



27 April 2016

CTP Review
State Insurance Regulatory Authority
Level 25
580 George Street
SYDNEY NSW

Dear CTP review,

Thank you for an opportunity to comment on options for reform of compulsory third party insurance (CTP insurance).

Recommendations

Kingsford Legal Centre (KLC) supports a move to a no fault scheme, and greater transparency around the regulation of premiums as recommended by the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme.

Specifically KLC recommends:

- adoption of options 3 or 4 in the Options Paper, on the basis that these options will improve timeliness, address affordability and improve access to the scheme; and
- that the recommendations of the Independent Review of Insurer Profit regarding transparency of premiums should be incorporated into any reform of the scheme to address issues of affordability of CTP Green Slips.

About Kingsford Legal Centre

KLC is one of 42 community legal centres in New South Wales and provides free legal advice and assistance to people who live, work or study in the municipalities of Randwick and Botany on selected legal problems, and a state wide service on matters of discrimination law. KLC also conducts an outreach service for Aboriginal clients at the La Perouse community. At KLC general advice to clients is usually provided by volunteer lawyers with the assistance of students from the University of New South Wales.

F8-003 Kingsford Legal Centre | Faculty of Law

UNSW AUSTRALIA | UNSW SYDNEY NSW 2052 AUSTRALIA

T +61 (2) 9385 9566 | F +61 (2) 9385 9583 | ABN 57 195 873 179 | CRICOS Provider Code 00098G

In 2015 KLC provided over 1700 instances of advice, and of those around 142 of those instances were concerned with motor vehicle accidents. KLC also provided 145 advices on debt matters in 2015. Many of the debt matters KLC sees relate to debt from property damage to motor vehicles. In previous years the number and proportion of advice given about motor vehicle accidents were higher than for 2015.

KLC does not represent clients in personal injury matters under the Motor Accidents Compensation Act (MACA) but does sometimes provide free initial legal advice about clients' rights under the law, and referral to lawyers who can represent clients to make a claim under the MACA. Where advice is given about personal injury suffered as a result of a motor accident KLC will generally make a referral to a private solicitor for that client. The number of people who contact the Centre about car accidents is therefore not reflected in our statistics as some people who have been injured are referred directly to private solicitors and would not be recorded as advice or casework.

KLC's submission

KLC notes that while the current scheme for compensation for personal injury as a result of a motor accident is fault based, a number of important exceptions to this principle have been developed. These exceptions respond to the needs of people who are injured in motor accidents and who would not have had recourse to adequate benefits under the fault based scheme. These include the Nominal Defendant scheme, children who are injured in a motor accident, blameless accidents, the Accident Notification Form and the Life Time Care and Support scheme. The introduction of these exceptions was driven by the social objective of the scheme to provide rehabilitation and compensation to people who suffer injury as result of a motor accident on a needs basis, rather than a fault basis.

KLC agrees that reform of the CTP scheme should achieve the objectives of:

- increasing the proportion of benefits provided to the most seriously injured road users;
- reducing the time it takes to resolve a claim; and
- reducing the cost of Green Slip premiums.

In addition KLC submits that reform of the scheme:

- should ensure that the scheme is as accessible as possible to all people who are injured as a result of a motor accident;
- ensure that the scheme provides timely benefits for people who are injured; and
- improve transparency around the cost of Green Slop premiums.

Need for legal representation

The Options Paper notes an increase in legal representation for claims of 'minor severity' (claims that result in benefits between \$95 000 and \$110 000). KLC believes that clients whose needs are likely to go beyond the benefits available under the ANF process (up to \$5000) require expert legal advice on issues of fault, contributory negligence and benefits available under the scheme in order to achieve a fair outcome under the scheme. People who are injured in a motor vehicle accident need expert legal advice due to the complexity of the current scheme, tight time frames for making claims and the need to negotiate with an insurance company to obtain benefits. Unrepresented claimants inevitably experience disadvantage in negotiating with an insurer, who has superior expertise and knowledge about the scheme, and who is seeking to maximise their profit by driving down the amount of benefits payable for each claim. Insurance companies are repeat players within the system whereas individual claimants will frequently be using the system for the first time.

Cost of green slips

Affordability of Green Slips is a significant issue for people on low or no income. If Green Slip prices become unaffordable for people on low income there is a risk that more people will drive without registering or insuring their vehicle.

The options paper identifies a number of factors contributing to the increase in the costs of Green Slip premiums including the fact that the scheme is fault based (a common law scheme), and that these schemes tend to become expensive because of 'superimposed inflation.'

In 2014 the Standing Committee on Law and Justice commented on the rise in profits of the scheme, and the growing disparity between prospective and realised profits.

The Report of the Independent Review of Insurer Profit with the NSW Compulsory Third Party Scheme notes that superimposed inflation is a 'key source of uncertainty in this Scheme and contributes to the disparity between filed and realised profits' and recommends a review of the causes of superimposed inflation (page 47). The Options Paper identifies superimposed inflation as a feature of common law schemes because claims are negotiated on a case by case basis.

The Independent Review makes a number of recommendations to increase the transparency of premium filings, including the introduction of a requirement for CTP providers to prepare and submit annually to the MAA a retrospective analysis of their profit margins over time, to compare realised profits with premium filings and business plans lodged in prior years (page 74).

KLC submits that the recommendations of the Independent Review on transparency of premium findings should be incorporated into any reform of the scheme.

Specific questions on policy considerations

Should Government retain competitive private underwriting, or give consideration to a return to public underwriting?

If private underwriting is retained there should be greater transparency in premium setting, in line with the recommendations made by the Independent Review. In addition, the retrospective analysis recommended by the Review should be publicly available.

How should Government best deal with fault (including injuries without another party to sue) illegal acts and contributory negligence in any reform?

KLC supports a move to no fault benefits. All injured people regardless of fault should have access to medical, rehabilitation and related care services.

Yours faithfully



Anna Cody
Director



Kate Halliday
Law Reform and Policy Solicitor