

**Submission
No 5**

FIRST REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Australian Lawyers Alliance

Date received: 13 May 2016

**Submission to the Standing Committee on
Law and Justice**

**First Review Of Compulsory Third Party
insurance scheme (2016)**

13 May 2016

EXECUTIVE SUMMARY

1. The ALA supports reform of the NSW CTP insurance scheme but not at the cost of gutting current benefits.
2. The ALA supports practical proposals to address the blowout in claims numbers.
3. The ALA supports retaining the form of the current scheme given its stability in relation to moderate and serious injury claims.
4. The ALA seeks to protect loss of earnings for innocent motor accident victims .
5. The ALA strongly opposes moving to a no fault, low benefit, no lawyer, defined benefits, scheme that will put those with moderate and serious injuries and manual jobs on to unemployment benefits and push them out of their homes.
6. The ALA cautions vigilance for the snake-oil salesmen with false claims about a first party system being kinder, gentler or better. They are selling something (dud income protection insurance).
7. In addressing profits, the ALA says beware the free-market fanatics who wish to reduce relativities that will be socially regressive: Older drivers in Sydney's east and north will be getting a premium cut paid for by the working poor in Sydney's west.

ABOUT THE ALA

The Australian Lawyers Alliance (ALA) is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

We oppose oppression and discrimination and support democratic accountable systems of Government and an independent judiciary.

We value immensely the right of the individual to personal autonomy in their lives and to equal treatment under the law.

INTRODUCTION

The ALA welcomes the opportunity to provide a submission to the NSW Legislative Council Standing Committee on Law and Justice in response to their First Review of the Compulsory Third Party insurance scheme.

The ALA is well placed to provide commentary to the Committee. Members of the ALA regularly advise clients all over the country that have been caused injury or disability by the wrongdoing of another. Our members advise clients of their rights under current state based and federal schemes, including motor accident legislation, workers compensation schemes and Comcare. Our members also advise in cases of medical negligence, product liability and other areas of tort. We therefore have expert knowledge of compensation schemes across the country, and of the specific ways in which individuals' rights are violated or supported by different Scheme models.

We are well aware of existing methods of compensation reimbursement across the country, in order for individuals to gain access to care, as they deal with intersecting Schemes.

Our members also often contribute to law reform in a range of host jurisdictions in relation to compensation, existing schemes and their practical impact on our clients. Many of our members are also legal specialists in their field. We are happy to provide further comment on a range of topics for the Committee.

In very recent times the ALA has engaged with State Insurance Regulatory Authority (SIRA) and the Government in order to understand the issues underlying the Government's call for broad reform of green slip insurance in New South Wales.

The ALA believes the requirement for reform is not as broad as contemplated by either the Regulator or Government.

We are considered a key legal stakeholder in the scheme. Our contribution is evidenced by our ongoing participation in the New South Wales CTP Fraud Taskforce and roundtable discussions and working groups concerning CTP insurance scheme reform.

SUBMISSION

Terms of reference

In providing this submission the ALA has considered the open Terms of Reference to this Inquiry and the Committee's media release dated 4 April 2016.

The (then) Chair of the Committee announced on 4 April 2016 *"The Government is proposing major reform to the scheme later this year. The committee therefore welcomes the input of stakeholders during this important time to help shape any changes to the scheme."*

It is noted that this inquiry is the first to monitor and review the implementation of the state's compulsory third party motor vehicle insurance scheme since the abolition of the Motor Accident's Authority and establishment of a new regulatory authority, SIRA.

Legacy report 55th Parliament

The Australian Lawyers Alliance (ALA) continues to support the unanimous recommendations of former Standing Committees in relation to motor accidents legislation and the third party insurance scheme.

The ALA notes the Standing Committee on Law and Justice report 56 – November 2014: Legacy report 55th Parliament 2014. Legacy Report 56 serves to inform the current Standing Committee of matters considered the former Standing Committee's Eleventh (2011) and Twelfth (2013) review of the exercise of the functions of the Motor Accident Authority [and the Motor Accidents Council (2011)].

The ALA considers that many of the issues canvassed in the 2011 and 2013 reviews remain pertinent, in particular the concern over insurer 'super profits' and action taken by the Regulator to mitigate against such profits. The ALA notes the 'Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme' commissioned by the NSW Government and delivered by Mr Trevor Matthews, Independent Review Chair, to SIRA on 15 October 2015 and supports most of the recommendations designed to remove the propensity for insurer 'super profits' and significantly narrow the gap and between filed profits and realised profits. Our concern is the removal of relativities and the economic consequences of removing cross subsidies.

Emerging issues with the CTP scheme

In March 2016 the NSW Government issued an Options paper: "*On the road to a better CTP scheme*" setting out options for reform of 'green slip insurance in NSW'. The Government expressed concern that "*the system is not serving injured road users as well as it could*". The Government has embarked on a 'major scheme review' identifying as reasons for the review:

- That only 45¢ of every Green slip premium dollar 'ends up in the hands of injured road users'
- That the claims process is lengthy with claimants waiting between 3 and 5 years for their claim to be resolved
- That CTP Green Slip insurance premiums have increased significantly and that without scheme reform premiums are likely to increase further in coming years.
- That there has been a significant increase in 'fraudulent and exaggerated claims', the cost of which is reflected in rising Green Slip prices.

The Government's objective is to create a 'fairer and more affordable scheme for road users' by:

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

The ALA lends its support to the objectives of the scheme review . The ALA has provided a response dated 6 May 2016 to the Government's Options Paper, a copy of which is **attached**.

In our response, we fully endorse and support the commentary, arguments and proposals put forward in the submissions of the Law Society of New South Wales and the New South Wales Bar Association to the options paper.

Response to the emerging issue of fraudulent and exaggerated claims

The ALA accepts that there is evidence of a disturbing increase in fraudulent claims and an increase in claims for those with minor severity injuries where the claimant is legally represented.

The broader issue of hard fraud has been referred to the NSW CTP Fraud Task Force of which the ALA is a participant and contributor with other agencies



including the NSW Police, the HCCC, the Office of the Legal Services Commissioner, insurance companies and the Insurance Council of Australia, the NSW Bar Association and the Law Society of NSW, SIRA and others.

The ALA, in co-operation with the legal profession representative organisations, the Law Society of NSW and the NSW Bar Association, responded to information about these trends by formulating a written proposal designed to bring an immediate halt to the activities. The proposal was delivered to Minister Dominello on 23 March 2016 by letter bearing the same date. A copy of the letter is **attached**.

The proposal covers both fraudulent claims (generally accepted as claims for child accident victims with nervous shock claims) and the increase in legally represented claimants with minor severity injuries by removing the economic incentive for the legal profession to engage with such claimants. The ALA continues to endorse the proposal as the solution to this emerging issue.

CONCLUSION

The ALA thanks the Standing Committee on Law and Justice for the opportunity to provide a submission in relation to this review. We would be happy to provide further information or explanation regarding this submission.