

CTP Review

21 April 2016

State Insurance Regulatory Authority

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MOTORCYCLE COUNCIL
OF NEW SOUTH WALES
INCORPORATED



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About the MCC of NSW

The Motorcycle Council of NSW Inc. (MCC of NSW) is an internationally recognised umbrella group for motorcycle clubs, associations and ride groups, in the state of New South Wales, Commonwealth of Australia.

Established in 1982, the MCC of NSW is recognised as the peak motorcycle representative body in NSW and Subject Matter Experts on many complex issues dealing with motorcycling including crash data and statistics, traffic data and congestion information.

The MCC of NSW has published documentation that has been referenced worldwide by overseas motorcycling and traffic bodies and has produced video training films that have been utilized and referred to by many overseas trainers, researchers and ride associations.

The MCC of NSW has appeared before several standing commission of inquiries in NSW including the Standing Committee on Law and Justice and is often consulted on all things motorcycling by the Roads and Maritime Services (RMS), Transport for NSW and Centre for Road Safety.

MCC of NSW is the peak representative body for motorcycling in the state of NSW. The MCC of NSW represents over 50 clubs, with more than 41,000 riders.

We wish to thank the Hon. Victor Dominello MP, Minister for Innovation and Bette Regulation and the State Insurance Regulatory Authority (SIRA) for the opportunity to present this submission and the views of our member clubs on the subject NSW Compulsory Third Party Scheme Options Paper.

Should you require further information on the information contained within this submission please feel free to contact the undersigned.

Yours sincerely,



Christopher Burns

Chairman

MCC of NSW



Introduction

The New South Wales (NSW) Compulsory Third Party (CTP) insurance scheme was introduced with the intent of providing fair and adequate compensation to innocent injured victims of motor vehicle crashes.

The components being paid out of the scheme are;

- 45% paid to the innocent victims
- 19% average profit paid to the insurance companies
- 15% being paid as costs to the insurance companies
- 18% in Legal and investigation costs
- 3% to SIRA and RMS

The victims in the crashes are receiving 45 cents in the dollar from the scheme whilst the insurance companies follow with 34% of the CTP scheme funds paid back to them.

The preferred option (as heavily hinted at in the roundtable meetings in 2016) is to reduce the costs of the CTP scheme by limiting the payouts to the victims. These are the very people that the scheme was intended to support and compensate.

The scheme has already been modified once in an attempt to reduce the cost of Greenslip premiums by moving most dreadfully injured into a new Government run scheme, the Life Time Care and Support scheme and thereby reducing the exposure to the insurers. This has had little effect on Greenslip prices but seems to have increased the profits of the insurers.

Trying to reduce the cost of Greenslip prices by reducing the compensation paid to the innocent victims instead of ensuring the system is managed properly and excess costs and profits are removed from the system is ethically and morally wrong and goes against the basic principles of the CTP scheme.

Issues Faced by the CTP Scheme

The issues faced by the NSW CTP scheme are many and varied and there have been many attempts to rectify these issues over the years. The majority of issues have already been highlighted through the various Law and Justice Commission of inquiries into the Motor Accidents Authority (MAA), which has been renamed the State Insurance Regulatory Authority (SIRA) as part of a “restructure”.

Not all of the recommendations have been implemented over the years and many have been ignored.

Increase in Claims in General and Fraudulent Claims

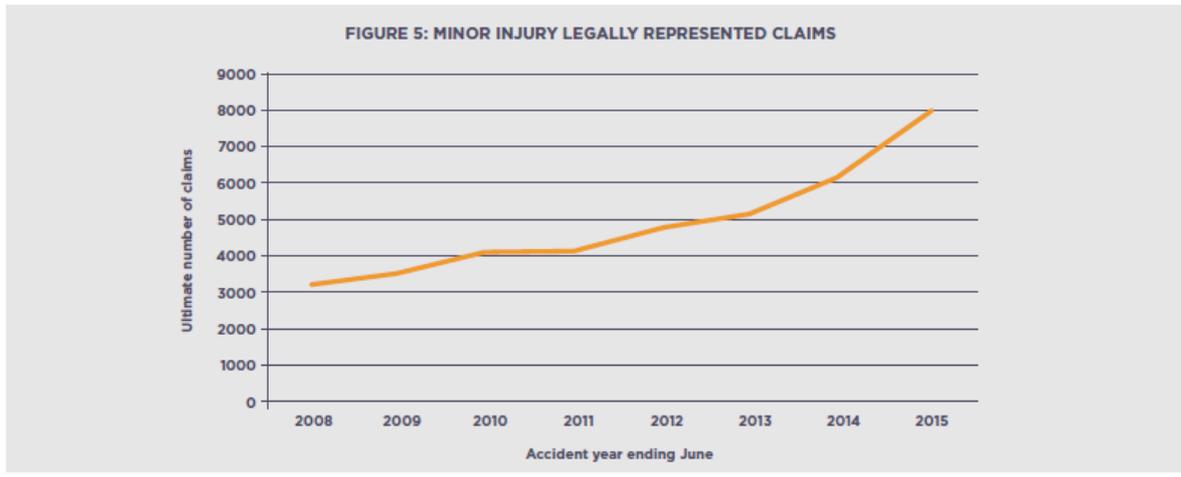
As the NSW Police force is now no longer required to attend minor motor vehicle crashes and therefore fails to witness any injuries or the number of people involved in the crash or vehicle, it stands to reason that the system can be manipulated. This is a basic failing at the lowest level and leaves the CTP Scheme open to fraud.

Fraudulent claims need to be investigated to the fullest extent and not have the claimants being bought off following a Cost Benefit Analysis. The current system makes it easier to pay a low figure to a fraudulent claimant and make the issue go away, rather than go through the long and costly exercise of investigation and prosecution.

It is understood that the NSW Government is introducing a fraud taskforce to tackle this issue.

Increase in Legally Represented Claims

There has been an increase in legally represented claims over the past few years which has been attributed to the recent changes allowing Legal firms to advertise. The following diagram has been used to highlight the increase.



Source; SIRA CTP Options paper

The increase in legally represented claims may also stem from the fact that many people were unaware of their entitlements in a claim and this advertising has improved their knowledge. Whilst the practice of cold calling accident victims is questionable, this does not negate the fact that the average Joe is entitled to make a claim and requires an expert in the field of CTP claims to represent them. Due to the fact that an average driver or rider is unlikely to have any experience in CTP claims and, as has been evidenced anecdotally, should the claimant make even a simple error on their initial claim submission or should the hospital miss something during the initial admission, this then is used against the claimant by the insurance companies at a later date.

At the moment, tactics by the insurers show that claimants even need assistance in filling out the initial claim form to ensure no errors are made are not used against the claimant at a later date.

Likewise most claimants are not aware of how their injury might affect them in the future and are likely to take the first offer made to them by an Insurer which is usually a low ball offer preying on the claimants ignorance and unlikely to cover the innocent victim for future issues and costs.

Case Study Low Ball Offers from Insurance Companies.

A rider is injured in a motor vehicle collision caused by another driver’s carelessness. The rider suffered injuries to foot, knee, hip and shoulder. These injuries impacted the riders quality of life to the extent that the riders after work activities, skiing, rock climbing, bushwalking were curtailed. In addition, the rider now has difficulty lifting and is not able to continue in his previous profession due to an inability to spend hours on the computer and has subsequently reduced his take home pay by \$70,000 per annum and a loss of job satisfaction.

The initial offer from the Insurer was for a lump sum payment of \$75,000 which, after medical costs and initial legal costs, would have left the rider with a final compensation figure of \$15,000.

Subsequent to legal advice the rider was made aware of what he was entitled to as a fair and reasonable figure for compensation for his injuries and loss of quality of life and a much higher settlement was attained.

This is supported by the following comment;

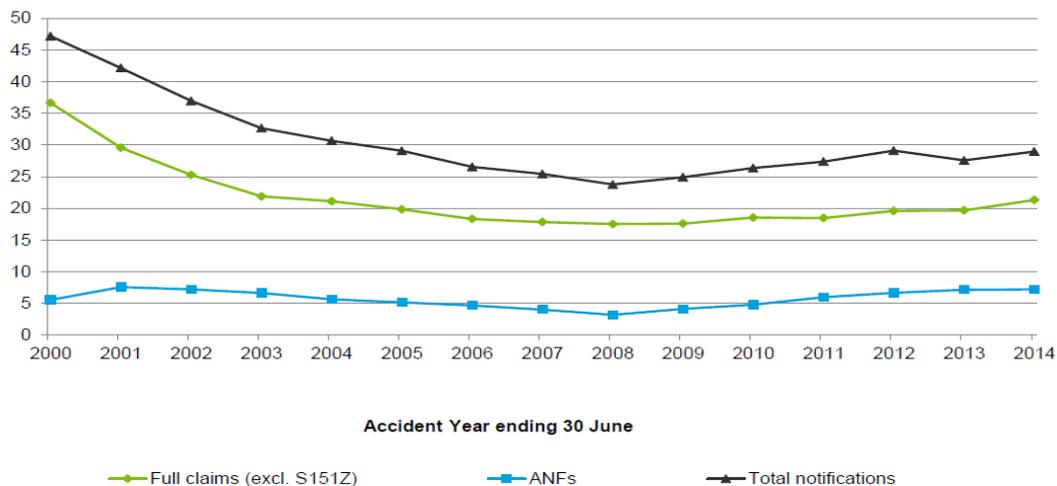
“ the average claim size for minor severity injuries with legal representation is close to eight times that for minor severity injuries without legal representation,...”

Source; *“Review of selected Scheme indicators 2014” SIRA released Nov 2015*

It would appear from the statement above that plaintiffs have not been adequately compensated in the past and the balance is being redressed.

Whilst there has been an increase in legally represented the actual claims rate per 10,000 registered vehicles does not appear to have increased as per below.

Chart 2.8: Claims frequency per 10,000 vehicles



Source: MAA

Source; *Report of the Independent Review of Insurer Profit within the NSW CTP Scheme*

Vehicle registrations have continued to grow over the past decade at a predictable rate.

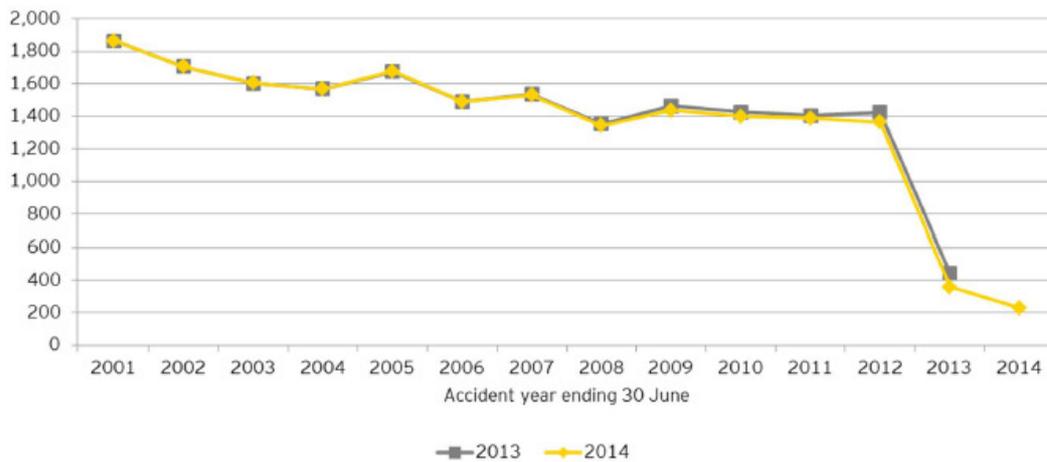


Source; RMS Registration Data (Clements)

No mention has been made of the changes to the Workers Compensation scheme which specifically excluded travel to work claims. Whilst these claims did ultimately get claimed back from the CTP Scheme they were not necessarily classed as legally represented.

4.3.1.5 Workers compensation recoveries

Figure 6: Ultimate number of claims for workers compensation recoveries



Source; "Review of selected Scheme indicators 2014" SIRA released Nov 2015

Consumers can look at and compare washing machines and know the value of an item, but unless you have been working in the CTP claims industry for some time you are unlikely to have any idea what sort of compensation you may be entitled to that is fair and just. Following on from recent media reports, it is highly unlikely that the average person off the street is going to trust any insurance company, particularly when one takes into account the fact that Key Performance Indicators for many loss adjusters and claims managers are

geared to reward them for minimising the outgoings to the innocent victims and maximising profits for their employer.

For these reasons alone, legal representation for the claimant is vital to assist in ensuring that they receive adequate compensation for their loss and injury and for loss of quality of life.

Exaggeration by Claimants

If the insurers are going to offer low ball figures for compensation then one can reasonably expect client's lawyers to respond with ambit claims. Like all negotiations, people will offer or ask well into their own favour and negotiate back. This then can lead to exaggeration by claimant's legal representatives, while the insurers medical practitioners will write down the extent of injuries in order to maintain work with an insurance company by minimizing the insurance company's losses, the medical practitioners working for the claimants and lawyers will write up the extent of the injuries. Theoretically the balance is achieved somewhere in the middle and if not then determined by a Medical Assessment Service (MAS) assessor who is supposed to be impartial.

Even the MAS assessor's role is not strictly neutral, despite the best attempts of the governors of the CTP scheme, and it is well known within the CTP industry which assessor is ex Insurer or ex claimant and how the MAS Assessor's final appraisal will go is often accurately estimated by both legal representatives and insurers.

The MAS assessment scheme needs to be regularly reviewed and monitored along with other elements of the CTP Scheme or better still, have more than one MAS assessor review each case to ensure impartiality.

Excessive Profits and Costs Paid to the Insurers

As was referenced in the introduction, the largest recipient of funds from the CTP scheme after the claimants (45%) are the insurers, with a combined total of 34% being paid to the insurance companies according to the figures in the CTP Options paper. The current scheme has no way of clawing back the excess profits paid to the insurance firms so the excess is just pocketed by the insurers. As we well know, the insurers profit is to be limited to 8% yet this is not being enforced and there appears to be no accountability put into place by either the insurers nor the managers (MAA/SIRA) to ensure that the people of NSW get the best deal possible.

Insurance companies have a legal obligation to maximise profits for shareholders. This profit motive is at odds with a Government mandated scheme which limits profit margins and should be run for the primary benefit of policy holders being the wider NSW public. The CTP scheme should return to a Government insurer or at the very least the Government should be in the CTP market as an insurer to ensure true competition and prove the data supplied by the insurance industry

One other possible solution here is pooling of excess profits to be used to offset future claims.

Over Servicing by Legal Firms

This an issue that needs to be addressed and is referenced with in the options paper.

Number of Motorcycle Classes in the Scheme

The excessive number of motorcycle sub-categories or classes leads to minimal numbers in each of the available policy classes and therefore increased volatility to claims against the various policy classes with consequential overpricing.

Currently the number of classes in the motorcycle CTP is scheme is 5, based on engine capacity alone and measured in Cubic Centimetres or cc. Engine capacity is used in spite of the fact that there are a number of studies showing that engine capacity is no indicator of the propensity to be involved in a crash, let alone how a larger engine capacity poses a greater risk to other road users or third parties.

1. 10d Bikes < 225cc
2. 10e Bikes 225-725cc
3. 10f Bikes 725-1125cc
4. 10g Bikes 1125- 1325cc
5. 10h Bikes >1325cc

These then are further broken down into another 5 classes by regional area.

1. Metropolitan
2. Outer Metropolitan
3. Newcastle/Central Coast
4. Wollongong
5. Country

These are then spread across the 6 insurance providers.

1. AAMI
2. Allianz
3. CIC Allianz
4. GIO
5. NRMA
6. QBE

This then gives us 150 different possible categories based upon

- 6 insurers multiplied by
- 5 areas where you live multiplied by
- 5 engine capacity classes equals
- 150 possible categories.

There are only 216,000 registered bikes in NSW which gives an average of 1,440 motorcycle policies in each possible class. This then means that one group with a large claim against it has a price rise and/or the cohort is too small to be able to complete comprehensive modelling in order to price the policies accordingly.

If only it were that simple, the 10g class, motorcycles between 1125cc and 1325cc, have only 17,000 motorcycles in that group (Last figures provided to the MCC by MAA/SIRA) which is an average of 566 Motorcycles with each individual insurer based upon;

- 6 Insurers multiplied by
- 5 Regional areas equals
- 30 possible groups.
- 17,000 divided by 30 equals an average of 566 motorcycles in each of the regional groups with each of the insurers.

With an average of 566 motorcycles in a sub-group it is no wonder we end up with an average Greenslip price of \$826. The CTP Greenslip prices below are for a 53 y/o rider with a clean licence living in the Inner West of Sydney with an 11 y/o motorcycle;

PRICES (INCL. MCIS LEVY & GST)

Insurer	12-month Price	6-month Price	Price Breakdown	Phone	Web Site
AAMI	\$1,018.34	\$521.59	more information	132 244	www.aami.com.au
Allianz	\$1,028.00	\$525.00	more information	1300 137 664	www.allianz.com.au
CIC-Allianz	\$1,020.00	\$522.00	more information	1300 360 340	
GIO	\$1,008.80	\$516.91	more information	131 010	www.gio.com.au
NRMA	\$989.33	\$505.73	more information	132 132	www.nrma.com.au
QBE	\$719.00	\$369.00	more information	133 723	greenslip.qbe.com

Thank you for using the SIRA's Green Slip Calculator - our free 'one stop' service to help find the best Green Slip price for you.

Too many classes of motorcycles in the scheme leads to volatility from a small number of third party claims and consequential exposure to risk by the insurers. In order to mitigate that risk, the insurers then price accordingly which leads to padding and a consequential hike in prices. The 10g 1125cc to 1325cc category includes some of the safest bikes available that feature top of the line Electronic aids. Bikes such as the BMW R1200GS features first class ABS, Traction Control System and just about every other electronic aid available on the market along with sundry other BMW models.

This type of separate classification is not used to create different classes of light cars so why should it be applied to motorcycles?

Removing the current 5 classifications and replacing it with 2 classes,

1. Learner Approved Motorcycle Scheme (LAMS)
2. Non Lams

would decrease the volatility of the current system by reducing the possible number of sub-categories from 150 to 60 possible categories and would raise the average number of policies within those groups from 1,506 to 3,600.

There is no impediment to determining what is a LAMS or non LAMS motorcycle as it forms a part of the basic registration information alongside such information as body type, weight etc and accessing the code on the registration should not pose a problem to the MAA/SIRA in any way shape or form.

This would definitely lead to a drop in premiums for motorcycles due to lower volatility.

As would risk rating for the risk to others as a motorcycle will have little effect upon the occupant of a car.

At Fault vs No Fault/First Party vs Third Party Schemes

Firstly, a momentary lapse in judgement kills people. Driving a tonne of steel at 27.7 metres per second requires skill and good judgment and we cannot afford to have drivers on the road that have momentary lapses of judgement. Our entire road safety system is based upon reducing the number of crashes. An effective way of achieving that is to train drivers, much like riders, of what their responsibilities are and how to operate the vehicle in a safe manner. The NSW motorcycle pre-permit rider course has been given credit by many for reducing the number of motorcycle crashes per 10,000 registered motorcycles in NSW over the past 10 years.

Benefits to At Fault Drivers whilst reducing compensation to victims

Reducing the amount of compensation payable to an innocent injured victim in order to pay benefits to the driver that caused the crash is illogical.

Whilst the at fault driver has been injured due to their own inattention or negligence they will not want for medical care as Medicare is a safety net and adequate income protection insurance will cover them in any case.

Without a third party insurance scheme the victim/s would sue the at fault driver for adequate compensation. That is why we have a compulsory scheme in place, to protect the at fault driver from being sued for their negligence and to ensure fair compensation to the victim for their loss, injuries and lowered quality of life. The intent of the scheme is to provide for the victims, not the wrongdoer.

First Party Scheme

It has been suggested that an insurance company would look after its own client in a better manner under a no fault first party scheme by virtue of the fact that the claimant is a customer of the insurer. One word, **Comminsure**.

<http://www.smh.com.au/interactive/2016/comminsure-exposed/terminal-illness/>

Whilst ever the Key Performance Indicators (KPIs) of an insurance companies staff are set against loss mitigation and profit maximisation the client/claimant will not get the best deal as the KPIs are all about reducing costs and therefor repatriation of the victim suffers through cost minimisation tactics, in other words, get the claimant off the books as fast as possible and cut costs wherever possible.

The NSW Workers Compensation scheme is a good example of KPIs interfering with rehabilitation with people being pushed back into the work place when they are barely capable or being certified by tame Doctors as fit for work that they cannot perform and then the victims being kicked out of the system after a couple of years. This is going to lead to a new underclass of poor on welfare with disabilities through no fault of their own and the NSW Workers Compensation scheme should not be held up as an example of best practice.

Documented issues with the Workers Compensation scheme;

“The Impact on injured workers of changes to NSW Workers Compensation” Markey/Holley/o’Neill/Thornthwaite.

https://www.mq.edu.au/_data/assets/pdf_file/0011/76637/1_Dec_The_Impact_on_Injured_Workers_of_Changes_to_NSW_Workers_.pdf

Independent Uastrlaian “”NSW Workers Compensation Changes restrict worker’rights”

<https://independentaustralia.net/business/business-display/nsw-workers-compensation-changes-crunch-workers-rights,6683>

No fault, first party schemes in Australia are underwritten by Government.

There is only one privately underwritten no fault CTP scheme in the world in New York State in the United States of America and they specify a minimum amount of coverage only;

New York law requires that you have auto liability insurance coverage. The minimum amount of liability coverage is

- *\$10,000 for property damage for a single accident*
- *\$25,000 for bodily injury and \$50,000 for death for a person involved in an accident*
- *\$50,000 for bodily injury and \$100,000 for death for two or more people in an accident*

<https://dmv.ny.gov/insurance/insurance-requirements>

Fault Based Schemes and Better Management;

“If managed appropriately a fault based scheme can lead to better cost control than can be the case in no fault schemes. The increased use of periodic benefits in a no fault scheme can result in cost creep over time with claimants receiving more treatments than are really required. The lump sums paid in a fault based scheme do not, in general, suffer from the same type of growth pressures.”

To fault or not to fault? That is the question, Institute of Actuaries of Australia

http://www.actuaries.asn.au/Library/ACS09_Paper_Allsop%20et%20al.-To%20Fault%20or%20Not%20to%20Fault%20-%20That%20is%20the%20Question.pdf

Possible Savings in the Existing Scheme

- | | |
|--|-------------------|
| 1. Hold the insurers to 8% profit margin | 10% off Premiums. |
| 2. Change bonus/malus to -5%/+15% | 20% off Premiums |
| 3. Transparent auditing of Insurer costs | 3% off Premiums |
| 4. Remove bundling from the scheme | To be quantified |
| 5. Investigate fraud and convict accordingly | To be quantified |
| 6. Reduce the 5 class motorcycle system to 2 | To be quantified |
| 7. Pooling of excess profits to offset future claims | To be quantified |

The options paper seems to be geared towards minimising compensation to the innocent through capping of claims. This will only benefit the Insurance companies in the long run as has been seen with previous attempts to cap compensation or remove high risk long tail claims from the Insurers remit.

Questions on Policy Considerations

1. Should there be support or a safety net for anyone injured on the roads by vehicles that are not part of the insurance system (like bicycles) even if that increases the overall cost of CTP?
 - a. No, where would it stop? You will then have to ensure that roller bladers, skate boarders, hoverboarders, joggers, walkers are all covered by insurance.
 - b. Unless of course Bicycle riders contribute to the system.
2. Is it better to make a claim against your own insurer as opposed to the insurer of the at-fault driver? If so, why?
 - a. It makes no difference who you claim from as you are a drain on the bottom line.
 - b. Insurer's claims payment performance should be managed by SIRA to ensure that each and every insurer plays by the rules.
 - c. Look at the numerous documented instances of insurance companies Loss Adjusting their way out of making any kind of payment to their customers and the answer will be obvious.
3. Should Government retain competitive private underwriting, or give consideration to a return to public underwriting delivery?
 - a. Make it a mix of both. Think outside the square and bring in a Government insurance agency to compete with the current crop of insurers.
4. How should Government best deal with fault (including injuries without another party to sue), illegal acts and contributory negligence in any reform?
 - a. Maintain a No Fault scheme with limited "benefits" to at fault drivers on the ANF and maintain compensation to innocent victims.
5. What changes to the CTP scheme could increase competition?
 - a. Introduce a Government under written insurance group as a competitor.
 - b. Stop using the relativities bonus/malus allowance as a reason to push people to buy more product from the insurer. It is a false and misleading use of the system to give an illusion of competition. Apart from the points system within the Greenslip calculator it essentially gives discounts to persons with the most insurance policies.

Questions on Possible Options

1. What should be the most important features in any scheme reform?
 - a. Reforming for the right reasons is the most important feature.
 - b. Why reform when the current system has checks and balances in place that are not being utilised to their full effect?
 - c. Manage the system to its full capabilities and change will follow.
2. On balance, which option or combination of options do you believe best addresses the priorities for improving the scheme and why?
 - a. Option 1 with the inclusion of weekly payments to injured parties.
 - b. The priorities appear ill-defined and misdirected.
 - c. How does reducing the compensation to the victims in order to make payments to the negligent and the insurers constitute change for the good?
 - d. Option 3 appears to be the future of the scheme given the tone of the roundtable discussions, as scant regard was paid to the other options during discussions.
 - e. If Option 3 is chosen who decides what the Whole Person Impairment level is to start/stop statutory benefits?
 - f. A WPI of 6% is enough to ruin someone's quality of life and impact their workplace performance
 - g. As has been shown the NSW Workers Compensation scheme uses levels of impairment that take little account of ability to work or future prospects
 - h. Is the loss of a finger more important to a musician or a store attendant?
3. Does fault in an accident remain the most acceptable way of determining eligibility for benefits or is it more important that anyone injured on the road is covered, even if this means fewer savings in any reform?
 - a. This scheme is about fair and adequate compensation to the victims of a road crash for loss of mobility, loss of future income and lost quality of life.
 - b. The question should be, "Does lack of fault in an accident remain..." etc.
 - c. Anyone injured on the road is covered for medical expenses through Medicare.
4. Is it more important to reduce CTP prices or to extend benefits to more people?
 - a. Leave the benefits to cover the people it already does cover.
 - b. CTP prices can be reduced through other means, it will require a strong will and a steady hand to complete the job.
5. Are people better looked after if receiving a negotiated lump sum (often years) after the accident or receiving prescribed weekly benefits shortly after making their claim?
 - a. Why can't it be a combination of both?
 - b. Fault is often determined within 9 months of the crash therefore start weekly payments then.
 - c. Medicare already covers the medicals and is claimed back later.

6. Should a greater proportion of funds go to the more severely injured, even if this means capping benefits or introducing an excess for low severity injuries?
 - a. Each victim should receive what they are entitled to taking into consideration their circumstances.
7. If Government retains common law, should there be tighter restrictions and caps on various benefits as is the case in other States, or if the Government adopted defined benefits should the caps and thresholds reflect what is paid in other States?
 - a. Neither, leave it as it is and better manage the scheme.
 - b. We have the potential to create an underclass of poor here so we must tread carefully.
8. If the Government retains common law, what is the best method and threshold to determine eligibility?
 - a. 10% is far too high to use as a benchmark for the start of common law and the end of statutory benefits.
9. If Government retains common law, what mechanisms should be adopted to resolve claims more quickly and avoid lengthy negotiations and disputes?
 - a. Put an end to stalling tactics on both sides
 - b. Sometimes injuries take time to settle and this is one of the reasons for lengthy delays in settlement as the disputes continue between the Lawyers and Insurance Companies.
10. Should there be limits to legal expenses, especially for small claims, and should legal expenses be linked to the work performed or the value of the claim?
 - a. Whose legal expenses? Should the insurers legal expenses also be capped?
 - b. We could see plaintiffs trying to get a fair deal with one hand tied behind their back against the machine of the insurers legal team.
 - c. There needs to be a way to stop the over servicing of plaintiffs by claimants lawyers.

In Conclusion

There seems to be much noise and alarm made about the increase in legally represented claims whereby victims are being adequately compensated and legally entitled to, and not much being said about the insurer's profit margins which they are they are not legally entitled to. How the scheme is managed appears to need closer scrutiny.

The legal machine needs to be looked at in order to ensure that plaintiffs are not being over serviced by Legal firms.

Ultimately the aim of a third party scheme is to provide adequate compensation to victims and to ensure that the negligent driver doesn't lose his house through common law suits.

Capping compensation to victims in the favour of benefits to negligent drivers and the insurance companies defeats the intent of the scheme.

MCC of NSW Recommendations

1. Better management of insurer profits
 - a. Implement a system to hold the insurers to 8% with an immediate saving of 10% on Premiums.
2. Great transparency of Insurer costs
 - a. Transparency in insurer costs could lead to more savings.
3. Adjust the current -15% - +35% bonus/malus on relativities.
 - a. This is supposed to introduce "Competition", but is only used to generate sales of more product for the insurer.
 - b. Changing this to -5% + 15% would lead to a greater saving on CTP Premiums
4. MAS assessor scheme to be reviewed so that more than one assessor appraises each case.
 - a. It is widely known throughout the CTP industry which MAS assessors are pro insurance or pro claimant and it works to the detriment of the victims and no one else.
 - b. The panel review system is flawed with a panel of Doctors simply looking at the initial MAS assessors notes and only if the claimant manages to have a review granted.
5. Remove the 5 classifications of motorcycles in NSW and replace the current system with two classes, LAMS and non-LAMS
6. Continue with an "At Fault" scheme with better management
7. Increase the ANF to \$10k
8. Introduce Statutory Benefits up to 1% Whole Person Impairment (WPI)
9. Under 16's to go through the full medical assessment process.

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