



Standing Committee on Planning,
Environment and Territory and Municipal
Services Inquiry into Vulnerable Road
Users

Date: 24 October 2013

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1. Introduction

1. The Society appreciates the opportunity to provide this submission to the Standing Committee on Planning, Environment and Territory and Municipal Services Inquiry into vulnerable road users.
2. The Society would be pleased answer any questions at a public hearing if invited to attend.

A) An examination of national and international best practice approaches to protecting and encouraging vulnerable road users, including through regulation, infrastructure, design, education and funding arrangements.

3. The Society considers that the central question to be answered in respect of this issue is how road users can be encouraged to make the roads safer for those most at risk, such as cyclists and pedestrians.
4. The Society is committed to working with others to reduce the number of accidents in the Territory, particularly through the exploration of more effective preventative measures. Although the primary focus should be upon implementing strategies to prevent injury to such vulnerable road users, it is also vital that there are effective regulatory systems in place to help those injured on the roads get back to health.
5. The Society is of the opinion that an important part of this is a supportive third-party insurance regime which provides a strong rehabilitation emphasis but also provides proper compensation for pain and suffering. The Society would be concerned about the introduction of any scheme that would disenfranchise the rights of the most vulnerable road users. Any introduction of a 'no-fault' scheme that included reducing entitlements to compensation would affect vulnerable road users most seriously, as they are rarely at fault.
6. Currently Section 72 of the *Road Transport (Third-Party Insurance) Act 2008 (ACT)* provides no fault payment of medical expenses of up to \$5,000.00 with early notification.
7. This is an important first step although we submit that the legislation is drafted in such a way as to unintentionally disenfranchise some vulnerable users such as cyclists and pedestrians. Section 72(c) should be amended to allow a claim against the third-party insurer of the other vehicle.

8. An effective third-party insurance scheme is an essential protective safety net to ensure that the most vulnerable road users are not further exposed in terms of their health or financial welfare in the event of an accident. The Society suggests that it is incumbent on the ACT Government to ensure there are suitable protective measures in place for all road users in the Territory.
9. The Society also considers that better education of all road users is required to protect those who are most vulnerable. The Society considers that education is required in two contexts.
10. The first, and most important, is education on how to prevent accidents occurring. With the increasing prevalence of on-road cycle lanes and the proposed introduction of light rail in the Territory, education and awareness is required to protect cyclists, pedestrians and all road users generally.
11. Attention should be drawn in an appropriate way to the potential risks that arise as a result of these new road measures. Some drivers, particularly new drivers, may not have had exposure to such road measures and it should be mandatory for all drivers to fully understand their responsibilities when confronted with such situations. In terms of education measures to prevent accidents it is important that as part of the "L plate" test cycle lanes and pedestrian crossways are included in the initial test.
12. The second context in which better education is required is in relation to road users who are unfortunate enough to be in an accident. It is the experience of the Society and its members that the public are not fully aware of their legal rights and responsibilities in relation to accidents on the road, including rigid time limits imposed by legislation. Indeed, many road users only become fully aware of these issues after the event of an accident, and sometimes when it is too late.
13. The Society considers that better education should be more readily available to road users on their rights and responsibilities in respect of road safety. Further to this, the Society considers that any major proposed reforms to road safety regulations and third-party insurance laws should be made clear to the community in a generally understandable way. There should be full consultation about such proposed changes. Indeed, the Society considers that it is imperative that all road users are keep abreast of regulatory reforms which may affect their rights and responsibilities.
14. The no fault provisions could also be more broadly publicised during registration renewals.

B) Gathering evidence from the community and experts about issues faced by vulnerable road users and potential improvements.

i) Community and Experts

15. The Society strongly agrees that collective expertise and community involvement should be better harnessed to protect vulnerable road users in the Territory.
16. To this end, the Society would like to bring to attention of this Inquiry the *Standing Committee on Public Accounts Inquiry into Road Transport (Third-Party Insurance) Amendment Bill 2011, April 2012, Report 22*.¹ Recommendation 13 of that report stated:

The Committee recommends that the ACT Government establish a consultative working group comprised of appropriate experts in CTP insurance scheme design from all sectors to propose an alternative scheme or model that supports a culture in the scheme of all stakeholders working to the best advantage of the scheme itself. The working group, amongst other things, should consider:

- (a) alternative compensatory mechanisms to damages for non-economic loss (NEL) that have the effect of restoration for injured people, and*
- (b) alternative mechanisms for controlling premium costs other than limiting access to common law.*

17. Following this report the Society wrote to the ACT Government indicating our support of this recommendation. (Copy attached at **Attachment A**) The Society stated that:

Regrettably changes to third-party insurance have tended to be characterised by high levels of conflict and disputation. The Government, the people of Canberra, the legal profession and the insurance industry share a common goal in ensuring a fair, efficient and affordable CTP system that benefits those injured in motor vehicle accidents especially those who are injured through no fault of their own.

We would welcome an ongoing Consultative/Advisory Group consisting of representatives of the Government, the insurance industry, the legal profession (who have particular expertise in seeing those injured and in dispute resolution), the medical profession and representatives of the citizenry (motorists, ACTCOSS) to provide ongoing advice on matters raised by the Committee and on the scheme generally.

18. The Society suggests that the recommendation of the Public Accounts Committee be revived and this consultative group be established with the extended scope of protecting vulnerable road users. The Society suggests that the membership of such a consultative group should be extended accordingly to include stakeholders with detailed knowledge about vulnerable road users.

¹ Available at

http://www.parliament.act.gov.au/_data/assets/pdf_file/0020/371513/PAC22_Road_Transp_Bill.pdf

ii) Evidence and Statistics

19. The Society suggests that it is imperative that before any statutory reforms are introduced in relation to the way road users are cared for in the event of an accident, qualitative statistical analysis should be provided on the likely impact of such changes.
20. In the past this has been difficult because of the commercial demands of the single insurer. However now the ACT maintains its own data there should be annual reporting on accidents including types of accidents, locations (including black spots) and injuries. Further data concerning aggregated claims costs broken down by age and injury should be publicly available for scrutiny to ensure transparency for the purposes of consultation and scheme design.
21. The Society suggests that full and frank disclosure, where possible, is essential in relation to any proposed reforms that seek to impose regulatory changes which may impact on the health outcomes of road users.
22. It is the Society's experience that such reforms tend to result in people "falling through the cracks" and impact most severely on vulnerable road users. The Society considers that there is an important social responsibility to take reasonable steps to actively protect the most vulnerable rather than making them increasingly exposed as the result of legislative change.

c) Recommending changes to be made in the ACT to better protect and encourage vulnerable road users.

23. The Society recommends the following changes:
 - i. The protection of vulnerable road users through better education and road safety awareness;
 - ii. Further information be made available on the legal rights and responsibilities of all road users;
 - iii. Appropriate community education and awareness of proposed changes to road safety laws and ancillary issues;
 - iv. A consultative working group comprised of appropriate persons as recommended by the Public Accounts Committee with the extended remit of protecting the safety and wellbeing of vulnerable road users; and,
 - v. Greater disclosure of statistics and research carried out in relation to proposed legislative reforms relevant to the safety and wellbeing of all road users.

24. In addition to this, the Society suggests that it is crucial that a supportive third-party insurance regime remains in place in the Territory to protect all roads users, and particularly those who are most vulnerable.

4 July 2012

Mr Andrew Barr MLA
Treasurer
ACT Department of Treasury
GPO Box 158
Canberra, ACT 2601

Dear Mr Barr,

Response to the Standing Committee on Public Accounts Inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011

The Law Society of the Australian Capital Territory, the ACT Bar Association and the ACT Branch of the Australian Lawyers Alliance take this opportunity to respond to the Standing Committee's report into this legislation dated April 2012.

Before doing so we wish to put on record our appreciation of the considered and thoughtful report of the Committee. It highlights the value of the ACT Assembly's Committee structure in dealing with complex legislative policy issues to produce better policy outcomes.

In response to the specific recommendations, we advise as follows;

Recommendation 1

The Committee recommends that the 28 day timeframe for notice to be given to the injured person's insurer, as required under section 72 of the Road Transport (Third-Party Insurance) Act 2008, be amended to provide some discretionary extension where there may be a good reason why a crash victim has not been able to give the notification within that time.

We agree as there are circumstances in which there has been good reason why a crash victim may not have been able to give notification within time.

Recommendation 2

The Committee recommends that the ACT Government (and the CTP Insurer) should more widely promote the availability of early payment for treatment of motor crash injuries as provided for under section 72 of the Road Transport (Third-Party Insurance) Act 2008.

We agree and believe the scheme could be promoted by providing information at the time of insurance renewals. Anecdotally, there seems to be a greater awareness of the scheme with more injured victims complying with the eligibility requirements for the scheme.

Recommendation 3

The Committee recommends that the ACT Government review the provisions concerning compulsory conferencing in the Road Transport (Third-Party Insurance) Act 2008 to determine a more practical approach.

We agree and refer you to the suggestions made at paragraph 21 of our submission to the Inquiry.

Recommendation 4

The Committee recommends that the ACT Government in response to this report should either: (a) detail an alternative mechanism to using the AMA Guides as a definitive threshold for determining non-economic loss impairment; or (b) detail how the use of AMA Guides will be modified to address the issues raised concerning their sole use as a measure of impairment for non-economic loss.

As outlined in our submissions, we are opposed to thresholds as they are inevitably arbitrary and produce injustice. This injustice is disproportionately experienced by children, retirees, carers and those not working for whom general damages for non-economic loss is a more major component of their loss. There are fairer, better ways to produce greater certainty in the award of damages for non-economic loss and to reduce the costs of smaller claims.

The AMA Guides make it clear that they are not intended for the purposes of assessing compensation and despite the claims that they are “scientific” the Guides remain a poor means of assessing non-economic loss and impairment. In practice the question of general damages is usually negotiated and resolved by agreement.

Our preferred approach is that adopted in the United Kingdom. Since 1992 the Judicial Studies Board produces “Guidelines for the Assessment of General Damages in Personal Injury Cases”. Currently it is in its 9th Edition and it produces useful guidelines for assessors whilst maintaining discretion as each case is individual.

The hard work would be creating a first edition for the ACT but thereafter it could be readily updated. Currently Master Harper is scheduled for retirement in 2013 and, if not re-appointed, he might be commissioned to produce a first edition in consultation with members of the ACT Judiciary, the legal profession and the insurance industry.

Recommendation 5

The Committee recommends that the statutory discount rate, as per section 155A of the Road Transport (Third-Party Insurance) Act 2008, remain at three per cent.

We agree particularly in the context of the current market.

Recommendation 6

The Committee recommends that the ACT Government, to the extent that this work does not already take place, should keep a watching brief on all jurisdictional reviews of compulsory third-party insurance schemes.

We assume this already occurs. In particular, we believe that there is much to be learned from the Tasmanian jurisdiction which has successfully been able to combine a no fault scheme with full fault based damages whilst maintaining premiums at a reasonable level.

Recommendations 7 and 8

The Committee recommends that the ACT Government advise the ACT Legislative Assembly of: (a) how it intends to address the issue of lifetime care for people catastrophically injured, in the context of the development by the Commonwealth of proposals regarding the introduction of an National Disability Insurance Scheme (NDIS); or (b) in the absence of a NDIS, how it will examine the feasibility of lifetime care for people catastrophically injured in motor vehicle crashes.

The Committee recommends that, if the National Disability Insurance Scheme (NDIS) does not proceed in a timely fashion, the ACT Government should examine the feasibility of introducing a no-fault lifetime care scheme for people who suffer catastrophic injury.

We are pleased to note that the National Disability Insurance Scheme (NDIS) seems to be proceeding in a timely fashion.

It is our view that one scheme, the NDIS, should cover those who are extremely seriously disabled and those who are catastrophically injured (i.e. regardless of cause) particularly where no other safety net scheme exists. Although this should be funded by Federal Government revenue (we are inclined to support a levy but are not fixed on this view) it may be that motorists and others may also be levied.

In our view it is too early to make jurisdictional changes until the dimensions of the NDIS scheme become clearer. We would welcome the opportunity to work with Government on the issue of care for catastrophically injured motorists if the NDIS falters.

Recommendations 9 and 10

The Committee recommends that after considering the findings of the: (i) Standing Committee on Public Accounts inquiry into the Road Transport (Third-Party Insurance) Amendment Bill 2011; (ii) statutory review pursuant to section 275 of the Road Transport (Third-Party Insurance) Act 2008; and (iii) NSW Government's internal review of the NSW CTP insurance scheme, the ACT Government may choose to bring forward or propose reform to the ACT CTP Insurance Scheme—but that the Road Transport (Third-Party insurance) Amendment Bill 2011, as presented, should not be supported.

The Committee recommends that the Road Transport (Third-Party Insurance) Amendment Bill 2011, in its current form, should not be supported by the ACT Legislative Assembly.

We strongly agree.

Recommendation 11

The Committee recommends that any significant changes to NSW CTP insurance legislation should automatically trigger an internal Government review of the ACT CTP insurance legislation. The conclusions of these reviews should be tabled in the ACT Legislative Assembly.

Although the process of regular review is appropriate we do not believe that the ACT scheme is or should be linked to the very different developments in NSW.

Recommendation 12

The Committee recommends that the ACT Government should place greater emphasis on achieving 'Vision Zero' within the transport system.

Having seen the tragedy and suffering involved for those injured on the roads and for their families first-hand, the legal profession strongly supports measures that will reduce the number and severity of motor vehicle accidents.

Recommendation 13

The Committee recommends that the ACT Government establish a consultative working group comprised of appropriate experts in CTP insurance scheme design from all sectors to propose an alternative scheme or model that supports a culture in the scheme of all stakeholders working to the best advantage of the scheme itself. The working group, amongst other things, should consider:

- (a) alternative compensatory mechanisms to damages for non-economic loss (NEL) that have the effect of restoration for injured people, and
- (b) alternative mechanisms for controlling premium costs other than limiting access to common law.

Regrettably changes to third-party insurance have tended to be characterised by high levels of conflict and disputation. The Government, the people of Canberra, the legal profession and the insurance industry share a common goal in ensuring a fair, efficient and affordable CTP system that benefits those injured in motor vehicle accidents especially those who are injured through no fault of their own.

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We trust this is of assistance in your deliberations and look forward to the Government response to the Committee's report.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Noor Blumer', written over a horizontal line.

Noor Blumer
President

Cc

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