

**Submission
No 11**

FIRST REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Motorcycle Council of NSW

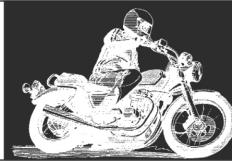
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First Review of Compulsory Third Party Insurance Scheme

12th May 2016

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

MOTORCYCLE COUNCIL
OF NEW SOUTH WALES
INCORPORATED



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Contents

Contents

First Review of Compulsory Third Party Insurance Scheme	1
About the MCC of NSW.....	1
Introduction.....	2
Issues Faced by the CTP Scheme	2
Increase in Claims in General and Fraudulent Claims.....	2
Increase in Legally Represented Claims.....	3
Case Study Low Ball Offers from Insurance Companies.....	4
Exaggeration by Claimants	6
Excessive Profits and Costs Paid to the Insurers	7
Over Servicing by Legal Firms.....	8
Number of Motorcycle Classes in the Scheme	8
Possible Savings in the Existing Scheme.....	10
E&Y Review of Motorcycle premiums	10
In Conclusion	11
MCC of NSW Recommendations.....	12

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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 utilised 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 Legislative Council Standing Committee on Law and Justice for the opportunity to present this submission and the views of our member clubs on the subject of the first review of Compulsory third Party insurance scheme in NSW

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

Yours sincerely,

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Chairman

MCC of NSW

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Introduction

Whilst this inquiry is named the First Review of Compulsory Third Party insurance scheme, there have been many previous inquiries into both the CTP Scheme and the way it has been managed culminating in a multitude of recommendations.

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 currently being paid out of the scheme according to the State Insurance Regulatory Authorities (SIRA) recently published CTP Options Discussion paper;

- 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 cents in the dollar of the CTP scheme funds paid back to the insurers.

The scheme has already been modified once in 2009, in an attempt to reduce the cost of Greenslip premiums by moving the 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 profits increased for the insurers.

Prior to this in 1987 there was a failed attempt to introduce a No Fault scheme with statutory benefits which was rolled back a year later.

The current proposal to modify the scheme in an effort to reduce the cost of Greenslip prices by reducing the compensation paid to the victims is ethically and morally wrong and goes against the basic principles of the CTP scheme. Instead we should be ensuring the system is managed properly and excess costs and profits to the insurers are removed from the system.

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 at the time the crash happened, 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.

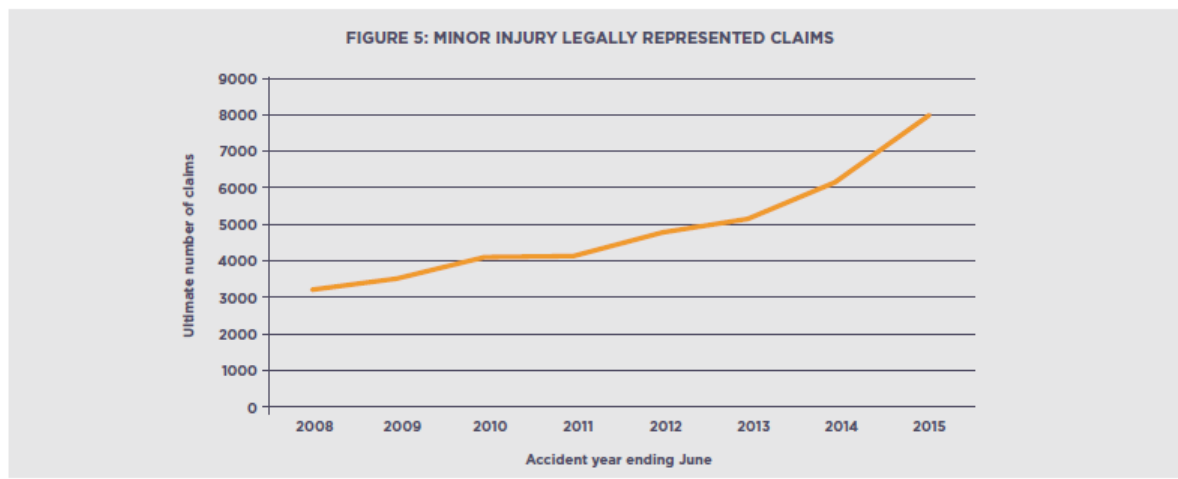
Fraudulent claims need to be investigated to the fullest extent and not have the claimants being “bought off” following a Cost Benefit Analysis. The current system makes it easier to pay a low figure to a fraudulent claimant and make the issue go away, rather than go through the long and costly exercise of investigation and prosecution. Ultimately these costs will be charged back to the consumer in the form of higher premiums so why would the insurers go to any trouble.

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

According to the MAA/SIRA’s Annual report there is an increase of claims by 10% which lags behind the increase in registrations in the state so there is no nett increase in claims.

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 and formed part of the CTP Options paper recently published by SIRA.



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 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 and 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 negotiated.

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 preceding statement 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 claims, the actual claims rate per 10,000 registered vehicles does not appear to have increased as indicated below.

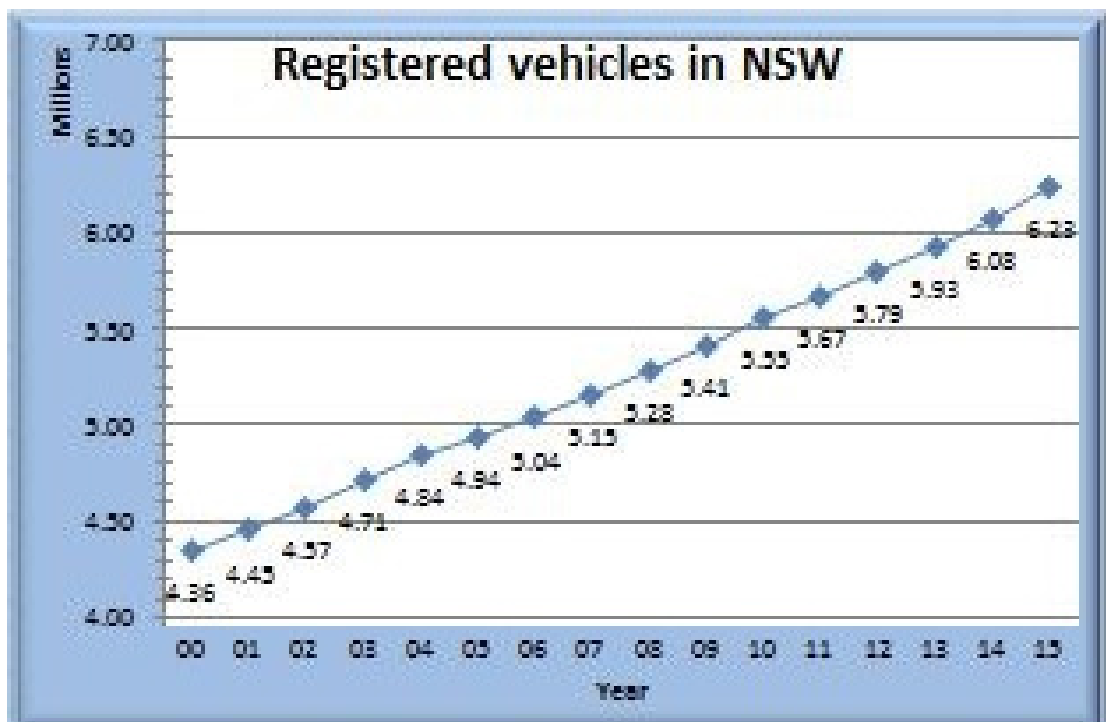
Chart 2.8: Claims frequency per 10,000 vehicles



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.

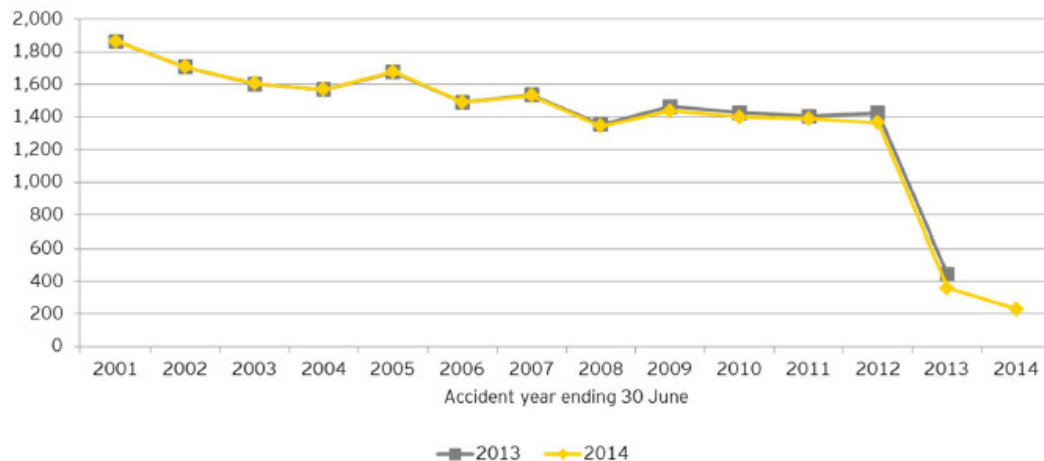


Source; RMS Registration Data (Clements)

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 and may have contributed to the change in numbers of legally represented claims.

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 for instance compare washing machines and know the value of an item to make a household insurance claim, 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 they are 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 independently 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 legislated 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 or 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 their shareholders. This profit motive is at odds with a Government mandated scheme which limits profit margins and is supposed to be run for the primary benefit of policy holders who are the wider NSW public and vehicle owners. 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 is 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 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 of the 150 possible sub groups. 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 the scheme has been implemented in NSW for the past 14 years and the information 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.

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.

E&Y Review of Motorcycle premiums

An Ernst and Young Report into Motorcycle Premiums was released earlier this year by SIRA (MAA) in order to comply with a recommendation from the 12th Review of the MAA and MAAS.

On Page 7, "The Scope of Work" does not meet the terms of reference agreed to between the MCC of NSW and then NSW Roads Minister Andrew Stoner when the review was first proposed in 2010 nor did the MCC of NSW have any input into the "Scope of Work" (SOW) for this review.

SOW did not resolve any of the complaints made to the most recent Law and Justice Commission of inquiry into the MAA;

- No total premiums paid into the Motorcycle component of the scheme.
- No total costs out the Motorcycle component of the scheme or costs out.
- No reference to scheme performance or how the motorcycle section of CTP Premiums is performing.
- No reference to scheme efficiency.
- No reference to the amount of profit being made by the insurers on motorcycle CTP Premiums at all.
- No supporting documentation, references or cost figures.

Whilst some of the information requested can be extrapolated from the Ernst & Young Report using multiple other sources it still does not meet the recommendations of the 12th Review of the MAA.

Utilising the registration numbers and claims numbers on page 32, Appendix A and using average costs provided by the MAA we can arrive at some base estimates;

984,684 registrations over the past 5 years, using the 2014 average CTP Premium of \$300 (Finity report March 2014 using March 2013 figures from the MAA) gives us an estimate of \$295 mil paid into the scheme by riders over the past 5 years.

481 claims over that same period using the average claims payout of \$136,280 from the MAA's annual report is approximately \$65.5 mil. over 5 years. This would seem to indicate that only 22% is making it out of the Motorcycle CTP scheme as benefits to injured persons.

This of course ignores the LTCS system as no figures can be found to work with apart from the Annual Report from the LTCSA which advises that 20% (209) of the people in the scheme were riding motorcycles at the time, it does not give a breakdown on who was licensed or not, registered or unregistered, private property etc. From RMS crash statistics we are well aware that approximately 22% of riders involved in motorcycle crashes should not have been on them in the first place. It could also be argued that non-contributors, pedestrians (243), cyclists (37) etc should then be made to pay into the system. Also let us not ignore the fact that 61% of multi vehicle crashes between a motorcycle and a light vehicle or light truck are the fault of the other vehicle. (Source: <http://roadsafety.mccofnsw.org.au/a/38.html>)

As it is, the overwhelming majority of motorcyclists also own a car, so we are in fact subsidising ourselves.

The section in the report on Premium relativities is an explanation of how the system works which is already well known, although it makes reference to Claims History and Case Estimates information being used to formulate these relativities and this is exactly the type of data the MCC has been asking the MAA to provide for a number of years and it has not been delivered yet again.

There is also reference to the fact that this method has inaccuracies due to the large number of classes and small number of motorcycles. 5 capacity Classes multiplied by 5 regional areas and then by 6 insurers leads to numbers as small as 500 or so in a category with an insurer.

Essentially this was a history of motorcycle CTP in NSW that the MCC of NSW are fully aware of with no information on efficiency, costs, profit margins or compensation paid and no supporting documentation or figures to support the claims in the current report.

In Conclusion

There seems to be much noise and alarm made about an increase in legally represented claims whereby victims are being adequately compensated and legally entitled to that compensation, 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.
 - b. Greater transparency of Insurer costs would lead to more savings.
2. Adjust the current -15% - +35% bonus/malus on relativities.
 - a. The Bonus/Malus variation is supposed to introduce "Competition", but is only used to generate sales of more products for the insurer.
 - b. Changing this to -5% /+ 15% would lead to a greater saving on CTP Premiums by virtue of the fact that prices would not be artificially increased to then give the appearance of a saving if you hold multiple other policies with the same insurance company.
3. 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.
4. Remove the 5 classifications of motorcycles in NSW and replace the current system with two classes, LAMS and non-LAMS
5. Under 16's to go through the full medical assessment process.
6. Once again we respectfully request an audit of the motorcycle CTP Scheme with reports to include;
 - a. Total premiums paid into the scheme.
 - b. Compensation paid out of the scheme
 - c. Insurer profits on the motorcycle portion of the scheme
 - d. Efficiency of the motorcycle portion of the scheme.
 - e. Supporting documentation.

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