

**A Background Paper**

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**CRASHING INTO DEBT:**

**FINANCIAL HARDSHIP CAUSED BY HAVING A MOTOR VEHICLE  
ACCIDENT WITHOUT AT LEAST THIRD PARTY PROPERTY INSURANCE**

## **Introduction**

Many Victorians drive on our roads without motor vehicle insurance. If these motorists cause damage, to either private or public property while behind the wheel, they will be held financially liable for that damage. As a result many motorists each year fall into financial hardship. This financial hardship can be avoided by having third party property insurance (TPPI).

This Background Paper will illustrate the problem of financial hardship caused by having a motor vehicle accident without at least TPPI using case studies. It will explain what TPPI is and how it works and outline the various reasons motorists do not have it. This report will also identify the role of regulators in improving access to TPPI for people on low incomes and improving resolution of disputes for third parties experiencing financial hardship. Consideration will also be given to the notion of compulsory TPPI. This Background Paper will also provide recommendations aimed at addressing the above problem.

## **Methodology**

This Background Paper was compiled using information in the form of reports and submissions by consumer groups to both government and the insurance industry. This

report also uses information available on insurance industry websites and accounts from financial counsellors at the Banyule Community Health Centre and solicitors at the West Heidelberg Community Legal Service.

### **The problem**

#### ***Case Study 1***

Jason never bothered to get TPPI because he thought his car was not worth the high price of insurance premiums. One day while driving to university, Jason swerved off the road to avoid a cat. He managed to miss the cat but hit a parked car instead. The owner of the parked car had comprehensive insurance and was covered for the damage Jason caused. However, the owner's insurer took action to recover its costs for the claim from Jason. Jason had no choice but to agree to pay the owner's insurer weekly instalments until the debt was repaid. This meant Jason could not afford to fix his own car and had to rely on public transport to get to university and work.

#### ***Case study 2***

Pamela was new to Australia. She assumed that when she paid her car registration in Victoria that she was covered for both third party injury and third party property insurance, as was the case back home in the USA. To Pamela's surprise she only received compensation for her medical expenses for a broken arm and was not covered for the damage she caused when she knocked down a

streetlight. Pamela could not pay the subsequent debt. Because she had no assets or income. Pamela had to bankrupt.

### **Case Study 3**

Tanya brought a new car for work from a dealership. Although the car was under finance she did not sign the insurance form because the dealer looked untrustworthy. Before Tanya had a chance to organise her own insurance she was hit by another motorist who was uninsured and could not afford to pay her damages. Tanya had no choice but to give up on reclaiming her loss. She is now without her car but still making loan repayments to the car dealership.

The above case studies illustrate the problem of financial hardship caused by having a motor vehicle accident without at least TPPI. All three case studies are similar to those situations dealt with by individuals, families, solicitors and financial counsellors.

### **What is third party property insurance and how does it work?**

TPPI is the most basic of three types of motor vehicle insurance provided by insurers. TPPI covers claims against the insured by other persons for damage you cause to their property.<sup>1</sup> Third party property insurance also includes the Uninsured Motorists Extension (UME). This covers repairs to a limited amount, but only when the other driver caused the accident, can be identified and is uninsured.

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<sup>1</sup> Fitzroy Legal Service, *The Law Handbook*, 2006 pp. 889

TPPI is obtained through contracts with insurers. A premium is the price paid for a contract.<sup>2</sup> When an insurer pays a claim the insured will also be required to pay an excess. An excess is the contribution a you make towards the settlement or payment of any claim.<sup>3</sup>

When making a claim you must, amongst other requirements, establish the insured's loss is covered by the insurance contract.<sup>4</sup> It is important not to void the insurance contract by not disclosing all required information on application. An insurer can forgo liability if they can prove that they would not have accepted the application had they known the full driving history.<sup>5</sup>

### **Reasons motorists do not have at least third party property insurance**

There are a range of economic and social reasons why motorists do not have at least TPPI. A 1990 survey by an insurance company as part of a working paper submitted to the Minister of Transport in Victoria<sup>6</sup> stated that the three major reasons motorists were not insured was that they could either not afford insurance, they did not believe their vehicles were worth the price of the premium or they believed they were already insured

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<sup>2</sup> Fitzroy Legal Service, *The Law Handbook*, 2006 pp. 878

<sup>3</sup> Fitzroy Legal Service, *The Law Handbook*, 2006 pp. 878

<sup>4</sup> Fitzroy Legal Service, *The Law Handbook*, 2006 pp. 882

<sup>5</sup> *Insurance Contracts Act 1984* s 28 (3) (Cth)

<sup>6</sup> Report referred to by Amery, 2nd reading *Motor Accidents (Third Party Property Insurance) Bill*, NSW Legislative Assembly Hansard, March 27 1992 article 2

by virtue of the compulsory third party personal injury scheme.<sup>7</sup> These results highlight both an issue of affordability and education.

### **Affordability**

Although TPPI is the most basic form of car insurance provided by insurers it is out of reach for people on low incomes. It is the initial cost of the premium that most motorists claim they cannot afford.<sup>8</sup> Premiums vary depending on the age, experience and sex of a motorist as well as their driving history and the type of car they drive. Of particular concern is the fact that the highest premiums are paid by those deemed by insurance companies to be most likely to make a claim. This creates an unfavourable situation where those most in need of insurance are priced out of the market.

### **Recommendation 1**

The introduction of a standard TPPI premium for all motorists regardless of age, experience, sex, driving history and type of car. This will mean those in need of insurance will not be priced out of the market. Insurers will still be capable of negating risk by adjusting excess amounts for different motorist as is the current situation.

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<sup>7</sup> Traffic Accident Commission (TAC) Levy

<sup>8</sup> Sheehan G and Renouf G, *Risk and Reality: Access to General Insurance for People on Low Incomes*, June 2006 pp. 7

## ***Recommendation 2***

The introduction of a discount on insurance for motorists who qualify for an Australian Government Health Care card. This will mean people on low incomes will not be disadvantaged when obtaining insurance and will be less likely to risk driving uninsured. It is worth noting that motorist on low incomes are often protected from creditors. It is therefore in insurer's best interest to provide people on low incomes with TPPI, as it is often unlikely they will receive all the costs they claim from an uninsured third party.

## **Education**

Many people do not understand the consequences of not being insured.<sup>9</sup> This lack of understanding is a combination of both an unrealistic assessment of risk and the undervaluing of property.<sup>10</sup>

## ***Recommendation 3***

The introduction of an education campaign to inform all motorists about the importance of TPPI. This campaign should be funded by both the state government and the insurance industry. The education campaign should take the

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<sup>9</sup> Sheehan G and Renouf G, *Risk and Reality: Access to General Insurance for People on Low Incomes*, June 2006 pp. 12

<sup>10</sup> Sheehan G and Renouf G, *Risk and Reality: Access to General Insurance for People on Low Incomes*, June 2006 pp. 11-13

form of radio and television advertisements. Booklets containing similar information should also be sent out with car registration.

### **The Insurance Council of Australia**

The Insurance Council of Australia (ICA) represents the interest of the Australian general insurance industry.<sup>11</sup> All members of the ICA must adhere to the general insurance code of practice. The code of practice sets out agreed standards and responsibilities for companies and organisations in the insurance industry<sup>12</sup> and provides some scope for reform.

A new code of practice was introduced on the 18th July 2006. The new code is a result of submissions made by both business and consumer groups as well as the insurance industry. These submissions resulted in 36 recommendations made by former Australian Securities and Investment Commission (ASIC) Chairman David Knott in an independent report.

One of the recommendations made by Knott was for the ICA to identify additional means for recognising the commitment of the industry to dealing with issues of financial hardship and compassion.<sup>13</sup> This came as a result of criticism by consumer groups that the old code did not commit the insurance industry with specific protocols when dealing

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<sup>11</sup> Insurance Council of Australia website, *About Insurance Council - Our Role*, <<http://www.insurancecouncil.com.au/Our-Role/default.aspx>>

<sup>12</sup> Code of Practice website, *About the Code - What is a code of Practice?*, <<http://www.codeofpractice.com.au/AbouttheCode/WhatisaCodeofPractice/tabid/135/Default.aspx>>

<sup>13</sup> Knott D, *Review of Submissions to the Insurance Council of Australia in Respect of a Draft Code of Practice*, October 2004 pp. 16

with third parties who are confronting genuine financial hardship in meeting insurance claims.<sup>14</sup>

The result was section 3.10 to 3.12 of the new code of practice which deals specifically with financial hardship in third party recoveries.

Section 3.10 provides protocol for debt collection, namely the ACC and ASIC debt collection guideline.

Section 3.11 reads as follows:

If a person is experiencing difficulty repaying a debt due to illness, unemployment or other reasonable cause, and they reasonably expect to be able to discharge the debt if repayment terms are arranged, we will consider one of the following options:

- a) extending the period of repayment and reducing the amount of each payment due accordingly;
- b) postponing payments for an agreed period; or
- c) extending the period of repayment and postponing payments for an agreed period.

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<sup>14</sup> Knott D, *Review of Submissions to the Insurance Council of Australia in Report of a Draft Code of Practice*, October 2004 pp. 14

Section 3.12 states that the insurance industry, if unable to reach an agreement with a debtor will provide information about both complaint handling procedures and the existence of the Australian Financial Counsellors and Credit Reform associations.

These additions to the code of practice go as far as assisting those experiencing financial hardship as a result of having a motor vehicle accident without TPPI. However the new code of practice does not provide any remedy to the problem, namely more access to TPPI and is little known by claims officer within insurance companies and by their insured.

There is still a perceived unwillingness of the insurance industry to increase access to insurance. This is an attitude that financial counsellors do not understand. One financial counsellor commented that insurance companies would benefit from dealing with each other as opposed to chasing money from uninsured drivers.

It could be argued however that insurers will lose out if access to insurance was increased. By agreeing to increase access to insurance, insurers may be put in the position where they would have to lower their premiums and pay out more claims. This might not be as attractive as the current situation where an insurance company can pursue costs from an uninsured third party until bankruptcy. In this case, no one wins.

#### ***Recommendation 4***

A joint initiative by both consumer groups and the insurance industry into the expansion of the code of practice to include greater access to insurance.

## **Insurance Ombudsman Service**

The regularity body that could help address the issue of financial hardship caused by having a motor vehicle without at least TPPI is the Insurance Ombudsman Service. The Insurance Ombudsman Service (IOS) assists in resolving disputes between consumers and the insurance industry.<sup>15</sup> Although predominately set up to hear complaints by insured parties, the IOS has jurisdiction to consider some complaints made by uninsured third party motorist who are deemed liable for damage by an insurer and are therefore pursued for costs. This service can therefore reduce the likelihood of an uninsured party going to court.

In the 12 months leading up to May 2005 the IOS heard only 12 of these third party disputes.<sup>16</sup> This is due partly because of a lack of knowledge of the service by financial counsellors and legal centres and the \$150 charge for hearing a dispute.

### ***Recommendation 5***

Increased awareness by financial counsellors and legal centres about the service provided by the IOS. This could be achieved through information booklets distributed to health and welfare services, legal aid and community legal centres.

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<sup>15</sup> Insurance Ombudsman Service website –*About Us*,  
<<http://www.insuranceombudsman.com.au/pages/default.aspx?id=1&PageID=2>>

<sup>16</sup> Renouf G & Watson S, *Joint Consumer Group Submission to the Independent Review of the Insurance Ombudsman Service*, May 2005

## ***Recommendation 6***

The removal of the \$150 fee to hear an uninsured third party dispute. If this service is to provide some sort of relief to financial hardship caused by having a motor vehicle accident without TPPI it needs to be seen as accessible to people on low incomes.<sup>17</sup>

### **Should third party property insurance be compulsory?**

In the second reading of the proposed *Motor Accidents (Third Party Property) Bill*<sup>18</sup> member for Mt Druitt, Mr Richard Amery, outlined how compulsory third party property insurance would work in New South Wales. Although argued in 1992, it still stands as a good case for TPPI for NSW. The bill would have made it an offence to drive a vehicle that did not have at least third party property insurance. It would require that upon registration of a vehicle a motorist must declare, on the back of the registration form, the insurance company providing TPPI and the policy number. It was proposed that this be the method of declaration to save on insurer's administration costs. Motorists would be held liable for the information they provide and would have committed an offence by providing fraudulent information.

It is unlikely that such a system would work in Victoria. Firstly in NSW motorists obtain third party injury insurance through individual insurers. This means they are used to the

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<sup>17</sup> In 50% of the 12 cases heard in the 12 months before May 2005 this charge was waived.

<sup>18</sup> NSW Legislative Assembly Hansard, 27th March 1992, article 2

process of providing insurance details upon registration. In Victoria the TAC levy is automatic with registration.

A more effective scheme in Victoria could be the extension, under the *Transport Accident Act*<sup>19</sup> of the TAC to include TPPI as well as third party injury insurance. This means Victorians, upon registration, would be covered for both. Under the current injury scheme, the TAC will compensate victims for medical expenses above \$565. This policy could also work with property, with the TAC compensating damage exceeding \$565. This policy could effectively act as an excess. Such a scheme may be viewed by Victorians as an appropriate use of State revenue.

Currently, those who qualify for a health care card receive a discount on registration. This discount should continue to apply so that people on low incomes will be more able to afford the cost of registration coupled with third party injury and property insurance. Some financial counsellors believe that in order for this system to be successful, motorists will need the option to pay registration and insurance costs in monthly instalments.<sup>20</sup> This includes automatic docking of Centrelink payments. Although this may need greater exploration to ensure that an insured person and their family are deprived of sufficient income for their other necessary expenses.

This system, however, would not be without fault. Like the NSW proposal, it does not address the issue of affordability. The cost of registration would significantly increase. This may encourage less people to register their vehicles and risk driving unregistered.

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<sup>19</sup> 1986 (Vic)

<sup>20</sup> Discussion with financial counsellor 27th October 2006

This could create an even bigger problem in society as unregistered motorists would not be covered for any type of insurance. These motorists would also be exposing themselves to the risk of convictions and fines for driving an unregistered vehicle. More research is required to determine whether the introduction of compulsory TPPI would increase the number of cars with TPPI on Victorian roads.

### ***Recommendation 6***

The initiation of Victorian Law Reform Committee to investigate the introduction of compulsory TPPI. This report should conclude the State government's ability to expand the TAC to include TPPI.

### **Conclusion**

There has been little research into financial hardship caused by having a motor vehicle accident without at least TPPI in the past decade. This problem has, however, received recent attention from both consumer groups and the industry industry. Issues relating to financial hardship as a result of a third party claim have been somewhat addressed by the ICA. There is still however scope for improving access to insurance through the General Insurance Code of Practice. Only by increasing the incidence of insurance until all Australian vehicles are covered can the hardship and cost caused by the motor vehicles property damage be minimised.<sup>21</sup> This goal, in this author's opinion, is achievable. It would require the Insurance Industry agreeing to make insurance more affordable and increasing consumer groups and the insurance industry lobbying to increase education.

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<sup>21</sup> Bailey S, Liden S, Smith S, *Urgent Repairs Needed: Motor Vehicle Property Damage in Australia - A Victorian Case Study*, 2nd Edition, Federation of Community Legal Centres, Victoria 1989

Alternatively, this goal could be achieved through the introduction of compulsory TPPI. This would require more research into the ability of the State government to introduce such a scheme.

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