

## Legislative Council Hansard – 29 March 2017 – Proof

**MOTOR ACCIDENT INJURIES BILL 2017***Second Reading***The Hon. DAVID CLARKE ( 17:38 ):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

**Leave granted.**

The bill introduces a new New South Wales compulsory third-party [NCTP] insurance scheme for people who are injured or lose their life as a result of a motor accident. It represents a major reform for the Berejiklian-Barilaro Government. As a result of the NCTP, the owners of the 5.3 million registered vehicles across New South Wales will see a significant reduction in their premiums. The people injured on our roads will benefit from broader coverage and greater benefits. Subject to approval by Parliament, the new scheme will start on 1 December 2017.

Motorists can expect to see a gradual reduction in green slip premiums throughout the course of this year with the full reductions to be felt from day one of the new scheme. The NCTP will give people injured in accidents fast access to statutory benefits in the form of weekly income support and medical treatment and care. The focus of NCTP will be on rehabilitation of injured road users so they can return to good health sooner. The reforms will also improve the claims and dispute resolution process and arrest insurer super profits. Why the need for reform? Put simply, the old CTP scheme is seriously broken. The adversarial nature of the scheme means that only 6 per cent of benefits are paid out in the first year, and 22 per cent by the second year.

The majority of payments to injured road users do not start flowing until years three, four and five. Injured road users receive only 45 cents in every green slip dollar, with the balance being subsumed in costs. This is symptomatic of a grossly inefficient scheme. Under the new scheme, 55 per cent of benefits will be paid in year one, and 56 per cent by year two. In simple terms, this means that injured people on our roads will receive better payments faster so that they can focus on rehabilitation and return to good health, rather than being left out of pocket while a protracted dispute between lawyers and insurers ensues. Under the reforms, 57 per cent of a premium dollar will go to injured people, of which 65 per cent will be paid to those people with more serious injuries.

On 22 February 2017, the *Daily Telegraph* published on page 20 an editorial entitled, "Green Slip is an Insult". The editorial stated: "The green slip scheme strongly resembles a still-running terminal older vehicle. ... It's a busted device that arguably costs more to keep running than the scheme, so the aim of the reform is a tough one. ... Any overhaul might not be sufficient. This baby could be better off sold for scrap." I agree with the *Daily Telegraph*. The people of New South Wales do not need a patched-up old jalopy. The Motor Accidents Compensation Act 1999 is that jalopy, which is why we are sending it straight to the wrecking yard. The people of New South Wales deserve a brand new car with a smart engine. The Motor Accident Injuries Bill that delivers NCTP is a brand new bill.

The Government has consulted widely throughout this reform. The constructive input and broad support from the key stakeholders has been crucial to shaping this bill. I now turn to the details of the bill. The bill establishes a hybrid scheme. It delivers statutory benefits for injured road users with injuries other than soft tissue or minor psychological injuries, regardless of fault, while retaining the right to claim modified common law damages for those able to establish fault.

The Lifetime Care and Support Scheme for severely injured people is not affected by the reforms. One of the landmark changes in the bill will see all injured people receive support soon after they lodge a claim. Part 3 of the bill includes provisions for a statutory income, medical and care benefits for up to six months for all injured people, without any need for fault to be proven. At the moment, at-fault drivers can only claim a maximum of \$5,000 under the accident notification form. This includes drivers, for instance, who may have been injured due to a momentary lapse in concentration or being blinded by the sun.

The Government believes denying those people adequate support is not fair and only delays their recovery. NCTP will extend coverage by providing a six-month safety net for all at-fault drivers. When the only injury is soft tissue or minor psychological injury, statutory benefits for loss of income and treatment and care will be available for up to six months. All other injured people who are not mostly at fault will be entitled to additional income support and treatment and care. Under division 3.3, people with moderate level injuries, up to and including 10 per cent whole person impairment [WPI] will receive regular income benefits of up to 95 per cent of pre-injury weekly earnings for the first three months after an accident and up to 80 or 85 per cent of pre-injury weekly earnings after that.

The maximum weekly payment will be indexed and capped at 2 ½ times average weekly earnings, or \$3,853. Income benefits will be paid for up to two years for injured people not mostly at fault. However, if an injured person has continuing needs beyond two years, and has made a common law claim, income benefits will be paid for up to three years. Income benefits will be subject to the injured person's capacity to earn income, with insurers able to regularly assess the person's earning capacity. This is to ensure that injured people who have the capacity to return to employment stay off work only as long as is necessary to support their recovery.

If there is contributory negligence, such as not wearing a seatbelt or helmet in the case of a motorcyclist, payments for loss of earnings or earning capacity are subject to being reduced after six months. For injured people who are not mostly at fault and do not have soft tissue or minor psychological injuries, reasonable medical and commercial attendant care costs will be payable for life, if needed. Insurers will be responsible for claimant medical and care costs for up to five years and the Lifetime Care and Support Authority will be responsible for those costs after five years. Gratuitous care by family and friends will not be payable. For people with more serious injuries—above 10 per cent of whole person impairment [WPI]—statutory weekly benefit payments will be paid for up to five years if a common law damages claim has been made. People with such injuries will also be entitled to medical treatment, rehabilitation and commercial care for life. If someone loses their life in a motor accident, part 3 provides statutory benefits for reasonable funeral expenses.

Claims for economic loss can also be made where dependents of the deceased can prove an other driver was at fault. Part 4 of the bill retains access to modified common law damages for injured people who can establish another driver was at fault, and do not have soft tissue or minor psychological injuries. This means people with injuries less than or equal to 10 per cent of whole person impairment will continue to be able to make a claim under common law for economic loss. Those with injuries above 10 per cent WPI will be able to make claims for economic loss as well as pain and suffering. The cap for non-economic loss payments for pain and suffering will be \$521,000—which is the current cap under the existing scheme—and indexed. It should be stressed that such a person with ongoing needs will remain entitled to defined medical and care expenses for life, if needed.

The bill will reduce costs in a number of ways. The introduction of statutory and no-fault benefits under part 3 will reduce legal costs and the adversarial nature of the scheme because injured people will no longer have to lodge a common law damages claim to get compensation for their injuries. Costs will be further reduced by the removal under part 4 of access to common law damages for soft tissue and minor psychological and psychiatric injuries, which have contributed to a large spike in scheme costs and reduced the proportion of benefits going to those with more serious injuries.

The bill also tackles cost by allowing the regulation of legal fees that injured people can be charged. It allows for both the fixing of maximum legal costs by reference to the amount recovered by the claimant and a fee-for-service model. I have seen too many cases of injured people being left with a small fraction of their original payout after legal, insurance and other costs have been taken out. In one case an injured person received a payout of \$150,000 but was left with only \$60,000 after insurance and legal costs were deducted. In another instance, an injured person received a payout of \$40,000 but ended up with just \$479 in their pocket. The introduction of statutory benefits should allow insurers to price risk more accurately, ensuring more funds flow to injured people when they need it, particularly the more seriously injured. Crucially, eliminating insurer super profits will also help reduce green slip premiums. The Government's actuaries estimate the reforms will produce state-wide average premium reductions of more than \$100. This will be welcome news for New South Wales vehicle owners, who pay on average \$635 for a premium—the highest in Australia. In Sydney, this runs to more than \$700 for the average family car.

This is a real social equity issue. As a further safeguard against high premiums, part 2 of the bill confirms the regulator's power to impose a risk equalisation mechanism to stop insurers targeting low risks and avoiding high risks. This will lead to more price competition and encourage potential new market entrants. In addition, a profit normalisation mechanism during the transition to the new scheme will ensure any insurer super profits are returned to vehicle owners. The State Insurance Regulatory Authority [SIRA] will review the ongoing need for this power three years after it commences.

SIRA will be empowered to collect and regularly publish a range of insurer profit, filing and loss ratio information. Part 2 of the bill boosts the regulator's powers to regulate premiums, including the ability to reject a premium an insurer proposes to charge if it is deemed excessive or does not comply with the premium guidelines. As part of this, division 2.3 gives SIRA additional powers to place limits on what it considers unreasonable assumptions by insurers in relation to superimposed inflation and insurer expenses. Taxis will also be significant beneficiaries under the legislation. Sydney taxi owners currently pay on average around \$8,000 for their green slip premiums, and country taxi owners pay almost \$5,000.

Under the reforms, average taxi premiums are expected to fall by up to 40 per cent. Green slips are one of the major cost components in keeping a taxi on the road, so these reforms will significantly relieve pressure on the industry. Division 2.3 of the bill establishes a new premium-setting process for green slips for taxis and rideshare vehicles which will create a more level playing field for point-to-point transport providers. Premiums for taxis and rideshare operators will comprise a base premium with a top-up or refund based on their vehicle usage to ensure CTP insurance accurately reflects a motor vehicle's risk and usage.

These reforms respond to concerns raised by the New South Wales taxi industry. The Chief Executive Officer of the NSW Taxi Council, Mr Roy Wakelin-King, said in September 2016, "Without reform to the current CTP scheme, owning and operating a taxi could become uneconomic when compared to ridesharing and this is clearly not in the public interest." Having been briefed on the proposed reform, Mr Wakelin-King said in a letter dated 6 March 2017 "The proposed reforms achieve significant saving for taxis, it will also achieve competitive neutrality across the point-to-point transport sector." His letter went on to say "...we are greatly heartened by this approach". Importantly, the bill is also designed to reduce fraudulent and exaggerated claims. Fraud and exaggeration currently costs New South Wales motorists as much as \$400 million per year and adds about \$75 to the cost of each green slip. Parts 3 and 4 of the bill will substantially reduce opportunities for fraudulent and exaggerated claims by providing statutory benefits for soft tissue and minor psychological injuries for up to six months and removing access to the common law system.

Part 10 of the bill will give the regulator stronger powers to investigate fraud as well as for prosecution and enforcement, and penalties will be increased for people abusing the system. Part 7 of the bill establishes a new and enhanced dispute resolution model. If disputes do arise in a claim, this new model requires much more robust decision-making by insurers, and provides an independent dispute resolution service for disputes to be resolved independently, flexibly, fairly, cost-effectively and quickly.

The State Insurance Regulatory Authority will also establish a claimant support service to provide injured people with assistance with completing and lodging forms as well as advice on claims and dispute processes. Part 10 of the bill will introduce enhanced data collection and reporting, and real-time performance monitoring of insurer behaviour and claims experience, to enable SIRA to better regulate the scheme. CTP reform is very difficult reform. That is why no government has successfully navigated it in nearly two decades. Former State Government Minister John Del la Bosca said attempting CTP reform was akin to the first 30 minutes of *Saving Private Ryan*. John was right. The battle over CTP reform for many years has been akin to a war. The brunt of that battle has been borne by New South Wales motorists. That changes today. JFK—John F. Kennedy—famously popularised the Italian saying that victory has 100 fathers and defeat is an orphan: *La victoria trova cento padri, a nessuno vuole riconoscere l'insuccesso*. The CTP reform contained in this new bill has many fathers and many mothers and without their contribution the Government and I would not be in a position today to deliver this monumental win for the motorists of New South Wales.

The reforms contained in this bill represent an authentic victory. It will be a success for the people of New South Wales by dint of the many authors who have contributed their time, energy and intellectual rigour to its creation. I place on record my sincere appreciation to each and every one of them. I will list them, in no particular order: immediate past president of the Law Society of New South Wales Gary Ulman; current President Pauline Wright and long-serving Chief Executive Officer Michael Tidball; President of the New South Wales Bar Association Noel Nutley, SC; Deputy Executive Director Alastair McConnachie; and Common Law Committee member Elizabeth Welsh. I especially thank Andrew Stone, SC, who in many ways is the godfather of CTP in New South Wales. He is a man who wears many hats, and many bowties, including those of the New South Wales Bar Association and the Australian Lawyers Alliance. His knowledge of the scheme has been invaluable along the way. I acknowledge and thank Roshana May, New South Wales Branch President of the Australian Lawyers Alliance and Andrew Christopoulos, New South Wales Branch Secretary. From the insurance industry, I thank and acknowledge Robert Whelan, Chief Executive Officer of the Insurance Council of Australia; Vicki Mullen and Richard Shields of the Insurance Council of Australia; Anthony Day of Suncorp; George Karagiannakis and Anthony Justice of Insurance Australia Group [IAG]; Niran Peiris, Tony Mobbs and Nicholas Schofield of Allianz; and Steve Rivers and Kate O'Loughlin of QBE. I also pay tribute to Roy Wakelin-King, Chief Executive Officer of the NSW Taxi Council. Taxi drivers, owners and operators of this State are lucky to have a man of Roy's ilk at the helm.

I also acknowledge David Holmes, CEO of GoCatch, and David Rohrheim, CEO of Uber, as well as Jessika Loefstadt, Manager of Public Policy and Government Relations at Uber. I acknowledge the significant work undertaken by previous Ministers of Finance Greg Pearce, Andrew Constance and Dominic Perrottet. I also acknowledge the members of our CTP backbench reference group—Alister Henskens, Trevor Khan, Damien Tudehope, Stephen Bromhead, Shayne Mallard and Jonathon O'Dea.

I thank the Premier, Gladys Berejiklian, and Deputy Premier, John Barilaro, and all my Cabinet colleagues for their support along the way. I thank the staff in my ministerial office for work they have put in behind the scenes to get us here today—my chief of staff, Matt Dawson, in particular has been heroic as he has put his heart and soul into this legislation. I also thank my director of policy, Jane Standish, my media adviser, Will Sparling and my policy adviser, Tom Green, who have been sensational. My thanks also to Dora Shipley, our departmental liaison officer. I have promised Dora we will tackle workers compensation dispute resolution next. My final acknowledgements must go to the engine room behind this reform, and that is my agency, the Department of Finance, Services and Innovation, ably led by its outstanding secretary, Martin Hoffman.

The quality and volume of work that the team within the State Insurance Regulatory Authority [SIRA]—have produced is nothing short of remarkable. It is probably the best example that I think I have seen, during my six years in government, of a ministerial office and a department working in sync, as one team, towards one common goal, for the betterment of the people of this State. I thank Anthony Lean, the CEO of SIRA, for his wise counsel and tireless efforts along the way. I also acknowledge the executive director of the Motor Accidents Insurance Regulation Division of SIRA, Andrew Nicholls, who is certainly the godfather of CTP within Government. He is a walking *Encyclopaedia Britannica* on CTP. I thank him for taking all my late-night and early-morning phone calls and brushing up on my knowledge of the scheme before a radio interview or Cabinet meeting. Other members of the SIRA team I must thank are Christian Fanker, CTP Reform Project Director, Sharon Mooney, Louise Briffa, Theresa Fairman and Catherine Ellis, and the hundreds of other unsung heroes who have played a role in the reform process. I also acknowledge Cameron Player, Executive Director of Dispute Resolution Services, as well as Dr Ian Harris and Professor Ian Cameron. I also acknowledge the magnificent contribution of the SIRA board: Chair Trevor Matthews, Deputy Chair Nancy Milne, Abby Bloom and the most recent addition, Dr Graeme Innes.

I also thank John Della Bosca for, alongside Nancy Milne, leading an extensive round of stakeholder consultation and producing a top-rate report. I conclude my thanks by acknowledging one of the great "Dons" of the New South Wales Public Service: Parliamentary Counsel Don Colagiuri, SC. In the preparation of this bill, I read an email that contained a thread from the Don that was sent at 3:15 a.m. on Sunday 5 March 2017. This was a powerful reminder to me of how dedicated people have worked so hard behind the scenes to deliver this reform. For every person I acknowledged, I know there is a team of people behind them who deserve equal praise. My cascading thanks go to each of them. Finally, my greatest thanks go to the many people who have worked tirelessly behind the scenes for so many years to achieve this reform whom I have not directly or indirectly acknowledged. You know who you are. The people of New South Wales thank you. The Berejiklian-Barilaro Government is determined to deliver reform that improves the lives of the people of New South Wales. That is why I commend the bill to the House.