

NEW SOUTH WALES MOVES TO HYBRID NO-FAULT AUTO INJURY CLAIMS

Beginning last month, motorists renewing their compulsory third-party injury auto insurance in Sydney and other urban centres in New South Wales (NSW) enjoyed a reduction of almost 20% in their insurance premiums. Residents in more rural areas, who paid less for similar injury coverage, saw a smaller reduction in premiums.

The changes move the compulsory third-party auto insurance coverage scheme in NSW further along the continuum to a hybrid no-fault model, compared to the hybrid tort model that had been in place for the last 18 years.¹

Auto insurance, both injury and property damage, in NSW is provided by private insurers with rates based on market competition.

In 2013, responding to growing public concern about the rapid rise in premiums resulting from increasing injury claims costs, the state government proposed a form of no-fault coverage modelled on the workers compensation system of payments. This failed to garner sufficient political support, and the changes were allowed to lapse.²

Rising costs and premiums in 2015 and 2016, together with charges of excessive profits made by the private insurers,³ caused the government to undertake a new round of stakeholder and public consultations to discuss systemic reform the insurance scheme. The growth in the number and cost of legally represented minor soft tissue injury claims was identified as a major contributor to the rapid increase in premium costs.⁴

In the spring of 2017, the legislature adopted the new legislation followed by the necessary regulations. The objectives of the new scheme are:

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

¹ Compulsory third-party liability auto insurance was instituted in the state of New South Wales in 1942. Pain and suffering claims for minor injuries were already prohibited under the old scheme.

²

<https://www.parliament.nsw.gov.au/la/papers/DBAssets/tabledpaper/webAttachments/37532/Motor%20Accidents%20Authority%20annual-report-2014-15-1544.pdf>

³<http://www.abc.net.au/news/2017-03-07/green-slip-changes-with-consumers-to-pay-less/8331764>

⁴ https://www.sira.nsw.gov.au/_data/assets/pdf_file/0018/95400/CTP-Reform-options-paper-final.pdf p. 9. NSW has the highest premiums for third-party liability coverage in Australia.

The government consultation material stated that only 45% of premium revenue was being paid to claimants, with almost 35% going to insurers' expenses and profits and 18% going to legal fees and investigation reports.⁵

Under the new plan, the government expects that 60% of the premium revenue will go to claimant benefits, and the majority of those benefits will be paid to the more severely injured.⁶ This will be achieved by adopting a defined benefit payment for injuries which aligns with the benefits paid through the state's workers compensation system. This eliminates the finding of fault, and the often-lengthy negotiations to determine an appropriate lump sum financial settlement.

The government believes that paying most claims on a regular periodic basis as compared to a lump sum will significantly reduce the incentive to exaggerate claims or engage in fraud.

The other major benefit for claimants and insurers is a faster time to receive compensation, and a reduction in the unpaid claim liability faced by the insurers.

STATE of VICTORIA IS NO-FAULT

Part of the reason for the change in the auto insurance model in NSW was the lower rates for comparable coverage in the state of Victoria⁷, where the compulsory third-party injury insurance scheme has been administered by a single public provider for over 30 years.⁸ Additional injury liability and all property damage insurance is provided by private insurers.

The insurance scheme, which includes trains and trams, is no-fault based, and compensation includes the reasonable cost of medical treatment, rehabilitation and disability services, wage loss, home care support and death benefits. Those suffering from a serious injury may seek file a common law claim to seek a pain and suffering payment.

The cost of the injury coverage benefits is funded from the vehicle registration fee.⁹ In 2016/17 approximately \$1.35 billion was paid to support those injured in crashes, and the Traffic Accident Commission (TAC) also funds road safety and community awareness programs. The TAC paid a dividend of \$79.5 million to the government in 2016/17.¹⁰

⁵ Ibid., page 6.

⁶ Position Paper page 3-4. It stands to reason that if the total benefit payment is reduced through reductions to the less serious claims the amount paid to the more seriously injured will increase as a percentage.

⁷ The population of Victoria is approximately 5.8 million compared to approximately 7.5 million for New South Wales.

⁸ <https://www.greenslips.com.au/ctp-insurance-vic.html>

⁹ <http://www.tac.vic.gov.au/about-the-tac/our-organisation/transport-accident-charge>

¹⁰ http://www.tac.vic.gov.au/_data/assets/pdf_file/0004/235165/6747_TAC_AnnualReport_2017_web.pdf

NEW ZEALAND IS NO-FAULT

The compulsory third-party auto injury insurance in New Zealand is also primarily a no-fault system, with insurance covering property damage provided by private insurers. The Accident Compensation Corporation, a Crown corporation, administers the compulsory injury scheme, as well as the workers compensation system.¹¹

As a no-fault system the right to sue for crash injury damages, including pain and suffering, is limited to serious injury.

Injury benefits are funded through a portion of the gasoline tax, and a portion of the motor vehicle license fees.

The finances for the traffic injury plan appear stable, with a comfortable margin between assets and unpaid claim liabilities.

LESSONS FOR BC?

The public consultation undertaken by the government of NSW could provide a useful model for the BC government as it assesses the future auto insurance model for ICBC. The four objectives have been cited as goals for our compulsory auto insurance system.

While NSW has moved from a hybrid tort to a hybrid no-fault system, the elimination of suits for pain and suffering for most forms of injury seems to have been ruled out by the current minister responsible for ICBC.

Attorney General Eby has strongly hinted that legislation will be tabled during the spring session to cap pain and suffering awards for minor soft tissue injuries. This will move ICBC slightly along the tort to no-fault continuum and will result in some claims costs savings. The real question is whether the savings will be enough to eliminate the structural deficit in the Basic program.

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¹¹ <https://www.acc.co.nz/assets/corporate-documents/acc7811-annual-report-2017.pdf>

