

**INQUIRY INTO THE EXERCISE OF THE FUNCTIONS OF  
THE LIFETIME CARE AND SUPPORT AUTHORITY AND  
LIFETIME CARE AND SUPPORT ADVISORY COUNCIL -  
THIRD REVIEW**

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April 25<sup>th</sup>, 2010

The Director  
Standing Committee on Law and Justice  
Parliament House  
Macquarie St  
Sydney NSW 2000

***Re: The exercise of the functions of the Lifetime Care and Support Authority  
and Lifetime Care and Support Advisory Council - Third Review (Inquiry)***

Dear Sir / Madam

Please find attached the MCC of NSW submission for this review.

If I can be of any assistance, or should you require further clarification on any of the issues raised, please do not hesitate to contact me at the above address, via e-mail at [hawkins.scott@bigpond.com](mailto:hawkins.scott@bigpond.com) or via mobile phone on 0438 742 311.

Yours faithfully

Scott Hawkins  
Chairman  
MCC of NSW

# **3<sup>rd</sup> Review of the exercise of the functions of The Lifetime Care and Support Authority of New South Wales and the Lifetime Care and Support Advisory Council of New South Wales**

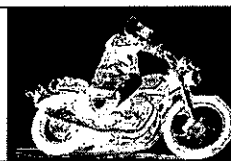
## **Comments on LTCS in NSW**

April 21<sup>st</sup>, 2010

**To**

**Standing Committee on Law and Justice,  
Legislative Council, Parliament House,  
Macquarie Street, Sydney**

**MOTORCYCLE COUNCIL  
OF NEW SOUTH WALES  
INCORPORATED**



**Motorcycle Council of NSW  
15 Huddleston Street Colyton, NSW**

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## **About the MCC of NSW**

The Motorcycle Council of NSW represents over 36,000 motorcycle riders in NSW through their club affiliations.

The MCC of NSW welcomes the opportunity to work with all agencies concerned with motorcycle issues.

The MCC of NSW recognises the concern the community has regarding fair and reasonable crash victim compensation, as this can happen to any one of us.

The MCC of NSW is keen to support an accident compensation scheme that is fair and reasonable.

## Introduction

The LTCS scheme fulfils an important role in the care of community members catastrophically injured as a result of accidents involving registered motor vehicles. The MCC of NSW has supported such a scheme from its genesis in 2006.

The funding of the LTCS scheme via the levy applied to the CTP Greenslip on registered vehicles has moved significantly from that initially proposed. It is neither transparent nor consistent in its application.

Motorcycle riders, for reasons that are not logical or fair, shoulder a disproportionate burden of the levy. The MCC of NSW would like to see the system return to a basis and burden that reflects the original proclamations made to parliament when the scheme was proposed, developed and accepted.

From a purported flat \$20 fee for all registered vehicles prior to the scheme in 2006,

*"The LTCS scheme will be fully funded through a levy on motorists collected in conjunction with CTP insurance. It will require an extra \$20 per CTP policy."*<sup>1</sup>

through to an estimated 200 - 300% increase for the average levy applied in reality in 2007,

*"This levy is currently in the order of \$40-\$60 per premium"*<sup>2</sup>,

we now have some motorcyclists with MCIS fees approaching \$200 on their CTP Greenslip, of which LCTS levy is a large, but hidden component.

This submission by the MCC of NSW asserts that the scheme's levy is unfairly calculated, unfairly applied, relies on determining calculations that are based on an inherently unfair data set and that the real impact is hidden from view of the very policy holders that fund it.

The MCC of NSW provides recommendations for a fairer approach to funding the scheme and communicating its impact to the motorists of NSW.

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<sup>1</sup> MAA [2005], Lifetime Care and Support, p17, MAA Publication ISBN 1 876958 22 7

<sup>2</sup> Institute of Actuaries of Australia [2007], The NSW Lifetime Care and Support Scheme p5, Andrew Stone

## The LTCS Levy is Not Transparent

In NSW the LTCS levy is charged as a levy based on a percentage of the CTP insurance premium. This is not transparent to the CTP Insurance policy holder for a number of reasons.

1. LTCS is not displayed on the "Greenslip" as a separate line item.

LTCS is included in the Greenslip as part of the Medical Care and Injury Services Levies. Accordingly there is no transparency to the policy holders as to the cost of LTCS within this greater charge.

The MCC of NSW raised this as an issue in the 2008 submission on the LTCS review. No change has been made in that time.

2. The LTCS levy calculation is not accessible to CTP policy holders.

The LTCS levy calculation is not obviously accessible to CTP policy holders on either of the the LTCS or MAA websites.

Accordingly, no calculation of the % applied to the CTP premium nor the nett cost of the LTCS levy can be construed by the CTP policy holder.

3. The LTCS levy is based on an insurance premium that is determined by the insurance companies and not by an obvious data based calculation.

Whilst the MAA sets CTP relativities for CTP premiums, the final premium is determined by the insurer. The following description is found on the MAA website.

*CTP insurance is provided by a number of licensed insurance companies who set premium prices in a competitive market. They may take into account factors such as:*

- *your accident record*
- *the age of all regular drivers that drive your vehicle*
- *the age of your vehicle*
- *the type of vehicle*
- *comprehensive or third party property insurance*
- *the purpose for which your vehicle is used (private or business)*
- *renewal or new Green Slip*

*The criteria used by an insurer reflect its views on the risk associated with those factors.*

*CTP insurers also have discretion to offer discounts and impose loadings on premiums within the range allowed by the MAA Premium Determination Guidelines (available in the MAA Guidelines section of this website). Decisions about discounts or loadings vary between insurers.*

In effect, the LTCS levy is a state government tax on motor vehicle registrations to fund the LTCS system but is based on discretion of private sector insurance companies.

Therefore, to the average CTP policy holder (i.e. the average motorist) the LTCS levy is a state tax of unknown percentage on an insurance premium that is ultimately determined at the discretion of private sector insurers working within an MAA framework that the general public does not understand.

The simple act of detailing the LTCS levy as a separate line item on the "Greenslip" policy to provide clarity to the typical CTP policy holder has not been taken up either by the insurers or regulatory authorities. The cost of that levy remains hidden.

This remains an unacceptable circumstance to all CTP insurers and is reflected in feedback received by the MCC of NSW from club members and the general public alike.

### **The LTCS Levy is not fairly applied across the community**

The cost of the LTCS levy is restricted to a clearly defined portion of the community; those that own road registered vehicles with CTP Insurance.

The range of people who are covered by the LTCS scheme is substantially wider than this narrow segment, simply because this is a "no-fault" system. Accordingly, persons in the wider community who may be covered in the case of a catastrophic injury include (but are not limited to);

- Pedestrians
- Bicycle riders
- Motor vehicle passengers
- Drivers / Riders of unregistered or unregistrable vehicles
- Those injured in apparently off-road areas that fall under the definition for a road related area under the Australian Road Rules
- Mobility vehicles
- Motorised toys
- Other wheeled toys (e.g. rollerblades, skateboards etc)

By its very nature, the LTCS scheme relies on the few to cover the costs of the many.

On the question of fairness, the blameless system particularly fails the law abiding motorist, especially in the case of an unregistered uninsured vehicle striking a registered and CTP



insured vehicle where the driver / rider of the unregistered / uninsured vehicle is catastrophically injured.

The following examples were provided in the MCC of NSW 2008 submission and they still clearly demonstrate the wider community support provided by the LTCS scheme.

1. *A person too young to hold a license, is playing on a motorcycle in the front of a friend's house. He accidentally accelerates, out of control and travels across the road, crashing into the steps of the house on the opposite side of the street, suffering catastrophic injuries. As he travelled on, then off a public road, he is covered under the LTCS.*

*The cost of his unfortunate lack of responsibility is paid for by the responsible registered road users, not the community as a whole.*

2. *Similarly an unlicensed driver in an unregistered car is also covered for the catastrophic injuries they may cause to themselves.*
3. *As a result of poor road maintenance on a bend, a motorcyclist falls and strikes several upright posts of an Armco fence at the very edge of the road. The rider cannot take responsibility for the roadside furniture, only the Road Authority can.*
4. *A Bicycle rider who fails to stop at a red light and is catastrophically injured by through traffic is covered under the LTCS. There is no discounting of the LTCS benefit they receive due to contributory negligence on their part.*
5. *An intoxicated Pedestrian walks out of the local pub and steps into the path of oncoming traffic. Their catastrophic injuries are covered under the LTCS.*
6. *A child on a tricycle loses control going downhill and collides with a trailer that is connected to vehicle parked in a driveway. Are those child's injuries covered under LTCS? Where is the dividing line for the community to decide who is covered by LTCS and who is not?*

The whole basis for the LTCS needs review to ensure that a wider portion of the community is contributing to the funding of the scheme.

### **LTCS Levy is not fairly applied across motor vehicle classes**

Putting to one side the inherent penalisation of the NSW vehicle owner in funding the LTCS scheme, there are other inequalities even within the sub segment of registered vehicle classes in NSW.

The Motor Accidents (Lifetime Care and Support) Act 2006 No.16 allows for the fund levy to be determined in a number of ways;

*Part 1, Section 50 Point 3 "The Fund levy can be determined as a fixed amount or as a percentage of the premium payable for a third-party policy, or as a combination of a fixed amount and a percentage of premium."*

As detailed above on the subject of transparency, the levy is presumed (but not clearly shown) to be based on a percentage of what is a very loose premium setting structure.

Given that some motor vehicle classes are adversely penalised by both MAA CTP premium determination guidelines and by the insurers themselves, then basing the LTCS levy on such premiums inherently means that certain classes of vehicles are inequitably contributing to the LTCS scheme.

It is the view of the MCC of NSW, that Motorcycles and Scooters are unfairly penalised as a result of these issues. This is expanded in the next section.

The original submission to the MAA by the MCC of NSW in 2006 was based on correspondence that suggested that there would be a flat \$20 fee across all motor vehicles registered in NSW.

*"The LTCS scheme will be fully funded through a levy on motorists collected in conjunction with CTP insurance. It will require an extra \$20 per CTP policy."*<sup>3</sup>

This same dollar figure appears in Hansard, given by the Government during Parliamentary debate on the Motor Accidents (Lifetime Care and Support) Act 2006.

Not only has the cost of the LTCS increased dramatically above this figure, but it is now a (hidden) variable based on inappropriate criteria (i.e. the process for calculating CTP premiums).

Conventional positions from the MAA indicate that the CTP is somewhat reflective of the drivers of third party injuries, but that the LTCS is shared equally across the community. This is clearly not the case and cannot be whilst ever the LTCS levy is based on a percentage of the CTP premium.

The public positions and original intent is at odds with the current reality.

### **LTCS Levy unfairly impacts motorcycles without consideration of contributing factors**

As detailed above, the LTCS levy was originally pitched as a \$20 levy across all registered vehicles in NSW.

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<sup>3</sup> MAA [2005], Lifetime Care and Support, p17, MAA Publication ISBN 1 876958 22 7

The levy is not a flat rate and it appears that motorcyclists have been particularly disadvantaged in respect of the proportion of the LTCS levy that they bear as a part of the community.

There are at least 5 key drivers that adversely impact motorcyclists in respect of the burden of LTCS levy in NSW.

#### 1. Effect of Off-road Motorcycling Issues in NSW

Off-road motorcycles present a particular issue. National Parks and Wildlife provide no managed areas for trail riding of motorcycles, yet provide for many other classes of recreational pursuit.

In NSW there are approximately 160,000 registered motorcycles and over 100,000 unregistered/off road motorcycles. Off road riders lack managed spaces for recreational pursuits and many end up in areas that are not "roads" per se, but are gazetted or classed as "road related areas" and thus will be covered under LTCS.

Approximately half of all motorcycle crashes admitted to hospital arose from off-road motorcycle activities.

This half is not contributing to the LTCS levy but in many cases may adversely impact CTP premiums (and therefore the LTCS levy) on registered motorcycle owners.

#### 2. Effect of Unregistered / Uninsured motor vehicles

Unregistered off road motorcycles are covered above in point 1.

In addition to unregistered off road motorcycles, there has been a substantial surge in the availability and number of small "pit bikes" in the community. It is not an uncommon problem to have these small motorcycles ridden illegally on road or in road adjacent areas. Accident rates and injury severity is exacerbated by a) the often inexperienced rider (as these are often erroneously considered by parents to be toys) and b) the lack of protective gear worn.

Once again, accidents of these vehicles on road or in road adjacent areas are included as "motorcycles" for the collection of crash data and as a result once again adversely inflate CTP premiums and thence the LTCS levy.

Injuries suffered on unregistered motorcycles tend to show a significantly above-average rate of riders with excessive BAC. This dangerous behaviour, often by unlicensed riders, disproportionately affects this motor vehicle class.

This is a blatant example of illegal anti-social behaviour clearly impacting the responsible licensed rider with a registered motorcycle through higher insurance

premiums and LTCS levy. This is an utterly unfair impost and one that the community at large should bear as a common burden.

### 3. Effect of Motorcycles not being managed as a separate vehicle class

Motorcycles are treated by the NSW RTA as light vehicles. Accordingly, they are managed in a manner consistent with motor cars. There is a significant difference between handling behaviour and occupant protection of a motorcycle and a car.

As a result of this antiquated approach to roads management, motorcyclists are left vulnerable to compromised road design, road furniture (refer #4 below), traffic management, road rules and road repairs.

Despite the MCC of NSW's representations to the NSW RTA and various NSW Roads and / or Transport Ministers over many years, no headway has been made in regard to having motorcycles and scooters classified as a separate class of motor vehicle on NSW roads.

The effect of this is a higher than necessary accident rate arising from factors outside the control of the rider and greater severity of injuries arising. Yet again this results in inflation of CTP insurance premiums and thence LTCS levy.

It is plain to all involved in transport policy that motorcyclists represent a clearly vulnerable road user group and therefore there is no logical basis for continuing to include motorcyclists within the vehicle category of "light vehicles". Other vulnerable road user groups, such as bicycle riders and pedestrians, are classified separately and hence considered in these areas; why not motorcycle riders?

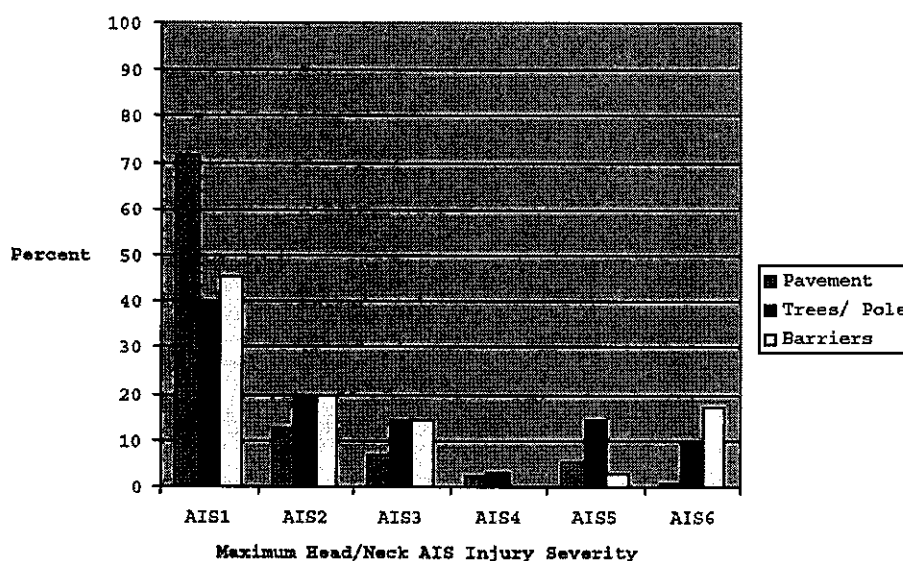
### 4. Effect of Infrastructure Shortcomings

A critical shortcoming of classifying motorcycles as a "light vehicle" is that no consideration is given to the road design nor roadside furniture when building or maintaining roads in NSW. This is critical to the safety of motorcyclists and the rate of accidents and severity of injury arising. Again, this has substantial impact of CTP and by extrapolation the LTCS levy.

The issue of roadside furniture was addressed effectively in the MCC of NSW submission of 2008.

*Engineering of cars has dramatically improved their "crash worthiness" and progressively reduced casualties. However, roadside engineering remains stuck in the 1930's. Motorcycle riders and other Vulnerable Users are at the mercy of roadsides provided by the community through the agencies of government and road authorities.*

**Figure 1** Proportion of Motorcyclists with Head or Neck Injuries from Impacts with a Class of Object in each Injury Severity Category, from Ouellet (1982).



*The graph above appears in Gibson & Benetatos,<sup>4</sup> constructed from data in Oullet's 1982<sup>4</sup> study of motorcycle injury outcomes. It is clear that collisions with vertical posts, trees and crash barriers will result in a greater likelihood of a rider receiving injuries that qualify them for LTCS. A considerable body of literature points to this problem, yet it remains unaddressed in NSW.*

*Blaming the victim for injuries from these collisions is externalising responsibility by the road authority.*

And what has occurred since the 2008 submission? Roadside furniture has in many cases become even more motorcycle unfriendly.

As an example, installation of wire rope barriers has become more prolific on NSW roads. Wire rope barriers pose special and additional risks to motorcyclists, largely because the posts are more exposed; research has clearly demonstrated an increase in injury severity and fatality rates as a result of this type of roadside furniture.

Clearly, decisions around type and format of installation of roadside furniture is made by road authorities, however the brunt of the LTCS burden is ultimately disproportionately borne by motorcyclists when it ought to be borne by the entire community.

##### 5. Effect of Inadequate Government Support for Motorcycle Safety Initiatives

In the realm of government support for vulnerable road user safety initiatives, motorcycling ranks a distant third. To quote from the MCC of NSW 2008 submission;

<sup>4</sup> Oullet, J.V. (1982) Environmental Hazards in Motorcycle Accidents, 26<sup>th</sup> Annual Proceedings, American Association for Automotive Medicine, Ottawa, 1982

*NSW Parliament provides funding in the order of 12 to 15 million dollars each year for bicycle and pedestrian safety, yet the total expenditure upon motorcycle safety since 1990 is paltry. Since October 2002, the sum total spent on motorcycle safety is less than \$3 million. Between 1996 and 2002, the only identifiable funding was the sum of \$25,000 per annum provided to the Motorcycle Council of NSW in support of Motorcycle Awareness Week. Prior to that, nil, as evidenced by the 1986 Staysafe report which could not identify any motorcycle safety funding for the previous ten years.*

Please note that the funding for Motorcycle Awareness Week from the is \$20,000, a 36% reduction in real terms when allowing for CPI from 2002 to 2010.

Today that pattern of motorcycling receiving a pittance of the available vulnerable road user safety initiative funding continues.

Further, the NSW RTA continues to focus on managing Motorcyclist attitudes, and to a lesser extent other motorists' attitudes, as the prime focus of their initiatives. This is reinforced by the 2010/2011 Project Funding Guidelines issued by the RTA to Local Government Road Safety Officers.

*The RTA motorcycle safety program aims to increase the safety of motorcycle riders through public education and limited engineering/signposting works.*

And has as one of the KPI's;

*"Number of enforcement strategies developed in consultation with NSW Police."*

And yet, as demonstrated above, whilst road design and road furniture are significant contributing factors to both the LTCS levy and the frequency of fatalities and severity of injuries, the RTA Road Safety Initiative Guidelines specifically proscribe *"Large scale civil works."*

Clearly the magnitude of the Motorcycle Safety Initiatives funding is inadequate and direction of too heavily biased towards enforcement and road user attitudes. This focus fails to address other significant contributing factors.

Accordingly, these road safety initiatives will fail to deliver for motorcyclists. It has a twofold effect of inflating the number of catastrophically injured motorcyclists that may require the LTCS scheme and the cost of funding the scheme's levy from motorcycle registrations.

These five drivers clearly demonstrate the unfair burden placed on licensed motorcycle riders with registered motorcycles in respect of the LTCS levy.

## **MCC of NSW Recommendations**

The MCC of NSW is fully supportive of a "no blame" Lifetime Care and Support Scheme to assist those in the community most in need. However it is also patently clear that the levy as currently applied is unfair to certain segments of the community which bear a disproportionate share of the burden through the LTCS Levy.

Accordingly, the MCC of NSW recommendations seek to have the LTCS levy calculated and applied in a more equitable manner across a broader cross section of the community. These recommendations include;

1. That the LTCS levy reverts to a common flat fee across all registered vehicles in NSW.
2. That the LTCS be shown as a discrete itemised line item on the CTP Greenslip presented to insured drivers / riders.
3. That the calculation of the fee be freely available and simply explained to members of the motoring public.
4. That consideration be given to applying the levy across all motorists (rather than just registered vehicle owners) given the significant coverage of the LTCS scheme across more than just the drivers, riders or passengers of road registered vehicles. This may be as a flat fee on licence holders.
5. That the fundamental data set and subsequent calculations for CTP premiums reflect more closely the accident / injury performance of the pool of premium holders (i.e. be based around registered vehicles only).