



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref:JDhm729805

17 May 2013

The Hon Greg Pearce MLC  
Minister for Finance and Services  
Level 36 Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister

### **Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme**

I am writing to express my concern about the *Motor Accident Injuries Amendment Bill 2013*, introduced in the Legislative Assembly on 9 May. The Bill has been reviewed by members of the Law Society's Injury Compensation Committee who found its provisions to be unfair, complicated and costly to administer.

In the absence of any response from you to the legal profession's alternate proposal, it remains entirely unclear to us why you would wish to proceed with this legislation. The legal profession's proposal has been independently costed to reduce premiums without cutting off benefits or assuming the risks of an untested privately underwritten no-fault scheme.

Notwithstanding your repeated public criticism of the profession, the Law Society continues to make itself available to work with government to achieve a fair and sustainable CTP scheme for NSW. In the meantime, we offer the attached submission prepared by the Injury Compensation Committee which sets out our most serious concerns about the Bill.

Please contact my office on 9926 0216 should you wish to discuss this submission or the alternate proposal.

Yours sincerely

John Dobson  
**President**

## **Motor Accident Injuries Amendment Bill 2013**

### **1. Benefits will be cut off**

Almost all claimants who have been injured through no fault of their own will have their statutory benefits cut off after five years because they do not exceed the 10% permanent impairment threshold for continuing treatment and care or the 20% threshold for loss of earnings. Many people suffer serious injuries which prevent them from working or result in recurring medical expenses well beyond five years. However, few of these severely injured people will be found to have exceeded the 10% and 20% thresholds for continuing statutory benefits. It is also unclear why different thresholds have been selected, a distinction for which, in the absence of an explanation, there appears to be little policy justification.

### **2. Children and parents will be worse off**

Only children who are 15 years or older will be eligible to receive statutory benefits for loss of earnings. Even if eligible, the legislation requires them to have finished secondary school before the benefits become payable. Children will also be subject to the same five year cap on statutory benefits. This means that unless the child has suffered more than 20% permanent impairment, they will only receive benefits for the balance of the five year period after they would have finished secondary school. The Bill also fails to address the position of children who had intended to leave school after year 10.

Children are not the only members of the family who will be worse off. Parents who take more than 18 months out of the workforce to care for their children will become ineligible for statutory benefits for lost earnings. People older than retirement age, forced to work for financial security, will also be ineligible.

### **3. Motorists injured at work will be worse off**

A person will not be entitled to statutory benefits under the CTP scheme if compensation is payable under the workers compensation scheme (unless liability is wholly denied). This means that if benefits are cut off at or before 130 weeks following a work capacity decision under the new workers compensation legislation, the injured person cannot claim for benefits under the CTP scheme. As a result, they will only receive benefits for up to two and a half years instead of five years.

### **4. Insurers don't have to tell the whole truth**

The Bill imposes a duty on both the insurer and the claimant to act towards the other with the utmost good faith. For the injured person, this includes the duty to disclose all relevant information in a timely manner, including reports by health professionals. However, for the insurer, the duty to disclose does not extend to all relevant information. Rather, the insurer is only required to provide the claimant with details of the information (including reports by health professionals) relied on to make a decision on a claim. This means that if a report is not relied on, it does not have to be provided, a position which could be abused by insurers to bury reports contrary to their interests.

## **5. Injured people will not get legal advice**

The virtual exclusion of lawyers from the statutory benefits scheme will result in a stark imbalance between injured people and insurers. The scheme is already complex and will be made more so by the Bill. While insurers are assisted by experienced claims officers and employed solicitors, ordinary people, also dealing with their injuries, will struggle to prepare their claim and navigate the dispute resolution process. In a disputed case, the claimant will need to gather evidence, lodge a claim, request an internal review within 30 days and apply to CARS within 30 days. This involves complex provisions including in relation to earning capacity, and also requires access to appropriate specialists of whom the appropriate questions will need to be asked.

There is also potential disadvantage for an unrepresented claimant if a claim for statutory benefits is to be redeemed (ie exchanged for a single lump sum payment). This can be achieved by agreement between the parties without reference to a claims assessor or independent advice for the claimant. An unrepresented claimant may also be disadvantaged if a claim is unresolved after two years and is referred to a claims assessor to decide what action is necessary to resolve the claim. The assessor can make directions, without the consent of the injured person, including for the making of a damages claim or the redemption of a claim.

It is noted that the payment or recovery of legal costs for statutory benefit claims may be permitted by the regulations. It is not possible to gauge the full level of disadvantage to claimants without knowing the content of any proposed regulations. Any provision that excludes recovery of legal costs cannot be considered separately to these regulations.

## **6. NSW can't afford it**

The new system will be cumbersome and expensive to administer. More resources will be needed to deal with determinations of earning capacity and to process the estimated 7000 additional claims. Insurers will face new costs, putting at risk the reduced premiums promised by the government. These will include additional structures to deal with the recovery of damages between insurers. Even the Insurance Council of Australia recognises in its April submission that "any reductions in premiums under a defined benefits scheme will necessarily be utilised, at least in part, to fund a no fault scheme." The MAA will have to increase resources, including to provide support for unrepresented claimants. CARS will need full time claims assessors and the Independent Review Officer will need to be established. In this context, it is of continuing concern that the government has not released the costings for its proposals.