

21 April 2016

The Honourable Victor Dominello MP  
Minister for Innovation & Better Regulation  
52 Martin Place  
SYDNEY NSW 2000

Dear Minister,

I wish to make the following Submissions to the current review of the New South Wales CTP Scheme.

Background

It is easily and commonly understood that where a person wrongfully causes damage to another they should pay for that damage. For example, if I injure my neighbour, I should be responsible to pay for my neighbour's medical expenses.

In 1942, the Parliament established a scheme which required drivers of motor vehicles to take out third party personal injury insurance.<sup>1</sup> The legislation ensured that the victim of an accident would be covered for the loss arising from his/her injuries without impoverishing the driver at fault.

The Introduction of No-Fault Benefits in New South Wales

The New South Wales scheme has been amended to provide for no-fault benefits in the following circumstances:

- a. In 2006, the *Lifetime Care & Support Act* was introduced to provide no-fault benefits to those suffering severe injuries in motor vehicle accidents.<sup>2</sup>
- b. At a similar time, the *Motor Accident Compensation Act* was amended to provide benefits to children and in respect of blameless accidents.<sup>3</sup>

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<sup>1</sup> *Motor Vehicles (Third Party) Insurance Act 1942*

<sup>2</sup> *Motor Accidents (Lifetime Care & Support) Act 2006*

<sup>3</sup> Part 1.2 *Motor Accident Compensation Act 1999*

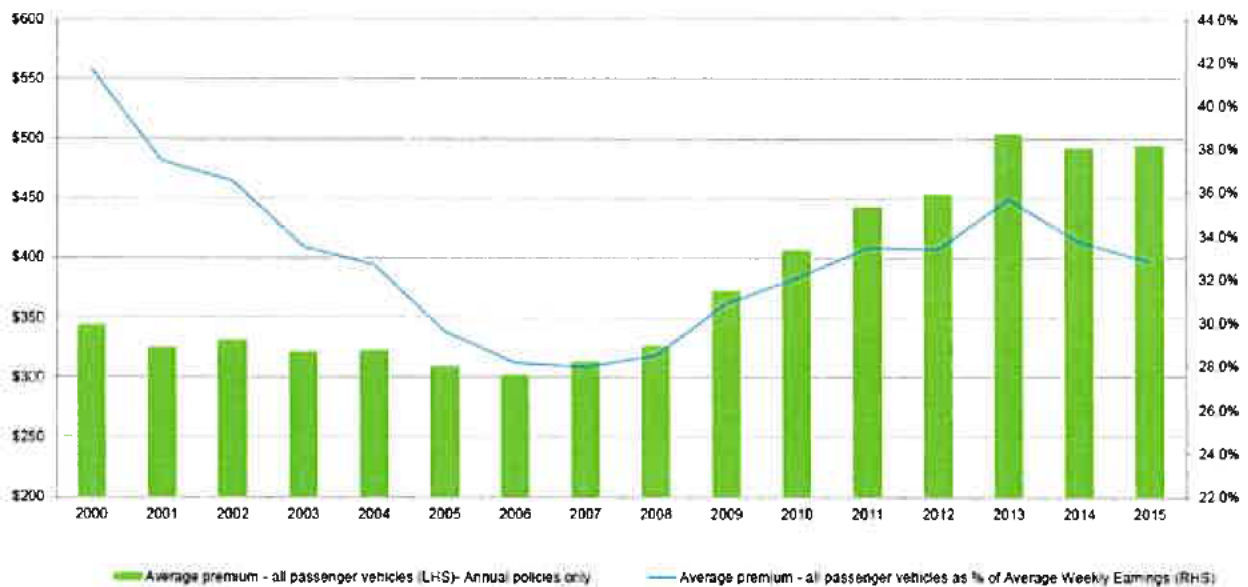
- c. Perhaps most significantly, in 2008 the accident notification provisions were amended to increase the benefits payable from \$500.00 to \$5,000.00 and to provide for early payment for treatment and lost earnings on a no-fault basis.<sup>4</sup>

The increased benefits payable to those who lodge an Accident Notification Form have the effect of inducing accident victims to make a claim in respect of minor injuries. It may be anticipated that, once in the scheme, accident victims will seek legal advice about their rights.

No-fault schemes, which are typically bureaucratic, such as workers compensation, have a tendency towards costs blow-outs. The National Disability Insurance Scheme will reportedly to cost 11.1 billion dollars per year a decade from now.<sup>5</sup>

In real terms, green slip premiums are less than they were when the scheme commenced in 2000 but are significantly greater than they were in 2008.<sup>6</sup> The increase is in no small part as a result of amendments to include no-fault benefits.

**Chart 2.1: Average premium as a proportion of NSW AWE (at 30 June)**



### A No-Fault Scheme

<sup>4</sup> Part 3.2 *Motor Accident Compensation Act 1999*

<sup>5</sup> *The Australian Newspaper*, 07 April 2016

<sup>6</sup> Report of the Independent Review of Insurer Profit with the New South Wales CTP Scheme, 15 October 2015

The establishment of a no-fault scheme would mean that motorists in New South Wales are required to insure themselves, that is hold an income protection policy.

Drivers of New South Wales would be surprised to learn that, as suggested in some submissions<sup>7</sup>, that mandatory insurance policy:

- a. provided only proscribed, non-negotiable benefits; and
- b. prohibited the insured from paying for legal advice.

Some motorists in New South Wales are prudent enough to take out their own income protection policy or private health insurance. For those people, a no-fault scheme would mean that they were doubly insured. Some motorists unfortunately cannot afford an income protection policy. If a person elects to take out an insurance policy they are at liberty to negotiate the terms of that policy so that the policy meets their needs.

### Conclusion

The compensation scheme for victims of motor vehicle accidents in New South Wales provides efficient and effective benefits.

A no-fault scheme comes at significant cost as well as a compromise of the rights of both drivers and benefits to innocent victims.

Reducing the benefits payable to victims of motor vehicle accidents cannot be seen on any view of it to be a positive amendment.

A no-fault scheme means for the insurers a greater pool of insured persons who each receive less benefits. That is likely to be a nice little earner for the insurers, to the detriment of those persons for whom the scheme was designed.

### A Solution

There are a number of ways in which the scheme can be improved. One of course is the current strategy to reduce fraud. Another would be to streamline the processing of claims, say, for example, by permitting CARS Assessors to approve infant settlements and not require those claims to be filed with the court.

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<sup>7</sup> See, for example, Mr Chris McKew, Insurance Insights April 2016

I would like to suggest another approach. Publication of the performance of stakeholders is an effective tool to ensure ethicacy and efficiency.

For example, the costs portal introduced in 2015 provides SIRA with the information necessary to rate the performance of lawyers who act for accident victims. Distribution of this material would reward good performance and penalise abuse.

I would suggest that SIRA should publish a rating for both insurers and lawyers and any other relevant participant in the scheme. The rating system may, for example, involve an assessment of between one and five stars. Factors such as cost and timelines can be assessed. The beneficiaries will be both drivers and accident victims.

Yours Faithfully,



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