions to the TAC in relation to the manner in which it funds or approves the provision of other services to injured persons.

It is understandable that the Government, as the effective owner of the TAC, will wish to retain a degree of control over the exercise of the TAC's powers and functions. This is a usual statutory power in respect of statutory corporations. The question which arises is whether the existence of this power, which may be used in a manner which restricts competition, gives rise to concern in the context of national competition policy.

The Review Team is not aware of any direction given by the Minister pursuant to section 14 of the Act which does involve a restriction on competition. Accordingly, it remains only a possibility that the power could be used in this manner.

The Review Team does not believe it is necessary to alter the power contained in section 14 of the Act. Any exercise of the power by the Minister will itself be subject to the requirements of clause 5 of the Competition Principles Agreement that requires legislation (including subordinate legislation) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

As any Ministerial directions given under section 14 will be subject to review under this clause 5, the review team does not believe any amendment to section 14 is required.

Appendix A

Terms of Reference

GOVERNMENT OF VICTORIA

NATIONAL COMPETITION POLICY REVIEW OF LEGISLATIVE RESTRICTIONS ON COMPETITION

REVIEW OF TRANSPORT ACCIDENT COMPENSATION LEGISLATION

TERMS OF REFERENCE

An independent review of regulation of transport accident compensation legislation has been commissioned by the Minister for WorkCover.

Background

The Transport Accident Commission (TAC) is the sole provider of compulsory third party transport accident compensation in Victoria. The current system is a no fault compensation system that includes provision for lifetime care and community rating. The Transport Accident Commission and the current scheme are contained in the *Transport Accident Act 1986* and regulation (the TAC legislation).

A review of the TAC legislation was undertaken in accordance with National Competition Policy in 1998. The then Victorian Government rejected the review recommendations to separate the TAC's commercial functions from regulatory functions, and to discontinue statutory premium setting and introduce risk reflective premiums complemented by community service obligation payments.

Scope of the review

The review of the TAC legislation will be undertaken in accordance with the requirement of the *Competition Principles Agreement* that legislation or regulation which restricts competition should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation or regulation cannot be achieved through other means, including non-legislation means.

The review will determine whether and the extent to which the sole provision of transport accident compensation by the TAC and statutory premium setting are in the *public interest* of the Victorian community.

Without limiting the matters that may be considered, an assessment of the public interest should have regard to costs and benefits in relation to:

- the need to protect the interests of drivers, passengers and third parties involved in transport accident causing personal injury, and to maintain the affordability of the transport accident compensation arrangements;
- the effect of the current insurance arrangements have or might have on the activities of insured parties;

- the effect of the current internal cross subsidies between classes of motorists;
- the performance of both commercial and regulatory functions by the TAC;
- the outcomes of similar reviews in other jurisdiction.

Methodology

The review will be undertaken in accordance with the methodological requirements for assessing legislative restrictions set out in the *Competition Principles Agreement* and the Victorian Government's approach to legislation review.

Without limiting the terms of reference, the review should:

- clarify the objectives of the legislative arrangements, and determine whether these objectives remain relevant;
- identify the nature and extent of any restrictions on competition contained in those legislative arrangements;
- analyse the likely effect of any restrictions in the legislative arrangements on competition and on the economy generally;
- identify any alternatives to the legislative arrangements, including non-legislative approaches, that achieve the objectives of the legislative arrangements;
- assess and balance the benefits, costs and overall effect (public interest) of the legislation and any alternatives;
- determine a preferred option for regulation, ie. whether the legislation should be repealed, modified, or maintained, and if modified, the suggested modifications;
- identify changes in legal obligations, liabilities, and revenue to Governments that might be expected to arise out of the preferred option for regulation; and
- advise on any transitional arrangements which might be necessary in implementing the preferred option.

Appendix B

Consultation

Review Advertising

The review was advertised in the following metropolitan newspapers on Saturday 12 August 2000:

- The Age
- The Herald Sun

Visits

Members of the Review Team met with the following organisations:

- Royal Auto Club of Victoria (RACV)
- NRMA
- Law Institute of Victoria (LIV)
- Insurance Council of Australia (ICA)

Submissions

Written submissions were received by the Department of Treasury and Finance from the following organisations:

- Insurance Council of Australia
- NRMA
- Victoria Police
- Law institute of Victoria
- RACV
- Australian Plaintiff Lawyers Association

Appendix C

Summary of transport accident compensation provision interstate and internationally

Australian CTP Insurance Schemes – State by State Breakdown*

* Information provided without detailed source references are gathered from knowledge of PricewaterhouseCoopers' staff. N/A means not applicable.

	NSW	VIC	SA	QLD	WA	TAS	ACT	NT
General information								
Population (June 1999)	6.4m	4.7m	1.5m	3.2m	1.8m	0.5m	0.3m	0.2m
Registered vehicles	4.1m (June 1998) ⁴⁸	3.2m (Aug 2000)	1.1m (Aug 2000)	2.1m (Aug 2000)	1.4m (1999) ⁴⁹	Not available	0.2m	0.1m ⁵⁰
Scheme details								
Responsible organisation	Motor Accidents Authority	Transport Accident Commission	Motor Accidents Commission, but Transport SA regarding registration and licensing	Motor Accidents Insurance Commission	Insurance Commission of Western Australia	Motor Accidents Insurance Board	Department of Urban Services	Northern Territory Government (administered by the Territory Insurance Office)
Relevant legislation	Motor Accidents Act 1988	Transport Accidents Act 1986	Motor Vehicles Act 1959	Motor Accident Insurance Act 1994	Motor Vehicle (Third Party Insurance) Act 1943	Motor Accidents (Liabilities and Compensation) Act 1973	Road Transport (General) Act 1999	Motor Accidents (Compensation) Act 1979
Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory	Compulsory
Fund type	Private insurers	Central fund	Central fund	Private insurers	Central fund	Central fund	Private insurer	Central fund
Number of insurers	8	N/A	N/A	N/A	N/A	N/A	1	N/A
Coverage								
Fault/no-fault	Fault	No-fault	Fault	Fault	Fault	No-fault	Fault	No-fault for residents; non-residents have right to sue
Premium setting								

⁴⁸ Road and Traffic Authority, *1998 New South Wales Driver & Vehicle Statistics*

⁴⁹ www.transport.wa.gov.au/roadsafety/crash_stats_99/appendix2.htm

⁵⁰ Department of Works information

System	Partly regulated	Fully regulated	Fully regulated	Partly regulated	Fully regulated	Fully regulated	Approved by minister after independent actuarial review	Fully regulated
Description of rating	Several rating factors. Insurers need to file premium structures	Based on vehicle type and zone where vehicle is garaged	Based on vehicle type, the purpose for which the vehicle is used and zone vehicle is garaged	Based on vehicle type	Based on vehicle type	Based on vehicle type	Based on vehicle type	Not known
Benefits								
Common law rights	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, partly
Common law threshold	10% permanent whole body impairment as define by the American Medical Association guidelines or MAA guidelines	verbal threshold	unrestricted	unrestricted	unrestricted	unrestricted	unrestricted	right to sue for non-residents

Selected International Schemes

	NZ	British Columbia	Ontario	Colorado	UK	Denmark
General Information						
Population (1996) ⁵¹	3.6m (1996)	4.0m	11.7m (2000) ⁵²	4.1m (1999) ⁵³	58.5m (1996)	5.3m (1996)
Registered vehicles (1996) ⁵⁴	2.4m (1996)	Not known	6.7m (1998) ⁵⁵	1.8m (1998) ⁵⁶	26.8m (1996)	2.2m (1996)
Scheme details						
Responsible organisation	Accident Compensation Corporation	Insurance Council of British Columbia	Financial Services Commission of Ontario	Commissioner of Insurance, Colorado and Registry of Motor Vehicle Police	Insurers are authorised by HM Treasury	Finanstilsynet (Danish Financial Supervisory Authority) and Danish Central Motor Registration Bureau)
Relevant legislation	Accident Insurance Act 1998	Insurance (Motor) Act 1996, RCBC Chapter 231	Auto Insurance Rate Stability Act	Colorado Rev. Stat.	Road Traffic Act 1988	Road Traffic Act 1990
Compulsory	Yes	Compulsory	Compulsory	Drivers must demonstrate financial responsibility	Compulsory, EU minimum levels	Compulsory, EU minimum levels
Fund type	Central fund	Central fund	Competing private sector	Competing private sector	Competing private sector	Competing private sector
Funding position	The account is one of seven accounts managed by the authority	Not possible to separate out motor insurance part	N/A	N/A	N/A	N/A

⁵¹ Federal Office of Road Safety, *Benchmarking report 1996*

⁵² Canadian Statistics

⁵³ US Census Bureau

⁵⁴ Federal Office of Road Safety, *Benchmarking report 1996*

⁵⁵ Canadian Statistics

⁵⁶ US Federal Highway Administration

Number of insurers/agents	N/A	N/A	Not known	Not known	Not known	Not known
Coverage						
Fault/no-fault	No fault	No fault	No fault	No fault	Fault	Fault
Premium setting						
System	Fully regulated	Fully regulated	Commission reviews and approves premium rates	File and use system	Completely determined by the market	Completely determined by the market
Number of rating factors	Based on four classifications of motor vehicles	Three for the compulsory part: <ul style="list-style-type: none"> • rate class (how the vehicle is used) • where garaged • claim record⁵⁷ 	No identified limitation, but the structure is reviewed	Examples include: age, gender, usage of car, claim record ⁵⁸	Unknown	Examples include: type of vehicle and claim record ⁵⁹
Benefits						
Common law rights	No	Yes	Yes	Yes	Yes	Yes
Common law threshold	N/A	CA\$200k ⁶⁰	verbal threshold	US\$2,500 threshold	?	?

⁵⁷ www.icbc.co/auto/basic.html

⁵⁸ www.dora.state.co/au/insurance/consumer/99auto.htm

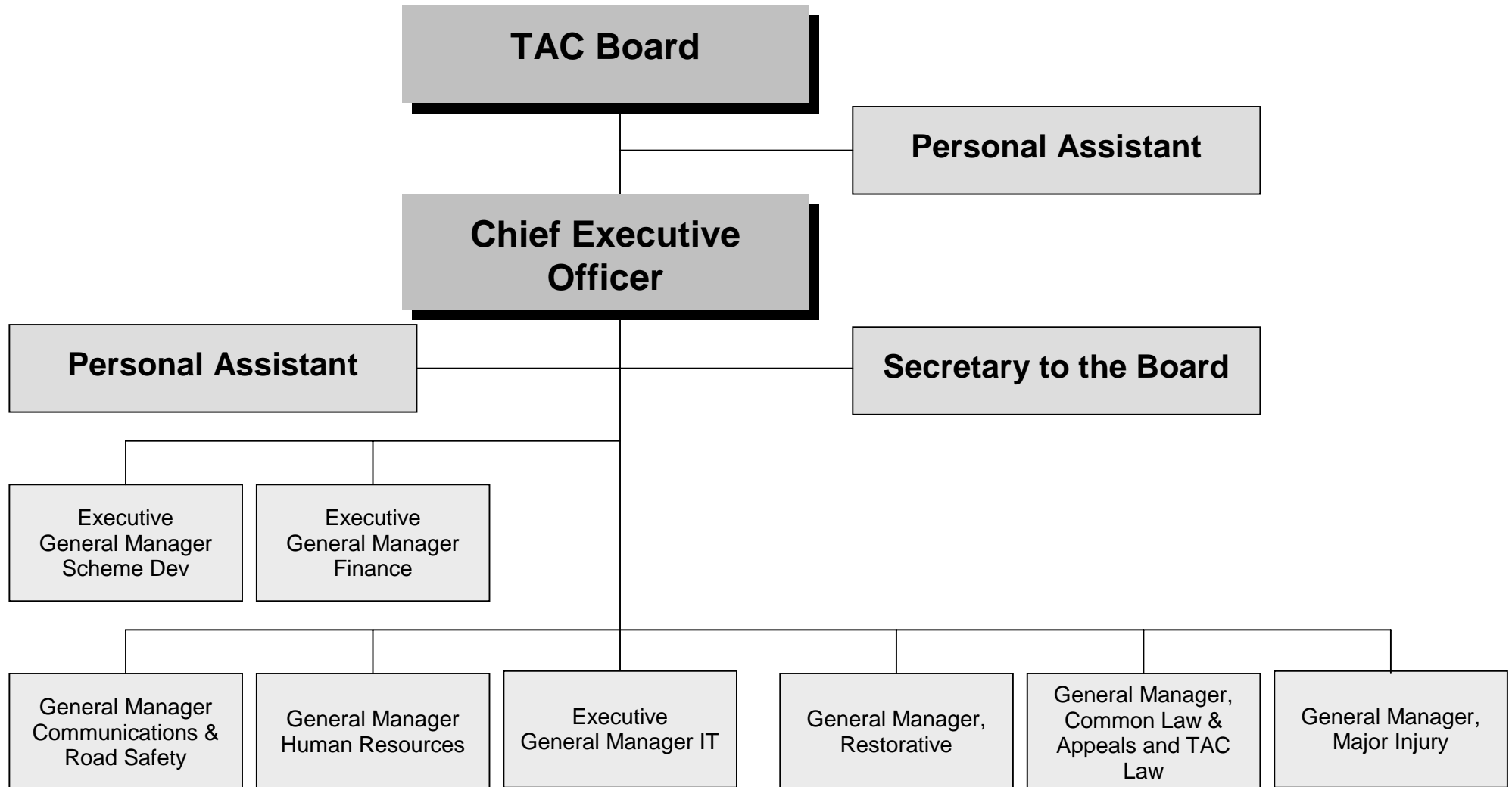
⁵⁹ www.danmark.dk/hr/owa/danmark.dk?object+146394

⁶⁰ www.icbc.com/auto/basic.html

Appendix D

TAC organisation chart

The TAC



Appendix E

Schedule of Transport Accident Charges - Effective 1/7/2000

Transport Accident Charges Effective 1/7/2000 for Non-Pensioners by Vehicle Class

	<i>High Risk Zone</i>	<i>Medium Risk Zone</i>	<i>Low Risk Zone</i>
<i>Passenger Transport Vehicles</i>			
Class 10 – Cars	277.00	247.00	215.00
Class 11 – Passenger up to 9 seats	277.00	246.00	203.00
Class 12 – Passenger 9+ seats	391.00	246.00	203.00
Class 13 – Taxis	1402.00	1050.00	699.00
Class 14 – Commercial Bus < 9 seats	916.00	613.00	211.00
Class 15 – Bus, 10 - 30 seats (per seat)	23.00	10.00	3.00
Class 16 – Bus 31+ seats	1402.00	840.00	278.00
<i>Goods Carrying Vehicles</i>			
Class 20 – Goods Carrying < 2 tonne	278.00	209.00	145.00
Class 22 – Truck 2+ tonne	404.00	353.00	304.00
Class 24 – Prime Mover	1120.00	895.00	673.00
Class 26 – Primary Producer	124.00	103.00	82.00
<i>Motor Cycles</i>			
Class 29 – Motor Cycle <60cc	47.00	47.00	47.00
Class 31 – Motor Cycle 61 – 125cc	183.00	161.00	140.00
Class 33 – Motor Cycle 126 – 500cc	203.00	177.00	153.00
Class 35 – Motor Cycle 500cc +	291.00	255.00	219.00
<i>Miscellaneous Vehicles</i>			
Class 41 – Miscellaneous	208.00	166.00	54.00
Class 43 – Miscellaneous	47.00	47.00	47.00
Class 45 – Recreation Vehicles	39.00	39.00	39.00
<i>Special Purpose Vehicles</i>			
Class 50 – MFB	699.00	699.00	699.00
Class 52 – CFA	110.00	110.00	110.00
Class 55 – Police Car	981.00	981.00	981.00
Class 56 – Police Motor Cycle	278.00	278.00	278.00
Class 57 – Trade Plates	180.00	136.00	90.00
Class 58 – Tow Truck	517.00	387.00	259.00
Class 59 – Hire & Drive	438.00	368.00	315.00

Transport Accident Charges Effective 1/7/2000 for Pensioners by Vehicle Class

	<i>High Risk Zone</i>	<i>Medium Risk Zone</i>	<i>Low Risk Zone</i>
<i>Passenger Transport Vehicles</i>			
Class 10 – Cars	138.50	123.50	107.50
Class 11 – Passenger up to 9 seats	138.50	123.00	101.50
Class 12 – Passenger 9+ seats	195.50	123.00	101.50
<i>Goods Carrying Vehicles</i>			
Class 20 – Goods Carrying < 2 tonne	139.00	104.50	72.50
<i>Motor Cycles</i>			
Class 29 – Motor Cycle <60cc	23.50	23.50	23.50
Class 31 – Motor Cycle 61 – 125cc	91.50	80.50	70.00
Class 33 – Motor Cycle 126 – 500cc	101.50	88.50	76.50
Class 35 – Motor Cycle 500cc +	145.50	127.50	109.50