

INQUIRY INTO 2020 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Motorcycle Council of New South Wales Incorporated

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2020 review of the Compulsory Third Party Insurance Scheme

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About the MCC of NSW

The Motorcycle Council of NSW Inc. (MCC) is an internationally recognised umbrella group for motorcycle clubs, associations and ride groups, in the state of New South Wales.

Established in 1981, the MCC 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 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.

MCC is the peak representative body for motorcycling in the state of NSW representing over 60 motorcycle clubs, which have a total membership of over 41,000 motorcyclists.

We wish to thank the Legislative Council's Standing Committee on Law and Justice for the opportunity to present this submission and the views of our member clubs on the Compulsory Third Party Insurance Scheme.

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

Brian Wood

Secretary

Compulsory Third Party Scheme

The Motorcycle Council of NSW (MCC) has a number of concerns regarding the 2017 CTP Scheme. Some of these concerns have been previously raised in the MCC's submission to the Law & Justice 2018 inquiry into the CTP scheme and when it appeared before this Committee on the 23rd August 2018. Not all of these concerns have been addressed.

The concerns raised previously and not fully addressed:-

Monitoring the performance of 2017 Scheme

The MCC has previously expressed concern that it needs to provide it with regular and sufficient data so that it could be reassured that the 2017 scheme is working efficiently for motorcyclists.

The MCC now has quarterly meetings with SIRA at which SIRA provides updates on the number of and size of claims. This allows the MCC to assess how the scheme is performing against what was predicted when the 2017 scheme was introduced.

The expected increase of 1,400 additional motorcycle claims has not eventuated and the number of actual claims is tracking well below this. However, even though the scheme has been in place for nearly 2 years, it is still unclear whether the number of claims have plateaued.

SIRA is providing data on the cost of claims, both motorcycle and other Classes but due to the long tail nature of claims it is still unclear what the eventual cost of claims will be.

The MCC will continue to monitor the scheme to ensure that the promised 57 cents in the dollar is being returned as a benefit to motorcyclist.

Profit Equalisation Scheme (Transitional Excess Profit and Loss mechanism – TEPL)

SIRA has given the MCC a presentation on how the Transitional Excess Profit and Loss mechanism (TEPL) scheme will work.

It is disappointing that the transitional mechanism only examines the insurers profit for the scheme as a whole. This means there is no guarantee that insurers are still not making super profits in excess of the allowable 8% from motorcycle policies.

The MCC is seeking means by which this deficiency in TEPL can be addressed.

One means would be the funding of projects to improve motorcycle safety using the Innovation Support provisions of TEPL.

Other issues of concern

Interstate Cover

As a result of the MCC being contacted by a NSW motorcyclist who had a single vehicle motorcycle crash in Tasmania, it has come to the MCC's attention that a NSW CTP policy does not cover any

road user for a crash that occurs interstate but it is the legislation in the State or Territory in which the crash occurred that determines what compensation you receive if any.

In the case raised with the MCC the motorcyclist's NSW CTP insurer rejected his claim as the crash was interstate and referred him to the Motor Accident Insurance Board in Tasmania who also rejected his claim. The MAIB rejected the claim as the crash did not involve a Tasmanian registered vehicle.

The rider is now left with having to pay a bill of around \$20,000 for transport by air ambulance.

The MCC has not been able to find any documentation that makes it clear that your NSW CTP policy does not cover interstate crashes.

When the MCC wrote to the Minister for Customer Service, the advice given was that NSW motorcyclists should take out travel insurance and ambulance cover when they intend to travel interstate.

The MCC has written to the National Heads of Motor Accident Insurance Schemes requesting that it address the issue of the lack of advice on cover for interstate crashes and provide information so that policy holders are able to make an informed decision on what travel insurance and ambulance cover they should take out depending on which State or Territories they intend to travel in as each jurisdictions cover is different.

The MCC has also raised this issue with SIRA and is currently working with SIRA to develop material that could be provided to policy holders which would include advice that a NSW CTP policy does not provide cover when interstate.

In searching for documentation on what your NSW CTP policy covers and what it does not cover, the MCC expected to find Product Disclosure Statements (PDS). However, the MCC has not been able to locate any of these for CTP insurance. When the MCC contacted the Australian Securities and Investment Commission (ASIC) they referred the MCC to their Regulatory Guide 168 "Disclosure: Product Disclosure Statements (and other disclosure obligations)". It appears ASIC relies on Clauses 168.46, 47 and 48, headed "When is a PDS not needed?" as to why they don't require insurers to provide PDS's for CTP policies. These clauses rely on the information being readily available elsewhere, which in the case of NSW CTP policies, appears not to be the case.

The MCC has raised the matter of Product Disclosure Statements with SIRA and is hoping that the work it is doing regarding developing material to advise policy holders on what their policy covers and does not cover will fill the gap of not having Product Disclosure Statements available for CTP policies.

The MCC has raised with SIRA the possibility of changing the CTP scheme so that the compensation available for interstate crashes is the same as that had the crash occurred in NSW. SIRA are currently investigate the implications of this change and will update the MCC at our next quarterly meeting early next year.

Changes to the Scheme to make it more efficient

The MCC believes the 2017 CTP Scheme required changes to make it more efficient for motorcycle policy holders.

This has been raised with SIRA and is on the agenda for discussion at our quarterly meetings once it is clearer what the claims history is for the 2017 scheme.

Claiming Costs from other Parties

The Safe System approach is a key element of Towards Zero initiative for road safety, this approach has the aim of reducing the road toll in NSW to zero by 2056.

The Safe System approach was introduced into Australia over 8 years ago.

Under the Safe System approach the cost of injuries should be borne by the Road Authority who has an obligation to provide a safe road network. The cost shouldn't be borne by CTP policy holders.

The MCC has already raised two cases with SIRA where, upon investigation, it was found that another party was responsible for the CTP claim and the other party subsequently reimbursed the scheme so the cost was not borne by motorcycle policy holders.

In taking out insurance policy holders are authorising insurance companies to act on their behalf. In many cases the insurance companies do not pursue claiming costs from other insurances companies or other at fault/liable road authorities. Not recovering cost from another party is commonly referred to as 'Knock for knock'. This knock-for-knock approach should not be applied to CTP as it is policy holders who ultimately bear the cost, not the party responsible for the crash and injuries. In many cases it is relatively easy to determine and assign responsibility for a crash that was caused by a road defect that the road authority had a responsibility and duty of care under the Safe System approach to make safe.

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