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South Australian Council of Social Service

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Submission on Compulsory Third Party Insurance

Dear Committee members

As the peak body for the community services in South Australia, the South Australian Council of Social Service (SACOSS) welcomes the opportunity to comment on the proposed changes to the South Australian Compulsory Third Party Insurance Scheme. While SACOSS does not claim any particular expertise in insurance law, the outcomes of any such scheme are of interest both because of our general mandate to advocate on behalf of vulnerable and disadvantaged South Australians and because many of our member organisations provide services to people who have suffered injuries or have disabilities arising from motor vehicle accidents.

Our starting point in considering the proposed changes is that any scheme should provide the best possible support for people with injuries and disabilities – and more generally that such support should be based on individuals' needs rather than being determined, as is currently the case to a large extent, on the circumstances from which injury or disability arises. The key issue is how to look after and where possible support back into full social participation those who are injured, not whose fault an accident was. In this sense, SACOSS supports the principle of a no-fault scheme, and we welcome the proposed introduction of no fault compensation for medical costs for those with catastrophic injury and disability.

That said, we have serious concerns about some aspects of the proposed reforms and the impact they may have on vulnerable and disadvantaged South Australians. In particular, we are concerned about the removal of common law rights for injured parties to seek compensation for non-economic loss, future economic loss and voluntary services. This is both because, as will be discussed below, the definition of "minor injuries" is so flawed that people with serious conditions will lose key rights and access to legitimate compensation, and because in essence, the proposal sacrifices the rights of many people who sustain less serious injuries in order to better look after the smaller number of people with a "catastrophic injury".

We reject the either/or choice implicit in the proposed changes and believe that if, as is evident, a better system of support is required for those with catastrophic injuries, this should be paid for by the community as a whole, not by other road accident victims. Moreover, the seriousness of some of the injuries in the category of "minor" injuries, raises a question of the adequacy for them of a system which will still rely on "fault" and excludes those who were at fault or can 't sue the person at fault. If people

with such injuries do not have common law rights, there should not be a no-fault system for those 'lesser' injuries. The hybrid system proposed seems arbitrary at best.

Beyond these general comments, we would like to highlight a number of problems with the current proposals which apply, whether or not the above comments are taken on board.

The categorisation of "minor injury" as 15 points or less in the draft Ranges of Injury Scale Values (ISV) includes substantial injuries which might require surgery and result in a legitimate inability to work and lifelong pain and suffering. Examples include:

- An extreme brain injury resulting in grossly reduced insight, for example a person in a persistent vegetative state (this is considered minor because the person is unaware of the extent of their loss);
- Moderate to serious facial injuries, for example a cheekbone fracture requiring reconstructive surgery and having permanent effects such as difficulty opening the mouth or eating;
- A serious but incomplete loss of vision in 1 eye;
- Moderate spinal injury including fracture, disc prolapse or nerve-root damage;
- Extreme scarring to a part of the body other than the face – that is, gross permanent scarring over an extensive area of the body with ongoing pain and limited ability to participate in activities due to functional impairment.

This categorisation would seem to include quite serious injuries and does not take into account the differing impact an injury will have on different individuals. For example, a "serious but incomplete loss of vision in one eye" (11-25 points) will have extreme consequences for a person who is already visually impaired in the other eye or for someone whose good eyesight is essential to their work.

The definition here is important because under the proposals those suffering one of these injuries will lose the right to sue for pain and suffering and loss of future earnings, despite the fact that such injuries may be extremely painful and result in loss of capacity to work. Placing such an arbitrary threshold on the right to be compensated for future earning capacity will result in faultless victims and their families being drawn into poverty.

Aside from the overarching concerns about removing the rights of injured persons, SACOSS objects to the categorisation of "extreme brain injuries resulting in grossly reduced insight" (10-15 points under the ISV) as a minor injury. The presumed rationale behind this categorisation is that a person with grossly reduced insight does not comprehend the loss they have suffered. However, this results in a highly perverse outcome: the person and their family would have no right to be compensated for economic loss and the family with no compensation for loss of financial support, nor would the person have their medical and care costs covered from the catastrophic injuries fund. This is in contrast to circumstances in which death occurs – in such a case there would be a right to sue for loss of financial support. This is counter-intuitive given the costs on a family of having someone in such a state, and morally objectionable where the family is left in a position where

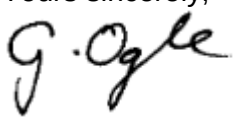
they were better-off if their loved one was dead. In preparing this submission SACOSS consulted with the Brain Injury Network of South Australia Inc (BINSA) and the above comments relating to extreme brain injuries are specifically endorsed by BINSA.

SACOSS also has concerns about limiting or removing a person's entitlement to be compensated for their legal costs. Such a proposal will seriously disadvantage those with a genuine need for legal assistance by discouraging them from seeking help or simply barring those who cannot afford it from beginning a case. Removing any right to seek legal costs for claims of less than $30,000 will have a disproportional impact on those on a lower income for whom $30,000 is a substantial sum of money. It will also discourage fair practice on the part of the insurance company (why settle for a reasonable sum when you know the injured person cannot afford to take you to court), exacerbating the power imbalance between the well-funded insurance company and the individual.

Finally, and unrelated to the issues of common law rights to sue, SACOSS is concerned about how any changes to motor injury compensation will fit with the broader disability care regime while there is uncertainty about how injured motorists might fit under the National Disability Insurance Scheme currently under development or the National Injury Insurance Scheme as proposed by the Productivity Commission. This will have a direct impact on the need to finance lifetime care and support for those catastrophically injured in motor vehicle accidents. At a minimum, SACOSS recommends that the tools and procedures used to assess injury and disability under the scheme be consistent with those being developed for the NDIS.

Thank you for consideration of our submission and if you have any questions relating to these recommendations, please contact me on 8305 4229, or by email at gregogle@senet.com.au.

Yours sincerely,



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