

**INQUIRY INTO 2020 REVIEW OF THE COMPULSORY
THIRD PARTY INSURANCE SCHEME**

Organisation: The Law Society of New South Wales

Date Received: 11 December 2020



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:RHap2000921

10 December 2020

The Hon Wes Fang MLC
Committee Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House, Macquarie Street
Sydney NSW 2000

By email: law@parliament.nsw.gov.au

Dear Mr Fang,

2020 Review of the Compulsory Third Party insurance scheme – supplementary submission

The Law Society of NSW welcomes the opportunity to provide a supplementary submission to the Standing Committee on Law and Justice's (Standing Committee) review of the NSW Compulsory Third Party (CTP) scheme, focusing on the six-month liability period under the scheme, specifically the period claimants are entitled to claim benefits irrespective of fault. The Law Society's Injury Compensation Committee has contributed to this submission.

At-fault claimants

Generally, we consider that the six-month liability period for statutory benefits for at-fault, or mostly at-fault, claimants is appropriate. Ideally, injured road users should receive all the treatment and care they need to recover. However, we understand that this may not be feasible in the context of the current CTP insurance framework.

Not wholly or mostly at-fault claimants

We consider the main issue with the six-month liability period for people who are not wholly or mostly at fault arises once a dispute develops. In our members' experience, some insurers appear to apply unreasonably high levels of contributory negligence, without understanding that they bear the onus of proving who is wholly or mostly at-fault. During the dispute, a claimant can be cut off from their statutory benefits (noting the six-month liability period), leaving many claimants without monetary or treatment support.

We suggest that an option to address this issue would be to extend access to statutory benefits while a dispute is underway. As raised in our original submission in relation to minor injury disputes, we similarly suggest that there be an ability to stay an insurer's decision as to liability, with statutory benefits to continue, until the dispute is determined.

We also consider the Government should consider mechanisms to reduce scheme friction and unnecessary delays, while simultaneously ensuring that injured people (specifically those not

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809
E lawsociety@lawsociety.com.au



wholly or mostly at-fault) are given the support they need to recover. We consider a reduction in scheme friction might address the current issues experienced by those claimants whose benefits are cut off while a dispute is on foot and would also assist in having matters resolved more efficiently if our recommendation above is adopted.

Insurer internal reviews

One mechanism to reduce scheme friction would be the removal of the requirement for claimants to seek an internal review of an insurer's liability decision before progressing to the Dispute Resolution Service (DRS). We note, based on the most recent statistics SIRA has provided, that 29% of insurer decisions on fault are overturned on internal review, while 66% of insurer internal review decisions on fault are overturned by DRS.¹

Noting these statistics, and that the internal review process often leads to delays, we consider the legislation should be amended to give a claimant a choice to proceed straight to the DRS for a review of the liability decision, rather than requiring the claimant to engage with this process first.

Access to police reports

The Law Society continues to hold concerns that there are not enough initiatives currently in place to educate police about the CTP scheme. In our members' experience there are issues with the support police provide both immediately post-accident and during subsequent engagement in relation to access requests to relevant information and reports. Discussions around liability are often stalled due to lawyers' inability to obtain relevant documentation, including police reports.

We suggest that SIRA be encouraged to develop a liaison group with the NSW Police Force to canvass issues. We consider this would lead to improved police understanding of the scheme and early production of limited and relevant documentation (within reason) to assist in decision-making.

Minor injury disputes

While we understand the purpose of this current call for submissions is to consider specifically the period claimants are entitled to claim benefits irrespective of fault, we note that we raised a number of issues in our original submission in relation to the period claimants are able to access statutory benefits where there is a dispute about a minor injury determination, and we draw your attention to those comments in the context of this further query.

Thank you again for an opportunity to provide a supplementary submission to this review.

Yours sincerely,

Richard Harvey
President

¹ SIRA, "CTP Insurer Claims Experience and Customer Feedback Comparison", 30 June 2020 <https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/909256/CTP-insurer-claims-and-experience-and-customer-feedback-comparison-June-2020.pdf>.