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Introduction of National Injury Insurance Scheme - Queensland

Important: The following is provided as general information only. It is not, and is not intended to be legal advice or even a complete overview of the subject. If you require more information about NIISQ please consult:

The Act <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/N/NatInjuryInsSchQA16.pdf> and the **regulation** <https://www.legislation.qld.gov.au/LEGISLTN/SLS/2016/16SL089.pdf> or seek your own independent legal advice.

Information about Compulsory Third Party Insurance and Driver Protection Cover is also provided.

On July 1 2016 the Queensland Government introduced the National Injury Insurance Scheme – Queensland. This important piece of legislation is designed to fill the gap created by the ‘at fault’ nature Queensland’s CTP cover. That is, a driver that was ‘at fault’ in a crash and was catastrophically injured as a result did not receive any assistance. In simple terms, in order to receive any benefits from CTP cover, drivers need to show that they were not at fault.

Prior to the NIISQ’s introduction, it was common for some severely injured drivers to be left with no on-going assistance. Some CTP insurers addressed this by voluntarily providing no cost Driver Protection Cover as an add on to their CTP policies. However the benefits these policies provided were generally fairly limited in comparison to the care needs of those injured.

DPC policies also carry a number of limitations that reduce or remove cover from some drivers. At the May 2016 QHMC General Meeting this was a topic of discussion and a motion to cease using the term ‘rally’ to describe club events was put to the meeting. Please refer to the minutes of that meeting (available on the QHMC web site) for an understanding of the issues raised.

An extract from a typical policy and examples of the limitations is shown below. It’s from the Suncorp Driver Protection Cover PDS (Product Disclosure Statement). Other CTP insurers have similar, but not identical conditions. The benefits provided by the cover can also vary from insurer to insurer. This extract is provided as an example and for information only.

When we pay DPC Benefits

We will pay benefits to the at fault driver of your motor vehicle for injuries suffered (or to the driver's estate or dependants if the driver is killed) as a result of a motor vehicle accident in Australia, if ALL of the following apply:

- your motor vehicle is registered with Queensland Transport, and the CTP Insurance for your motor vehicle is with Suncorp;
- the driver was solely at fault for the accident and at the time of the accident:
 - aged 25 years or older; or
 - aged between 16 years and under 25 years and your motor vehicle is comprehensively insured with us;
- the injury is on our *Schedule of Benefits* (see below);
- the motor vehicle is a Class 1 (cars and station wagons) or Class 6 (trucks, utilities and vans of 4.5 t or less) vehicle, under the Motor Accident Insurance Regulation 2004;
- the accident was the sole or substantial contributing factor to the injury shown on our *Schedule of Benefits*;
- an appropriately qualified medical practitioner confirms that the driver had sustained the injury as a result of the accident;
- at the time of the accident your motor vehicle was registered, roadworthy and not towing a load over the legal limit, and was not a police vehicle;
- the driver (or the estate or dependants if the driver died) is not entitled to claim under any statutory compensation scheme (including motor accident or workers' compensation).

When we do not pay DPC benefits

We will not pay benefits if:

- the injury was intentionally caused or was a result of the accident being intentionally caused; or
- the circumstances causing the injury result in the driver being convicted of a criminal offence, or the driver was under the influence of alcohol or drugs, or had a breath or blood alcohol level over the legal limit, or the driver was involved in any illegal activity, or was on a motor race track, racing, pacemaking, or in reliability, speed, motor sport or other trials or a car rally at the time of the motor vehicle accident; or
- the injury was directly or indirectly caused by, or was due to, psychological or psychiatric causes, sickness or disease; or
- the injury was caused by revolution, war (whether declared or not), acts of a foreign enemy, military coup, radioactivity or the use, existence or escape of nuclear fuel, nuclear material or waste, or the action of nuclear fission including detonation of any nuclear device or nuclear weapon, biological, bacterial, viral, germ, chemical or poisonous pollutant or contaminant or any looting or rioting following these occurrences.

Schedule of Benefits

Quadriplegia	See next table*
Paraplegia	\$350,000
Total loss of power of speech	\$100,000
Total loss of hearing	\$100,000
Permanent and total sight loss in both eyes	\$100,000
Loss/amputation of both hands or both feet	\$100,000
Loss/amputation of one hand and one foot	\$100,000
Loss/amputation of one hand or one foot	\$50,000
Permanent and total sight loss in one eye	\$50,000
Death (if the driver had dependants)	\$40,000
Death (if the driver had no dependants)	\$10,000

If the driver suffers more than one of the injuries in the schedule, we pay only the benefit for the injury with the highest benefit value.

*Table of Quadriplegia Benefit Cover		
Age of At-fault driver	Motor Vehicle Comprehensively insured with Suncorp	Motor Vehicle not Comprehensively insured with Suncorp
16 to 25 years old	\$2,000,000	0
> 25 years old	\$2,000,000	\$1,000,000

Pertinent points

DPC

DPC is not a component of CTP. DPC is voluntarily offered at no cost by some companies to cover the gap created by Queensland's CTP legislation. There is no requirement that insurers offer this cover. DPC is not covered by CTP legislation and those companies offering it do not necessarily offer comparable products.

There are only four CTP providers in Queensland (Suncorp, RACQ, QBE and Allianz). QBE's website does not mention DPC so it is assumed that it does not offer this product.

DPC covers CTP classes 1 and 6 only. This is consistent across all policies and companies. SIVS vehicles are class 5 therefore their drivers are not covered, regardless of fault. There are 25 Queensland CTP classes however only the following three are relevant to this discussion.

- Class 1. Cars and Station wagons
- Class 5. Motor vehicles, including cycles, for use only as vintage, veteran, historic or street rod motor vehicles (SIVS)
- Class 6. Trucks, utilities and vans, including panel vans, with a gross mass of 4.5t or less

NIISQ

The purpose of the NIISQ Act is to ensure that persons who suffer particular serious personal injuries as a result of a motor accident in Queensland receive necessary and reasonable treatment, care and support, **regardless of fault.**

For the purposes of this discussion the NIISQ covers all Queensland registered motor vehicles and trailers for which a CTP policy is in force. However vehicles such as tractors, forklifts etc are not covered unless the accident happens on a road. **It does not cover drivers injured in Queensland registered vehicles that crash in another State or Territory.**

Serious personal injury is defined in the Act as:

- a permanent spinal cord injury resulting in a permanent neurological deficit; or
- a traumatic brain injury resulting in a permanent impairment of cognitive, physical or psychosocial function; or
- a forequarter amputation or shoulder disarticulation amputation; or
- the amputation of a leg through or above the femur; or
- the amputation of more than 1 limb or parts of different limbs; or
- a permanent injury to the brachial plexus resulting in an impairment equivalent to a shoulder disarticulation amputation; or
- a full thickness burn to all or part of the body; or

- (h) an inhalation burn resulting in a permanent respiratory impairment; or
- (i) permanent blindness caused by a trauma.

The introduction of NISQ increased the cost of CTP by about \$32 for class 1 and \$17 for class 5.

Unlike DPC, which provides limited financial assistance, NISQ provides on going medical care, support and rehabilitation to those with injuries that qualify for assistance under the legislation. This could also include the provision of necessary equipment, such as wheelchairs etc, and alterations to homes to assist the disabled.

According to a CTP provider, benefits from only one of these arrangements can be accessed. i.e. the injured person will have to choose either the lump sum benefit from the DPC provider or ongoing medical care and / or rehabilitation from the NISQ.

Informal advice from a large CTP insurer indicates that Queensland's DPC benefits are currently being reviewed and will most likely reduce to similar levels to those of the other States and Territories where DPC cover is offered. The timeframe for this is unclear at this point, though it could take until mid-next year to finalise.

CTP insurance

The following extract is from the Motor Accident Insurance Commission and outlines some pertinent information about CTP cover and claims. For further information see <https://maic.qld.gov.au/>

Queensland operates a common law 'fault' based Compulsory Third Party (CTP) scheme, which was first introduced in 1936. The scheme provides motor vehicle owners, drivers, passengers and other insured persons with an insurance policy that covers their unlimited liability for personal injury caused by, through or in connection with the use of the insured motor vehicle in incidents to which the ***Motor Accident Insurance Act 1994*** (MAI Act) applies.

For the injured third party, it provides access to common law rights, where the injured person has a right to approach a law court to seek monetary compensation from the person 'at fault' for the personal injury and other related losses. As a fault based scheme it requires proof of liability, meaning the injured party must be able to establish negligence against an owner or driver of a motor vehicle. Consequently, circumstances can arise where an injured person can not obtain compensation, such as when they were the driver wholly at fault in the accident because there is no negligent party against whom a claim can be made.

The Queensland scheme is governed by the MAI Act and underwritten by private **licensed insurers** who accept applications for insurance and manage claims on behalf of their policyholders. Compensation is paid to accident victims from the respective insurer's premium pool. Since 1994, the scheme has had an increased focus on the rehabilitation of injured persons and places certain obligations on insurers and claimants.

The **Motor Accident Insurance Commission** (MAIC) regulates and monitors the scheme. The **Nominal Defendant** determines liability for and manages claims by injured persons where the 'at fault' vehicle is uninsured or unidentified. It also acts as insurer of last resort if a licensed insurer becomes insolvent.

Who can claim

If you are injured in a motor vehicle crash in Queensland due to the fault (total or partial) of the driver, owner or another person insured under a Compulsory Third Party (CTP) insurance policy you may make a CTP claim under the Queensland legislation. The claim is made against the CTP insurer of the vehicle that caused the crash. You can still make a CTP claim if you were partially at fault, but compensation may be reduced.

What if the vehicle was uninsured and unregistered?

If the vehicle that caused the crash was uninsured or was unable to be identified, you may still be able to claim. You should lodge your claim against the [Nominal Defendant](#), who is taken to be a licensed insurer.

What if no one else was at fault?

There may be times when an injured person cannot claim compensation, for example if:

- the injured person was totally at fault, or
- no-one was at fault.

If you are unable to claim compensation you will need to rely on sick leave, Centrelink benefits, Medicare and the public health system unless you have other insurance policies such as income protection or private health insurance.

Insurers may offer limited additional benefits for at fault driver cover for serious injuries or death. Contact your [CTP insurer](#) for details on policy coverage and exclusions.

If you have a catastrophic injury and your motor accident was after 1 July 2016, you may be able to access treatment, care and support through the new [National Injury Insurance Scheme Queensland](#).

National Injury Insurance Scheme for the catastrophically injured

As Queensland's CTP insurance is a fault-based scheme, almost half of all people who sustain serious personal injuries in a motor vehicle accident were not eligible to receive compensation. From 1 July 2016, people who sustain serious personal injuries in a motor vehicle accident in Queensland will be covered by the [National Injury Insurance Scheme](#) and receive necessary and reasonable treatment, care and support, regardless of fault.

Fatal injuries

You can make a CTP claim for loss or expenses:

- if you are a relative or dependent of a person who was fatally injured, and
- the motor vehicle crash was wholly or partly the fault of some other person.

What you can claim

All claims for compensation are assessed individually. The amount of compensation paid depends on the type and extent of your injury and your particular circumstances. The compensation you are entitled to may be reduced if you were partially at fault.

Your claim could include the cost of medical treatment, rehabilitation, loss of income, cost of care and support services and general damages (pain and suffering) if your injury is severe enough. You may be able to claim other expenses depending on your individual circumstances. Discuss any queries with the insurer or your solicitor (if you are legally represented).

Fatal injuries

Examples of loss that may be claimed by a relative or dependant of the person who sustained a fatal injury are:

- reasonable funeral costs
- financial loss arising from the death of an income provider (this could be claims from the surviving spouse, including de facto partner, dependent children and other dependent persons).

To make a fatal injury claim use the [Fatal Injury Claim Form](#).