

Submission
No 13

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

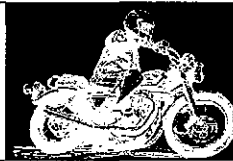
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**Eleventh Review of the MAA and the MAC and
Fourth Review of the LTCSA and the LTCSAC**

Comments on MAA and LTCS in NSW

17th August, 2011

MOTORCYCLE COUNCIL
OF NEW SOUTH WALES
INCORPORATED



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

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Contents

Contents

About the MCC of NSW	1
Introduction	2
Data Collection and Utilisation	3
The LTCS Levy is not fairly applied across the community	5
MCC of NSW Recommendations	9

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

From the perspective of a motorcycle rider, the CTP and LTCS schemes administered by the MAA and LTCSA appear expensive, unfair and clouded.

Please read our prior submissions from 2008 and 2010 in conjunction with this submission, which draws upon them in entirety.

This submission addresses the general aspects of CTP and LTCS schemes and pricing and how improvements may be made to ensure that all members of the community who may benefit from these schemes may also contribute.

Data Collection and Utilisation

In NSW the LTCS levy is charged as a levy based on a percentage of the CTP insurance premium. Hence the LTCS levy is determined by the CTP premium set by private insurers.

We have become aware of a number of factors that influence the CTP premium.

We are surprised that the MAA does not collect accurate or complete data on the at-fault driver/rider, vehicle type or crash type or location giving rise to a CTP or LTCS claim.

It would appear that a "data snapshot" of generalised RTA crash data is used as the basis for calculating CTP premiums. This data may reflect a general exposure to risk by the population, but fails to differentiate between types of crashes and the injuries arising from those crashes.

However, the "data snapshot" of generalised crashes gives no information as to the types or locations of crashes giving rise to CTP claims.

Even within RTA crash data there is a large difference between the nature of fatal crashes and general reportable crashes. RTA data on injury crashes is known to be unreliable in respect of serious injury crashes.

The prime measure for success of road safety programs by the RTA is measured by reduced fatalities and hence, RTA road safety programs essentially target the characteristics of fatal crashes alone.

With no reliable data on crashes causing injury that have resulted in a CTP or LTCS claim there is little useful information for informing road safety programs to target injury reduction.

This also means that the MAA is unable to determine with any accuracy, the actual risk of any particular type of CTP claim arising across the NSW population. Risk identification has been devolved to individual insurers, who rely upon their individual company experience of claims.

The result is differing premiums based on different commercial experience with CTP claims and not an overall population risk factor being applied to premiums.

As a consequence, individual marketing of CTP insurance utilises a range of individual factors for premium setting. We note that the type of property insurance held for the vehicle, or ownership of road-side assistance, or whether the vehicle is registered for commercial purposes, all affect the premium paid.

While a vehicle may be registered as commercial for taxation purposes, this does not automatically mean it has a higher exposure to risk of a claim, particularly if the vehicle use is indistinguishable from private use.

Without a clear view of the circumstances of driver, vehicle type or crash type, it is difficult to see that these divisions used are for other than marketing purposes, for insurer profitability, rather than for ensuring an even distribution of risk costs across the community.

CTP remains a mandatory requirement in NSW, yet individual circumstances produce a range of premiums that may not relate to their risk of a claim arising from crash. The most vulnerable in our community may have the largest costs imposed upon them.

It may be useful for the Law & Justice Committee to seek an independent opinion on the mathematical effect of sub-division of a population into smaller portions for the purposes of premium calculations. There are always "uncertainties" in risk factor calculations, but these uncertainties increase as the large population is subdivided into smaller blocks. It is clear that risk premiums will increase with the mathematically greater uncertainties of a smaller group and this directly affects premium pricing placing upwards pressure on CTP pricing to cover an ill defined margin of error due to a small sample group.

We are interested to compare the difference between the price of a premium calculated across the entire CTP policy population compared to the premium calculated for the same risk on each of the smaller population blocks of policies written by each insurer.

It appears to us that such measures could be usefully applied by the MAA in better understanding and supervising of the CTP insurance scheme and consequent costs.

The recent subdivision of motorcycles into five classes from the previous three classes would be a useful example to compare to the number of classes for passenger vehicles. For a large population of CTP premiums, such as a single grouping of all passenger vehicles from all separate insurers, the risk uncertainty is less variable, hence premiums are likely to be lower than in small classes broken across several insurers, where the uncertainty factors must be added to the price of an insurance premium.

Lack of clarity resulting from poor data gives rise to the suggestion that the NSW Government may have a vested interest in allowing CTP premiums to expand in order to increase the revenue generated from a percentage based levy and therefore fully fund the LTCS scheme.

It is the area of collection and accurate utilisation of data in which the MCC of NSW retains a keen interest, as this goes to heart of good public policy.

Whether the relevant Act or Regulations require modification to ensure accurate data collection by the MAA is a matter for the Law and Justice Committee.

The implementation of a Crash Reporting scheme similar to the Western Australian model (<https://www.crashreport.com.au/>) would go a long way towards more accurate and timely data capture. This system combines input from WA Police, Ambulance and insurers to give a better overall picture of crash data.

Specific training of Crash Investigators in relation to Motorcycle crashes would also resolve issues of inaccurate reporting of motorcycle crash causation due to a lack of understanding of the dynamics involved in motorcycling which was highlighted in recent discussions with the NSW RTA.

The LTCS Levy is not fairly applied across the community

We note the LTCSA Annual Report 09/10 at Page 16, shows tables of those who have obtained benefit from the LTCS Scheme, broken down by injury type and by adult/child and vehicle type involved.

PARTICIPANT'S ROLE IN ACCIDENT

CHILDREN

Over half the children in the Scheme were passengers in vehicles at the time of the crash while almost a third of children were pedestrians.

	TOTAL	PERCENTAGE
ROLE IN ACCIDENT		
Passenger	24	52.2
Pedestrian	13	28.3
Cyclist	4	8.7
Driver	2	4.3
Other	2	4.3
Motorcycle rider	1	2.2
TOTAL	46	100

ADULTS

Over one third of adults in the scheme were drivers in vehicles at the time of the crash.

	TOTAL	PERCENTAGE
ROLE IN ACCIDENT		
Driver	119	34.6
Motorcycle rider	81	23.5
Pedestrian	65	18.9
Passenger	64	18.6
Cyclist	12	3.5
Pillion passenger	2	0.6
Other	1	0.3
TOTAL	344	100

Data as at June 2010

In this summary, the term "role in accident" is ambiguous and does not indicate the role of those persons in terms of being at-fault or not.

The definition for "at-fault" must be examined carefully to ensure it is not simply used as a sobriquet for social exclusion.

According to RTA data, around 22% of motorcycle crashes are by "non riders", that is, people who were at the time of the crash, riding unlicensed, unregistered and uninsured.

In NSW, there are almost as many non-registrable and unregistered motorcycles as there are registered motorcycles. Many of these are off-road motorcycles used responsibly, but many are "toy" motorcycles distributed throughout the community, but with nowhere to

ride them legally within the suburban areas. This is a broad community issue, with a need to provide places to ride and a need to ensure the burden of injury costs is not borne solely by the smaller number of responsible, registered, licensed, motorcycle riders.

Greenslip pricing must not inadvertently assign costs to individuals when those costs must instead be properly assigned across the overall community.

Over the past 15 years, we have seen a steady reduction in injuries to occupants of four wheeled vehicles due to significant engineering improvements generally grouped under the term "safer cars". While behaviour modification has contributed to reduced casualty rates, we must applaud road engineering improvements and vehicle engineering solutions mandated through the Australian Design Rules for motor vehicles, as the prime drivers for these casualty reductions.

The "space" in which a car occupant "has their crash" is now a well protected capsule. This is not true for the motorcycle rider who "has their crash" in a hostile environment of roadsides and roadside furniture with an engineering modernity of around 1930. Application of appropriate engineering solutions to roads and roadsides remains the gaunt want of road safety.

Whilst the RTA administers Federal and State roads, these only comprise around 20% of the roads in NSW. The rest are administered by local councils, often with cost restrictions. The quality of roads, their engineering modernity and the lack of adequate training for road maintenance crews is an issue for the entire community in NSW.

Motorcycles, like bicycles, are single-track vehicles with handling characteristics that are very different to a car and are sensitive to road conditions. RTA data is transferred from Police data and then re-coded to redefine "speeding". An inspection of RTA data revealed that over 20% of motorcycle crashes defined by NSW Police to include road conditions as a major contributing factor in the crash were redefined by the RTA as "speeding" being the major factor (Data comparison completed by LDR and Assoc and available upon request). This data handling blinds RTA data to the significance of road conditions and assigns blame to the unfortunate motorcycle rider, defining them as "at-fault". This then does not flow on to the Local Councils responsible for maintaining a majority of roads in NSW.

Road conditions are slowly being recognised as a significant issue in motorcycle crashes. NSW Minister for Roads Duncan Gay recently announced that early motorcycle safety initiatives are under way as part of the \$170 million Road Toll Response Package. One of the items is to adapt the Vicroads training package for road designers, operators and maintenance crews to be delivered to RTA staff and offered to local governments to train road crews. This could then reduce instances similar to Tweed Council using sand as part of their road maintenance program (Letter from Tweed Council Vince Connell to Don Page MP as published in "Northern Rider Vol 2 Issue 2 Copy available upon request).

Again, pricing of Greenslips must ensure that costs of risks to be borne by the entire community are not assigned to individuals who are powerless to reduce that risk.

Hence, the definition for "at-fault" must be carefully examined.

We cannot escape the fact that the LTCS scheme is a hybrid, with the overall "Greenslip" premium pricing based upon at-fault claims at the CTP level.

Whilst benefits are paid out on the basis that the LTCS scheme is "blameless", pricing of the LTCS component is not.

It is obvious that we presently have five different classes of motorcycles, each with differing CTP risk and premium pricing. It is then, glaringly obvious that each different class of motorcycle is paying a different amount of LTCS levy. This is not equitable.

With inaccurate identification of the "at-fault" person or entity who has caused a claim to arise, there is the further problem that claimants are grouped by class of vehicle under the ambiguous term "participant's role", which looks at the claimant as being at-fault.

These generalisations lead to inequities in premium setting.

For example, say we were to hypothesise that a large proportion of claims by motorcycle riders or pillioners arise from at-fault collisions caused by drivers of another class of vehicle. In this example, it would mean that motorcycle riders are subsidising at-fault cars that hit them.

To use a different example, it may be that one insurer writes a large proportion of premiums for one particular class of vehicle that in one year suffer a larger than normal number of claims.

The singular claims experience of one company may distort premium setting for this entire vehicle class, despite the profitability to other insurers with low exposure to that vehicle class.

No data is available to us to test either of these hypotheses.

It is strongly suggested that improved cause of claim data collection identified earlier in this submission has a significant role to play in equitable funding of the LTCS scheme as well as in government supervision the CTP scheme.

We have previously made comment that, of the percentage addition of MCIS levies to the base CTP premium, the LTCS amount comprises the largest, but hidden proportion.

The Productivity Commission released its draft report *Disability Care and Support* on 28 February 2011 and proposes two schemes

- National Disability Insurance Scheme (NDIS), analogous to Medicare
- A no-fault National Injury Insurance Scheme (NIIS)

The Productivity Commission proposes the NIS as a federation of individual state and territory schemes to provide fully-funded care and support for all cases of catastrophic injury.

However, the Productivity Commission proposes that existing revenue sources from mandatory insurance be retained in the NIS.

To ensure equity and proper supervision of a National scheme that proposes to include multiple private and government insurance schemes, accurate data collection and utilisation is paramount.

Price signals alone may prove inadequate if the exact nature of the specific activity resulting in injury is unclear. These general comments also relate to the present NSW LTCS scheme.

A risk management approach may prove profitable and equitable to the community and to scheme viability. This is preferred to vague and simplistic risk avoidance via price signals based on imprecise data.

MCC of NSW Recommendations

The MCC of NSW remains fully supportive of a “no blame” Lifetime Care and Support Scheme to assist those in the community who have had the misfortune to acquire that need.

The MCC of NSW recommends the implementation of a Crash Reporting Scheme similar to that implemented in Western Australia with real time reporting in order to give the MAA better access to real data.

We would re-iterate the recommendations of our 2010 submission to the 3rd LTCS review with modification of No.5 in light of the attached section on Data Collection and Utilisation.

“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).”*

It remains patently clear that the LTCS levy as currently applied, is unfair to certain segments of the community which bear a disproportionate share of the burden.

The MCC would be happy to appear before the Members of the Committee in order to expand further upon the points made in this submission.