Ministry of Transport
TE MANATŪ WAKA

Compulsory Third Party Vehicle Insurance

A DISCUSSION PAPER FOR PUBLIC COMMENT

June 2008

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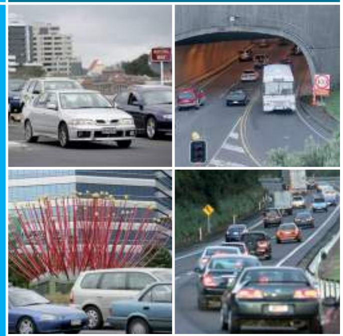
DISCUSSION DOCUMENT



MINISTERIAL FOREWORD

The insurance industry estimates that the cost of uninsured motorists is between $53.5 and $85 million annually. At present, those motorists who pay to have insurance pay this cost and subsidise the quarter of vehicles not currently insured in New Zealand.

When an insured vehicle is hit by an uninsured vehicle, the insured motorist often is left to bear the costs of replacing or fixing any damage. Other property may also be damaged in a vehicle crash – fences, buildings and lamp posts, for example. The owners of these items are also faced with the costs of repair, as often the uninsured motorist cannot afford to meet the costs of the damage they have caused.

Compulsory insurance would ensure that everyone who might cause damage to other people's property is capable of paying for that damage. It would also protect the at-fault driver from the long-term financial loss and hardship that may result if they are uninsured and required to pay for the costs of property damage themselves.

This discussion document outlines the different options available in designing a compulsory vehicle insurance system for New Zealand.

I have long believed that making third party vehicle insurance mandatory would result in road safety benefits, as all motorists are encouraged to take greater responsibility for their driving behaviour.

In most countries that already have compulsory vehicle insurance, high-risk drivers (those with a poor driving history) have higher annual premiums. Drivers can reduce their risk, and the size of their premiums, by adopting safer driving practices. It may also act to dissuade novice drivers or high-risk motorists from driving high-risk or high performance vehicles.

I am pleased to release this discussion document, and invite interested stakeholders and members of the public to comment on their experiences and knowledge of vehicle insurance, and on a possible compulsory insurance regime.

Hon Harry Duynhoven
Minister for Transport Safety

TABLE OF CONTENTS

MAKING A SUBMISSION

The Ministry of Transport (the Ministry) welcomes comments on the content of this discussion paper. The paper explores options for addressing uninsured and high-risk motorists, and includes options regarding a compulsory third party vehicle insurance regime in New Zealand. Questions are provided to assist. General comments are also welcome.

Please include the following information with your submission:

- The title of this document
- Your name, and title
- Your organisation's name (if applicable)
- Your address – postal and email

Please refer to the questions asked in each section of this paper, where applicable, when making your submission. Comments on other aspects of uninsured driving are encouraged.

The deadline for submissions is **Friday 8 August 2008**

Please send your submission to:

Compulsory third party insurance project
Land Transport Environment and Safety
Ministry of Transport
PO Box 3175
WELLINGTON 6140

You can also email your submission to thirdpartyinsurance@transport.govt.nz or use the submission form online at www.transport.govt.nz

CONFIDENTIALITY

Please note that submissions provided on the discussion paper will be subject to the provisions of the Official Information Act 1982. This Act requires information to be made available on request unless there is good reason to withhold the information.

If you do not wish any material provided in your submission to be released, please specify the material that you wish to be withheld and the grounds (as set out in the Act) for withholding. The decision on whether to release the material under the terms of the Act rests with the Ministry of Transport. Any decision regarding withholding information is subject to appeal to the Ombudsman.

REGULATORY IMPACT STATEMENT (RIS)

Substantive RIS elements have been included in this discussion paper at a level that is reasonable given the stage of policy development. The Ministry of Transport has endeavoured to adhere to the principles of the Code of Good Regulatory Practice.

INTRODUCTION

The Ministry is reviewing options for addressing the problem of uninsured motorists and wants to consult on the issues associated with a compulsory third party vehicle insurance regime.

The first stage of a review recently undertaken on compulsory third party insurance involved an appraisal of compulsory insurance regimes in other jurisdictions. It was found that regimes varied across jurisdictions in terms of design, administration and level of compliance.

The second stage included gaining insights into the New Zealand legal structure and vehicle fleet. The findings from this review have helped identify the benefits and costs of a compulsory third party insurance regime, and the options available for the structure and operation of a possible regime in New Zealand.

This document sets out the issues and considerations to be addressed if a compulsory third party vehicle insurance regime is to be introduced in New Zealand. The document raises a range of topics and questions to prompt discussion and gather information on the various issues associated with the design, implementation, monitoring and enforcement of a compulsory third party vehicle insurance regime, and the compliance costs that are associated with this.

All suggestions, comments and technical or economic information that could assist in the development of policy in this area are welcome. The Ministry needs to receive these by **Friday 8 August 2008** (see the *Making a submission* page).

When comments from interested parties have been received, the Ministry will present its recommendations to the Minister of Transport and the Minister for Transport Safety.

Third party motor vehicle insurance covers a vehicle owner for any damage caused to another person's property (usually a vehicle). It does not include damage to the at-fault driver's vehicle, or personal injury sustained in an accident.

New Zealand has, in effect, compulsory third party insurance for personal injury as a result of a motor vehicle accident, through the no-fault compensation for personal injury administered by the Accident Compensation Corporation (ACC).

Motorists pay their ACC levies through the vehicle licence ('registration') fee. It is an offence to use a vehicle on a road if the ACC levies have not been paid.[1] ACC provides comprehensive, 24-hour, no-fault personal injury cover and entitlements for everyone in New Zealand. ACC is applicable to all injuries involving moving vehicles on public roads. As the ACC scheme is unique to New Zealand, the experiences of jurisdictions that have compulsory vehicle insurance for both property damage and personal injury are difficult to compare with New Zealand.

New Zealand does not have compulsory third party insurance for property damage as a result of a motor vehicle accident. Motorists may choose to insure against liability for property damage against third parties through private insurance companies. Alternatively, motorists and vehicle owners may choose to manage the risk of an accident privately (common among owners of large fleets) or risk driving without any insurance or ability to pay in the event of an at-fault accident.

The question of whether to introduce a compulsory third party insurance regime to New Zealand was considered by a Select Committee Inquiry in 1988. The Committee recognised the problem posed by uninsured motorists, but concluded that, at that time, a compulsory insurance regime was not suitable for New Zealand. [2]

Compulsory insurance has been raised periodically with the Minister of Transport and the Minister for Transport Safety. A petition was considered by Select Committee in 1994, and the Ministers have received a number of letters on the topic in the intervening years.[3]

It is timely to re-examine whether a compulsory third party vehicle insurance regime for property damage is suitable for New Zealand. A number of factors have changed since 1988. There have been substantial changes in the size and composition of the vehicle fleet in New Zealand, as well as social changes in access to vehicles. The estimated annual cost of uninsured motorists has also risen. These changes, and the length of time that has lapsed since this issue was last examined, means it needs further consideration.

[1] s5 (2), Transport (Vehicle and Driver Registration and Licensing) Act 1986
[2] Mr Geoffrey Braybrooke, Chair, *Report on the Inquiry into Compulsory Third Party Property Damage Insurance for Motor Vehicles*, Second Session, Forty-First Parliament, 1988.
[3] The petition of D. H. Mitchell and 4,255 others, Hansard, 1994.

THE PROBLEM WE'RE ADDRESSING

It is estimated that 25 percent of the vehicles on New Zealand roads are not insured.

In a motor vehicle accident, an at-fault uninsured vehicle owner may incur substantial debt, while a motorist who is not at fault may find that they are unable to recover financial losses caused by damage to their vehicle.

To recover the cost of property damage in this situation, the not-at-fault party must either make a claim on their own insurance (if comprehensive cover is held), or pursue a claim through the Disputes Tribunal or the courts.

Uninsured vehicle owners who are unable – as opposed to unwilling – to compensate others for any damage caused may also be unable to afford third party insurance. These motorists choose to risk driving without insurance to maintain mobility, but are likely to bear long-term monetary hardship in the event of an at-fault accident.

When an uninsured vehicle owner causes property damage, he or she may not be able or willing to pay for that damage. The insurance industry estimates that recovering the costs of damage caused to insured vehicles by uninsured motorists range from 6.9 percent to 11 percent of total motor vehicle insurance costs annually.

At present, the cost of damage caused by uninsured motorists is recouped by insurance companies by building the cost into the premiums of existing customers. Therefore, the 75 percent of motorists who are insured are paying for the damage caused by uninsured motorists.

Studies in New Zealand, the United Kingdom and the United States of America suggest that the groups which are over-represented as uninsured are people on low incomes and young males.

The most common reasons for not having insurance are cost, lack of understanding of the purpose of third party insurance and, where insurance is compulsory, a low expectation of being caught.[4]

Observations from the Citizens Advice Bureau in New Zealand also indicate that some motorists misunderstand the purpose of third party insurance and choose not to insure. Such choices are based on false assumptions. For example, these drivers may have a low-value vehicle and believe that third party insurance insures their own vehicle, or they do not understand the extent to which they could be liable if they cause property damage as a result of a motor vehicle accident.

If a motorist causes property damage, they are liable for the costs of that damage. This can often be a substantial sum. If the at-fault motorist has vehicle insurance, their insurance company will pay the property owner reparation for those damages. If the at-fault motorist is uninsured, they will have to bear the cost of the damages themselves. An uninsured at-fault motorist may be faced with significant and long-term financial hardship.

Compulsory third party vehicle insurance is often suggested as a method of addressing the risky behaviour of some uninsured motorists. This assumes that all uninsured drivers are risky drivers. Qualitative research from the United Kingdom shows that some habitually uninsured motorists *believe* that they are more careful drivers, as they know that they would have a high financial burden if they were involved in a crash.[5]

On the other hand, New Zealand research based on the Auckland Car Crash Injury Study data found that, after controlling for age, sex, level of education and driving exposure, uninsured drivers "have a significantly increased risk of being injured or killed in a car crash, compared to insured motorists".[6] This may indicate that people who choose to insure when insurance is not compulsory are, by nature, more risk-averse than drivers who choose to drive uninsured.

The Ministry of Transport believes that uninsured motorists pose a problem for several reasons:

- Currently, 75 percent of vehicle owners (those who are insured) are paying through their premiums for the costs incurred by all vehicle owners.

[4] Stephanie Blows, et al, 'Car Insurance and the Risk of Car Crash Injury', *Accident Analysis and Prevention*, 35(6), 2003, pp. 987-990; IFF Research Ltd, 'Causes of Uninsured Driving', Qualitative Research Report for the Association of British Insurers, November 2003; and Lyn Hunstad, 'Characteristics of Uninsured Motorists', California Department of Insurance, February 1999.
[5] Greenaway, Prof D., 'Uninsured Driving in the United Kingdom', Report to the Secretary of State for Transport, July 2004; IFF Research Ltd, 'Causes of Uninsured Driving', Quantitative Research Report for Association of British Insurers, November 2003.
[6] Stephanie Blows, et al, 'Car Insurance and the Risk of Car Crash Injury', *Accident Analysis and Prevention*, 35(6), 2003, p. 989.

- The uninsured motorists are not protected from the costs that they may incur in an at-fault vehicle crash. These costs can often be substantial, imposing long-term financial hardship on the uninsured motorist.
- Owners of property damaged in a vehicle crash where an uninsured driver is at fault are, at present, not assured of complete and timely compensation for that damage.

Uninsured drivers as a group are likely to comprise a number of sub-groups. It is not assumed that uninsured motorists are risk takers or high-risk drivers, although a sub-group of uninsured drivers may be.

QUESTIONS

1. Has the problem been defined correctly? Are there other problems? What is the magnitude of the problem?

THE UNINSURED MOTORIST

WHO IS THE UNINSURED MOTORIST?

There is limited information available on the characteristics of uninsured motorists in New Zealand. Therefore, we must rely on information from other jurisdictions where insurance in compulsory. Overseas information and commentaries indicate that those who drive without insurance where insurance is compulsory can be grouped into three broad categories. These are:

- the deliberately uninsured who make a conscious decision not to insure, knowing this is in breach of the law
- those who are accidentally uninsured because, for whatever reason (for example, have forgotten to renew their vehicle licence and/or insurance), there is a ‘gap’ in the continuity of their cover
- those who are exempted by law (for example, in the United Kingdom Crown and police vehicles are exempt).

Research from the United Kingdom, using data from court convictions, insurance data on the characteristics of claimants and defenders, and information from focus group research, provides some insight into the characteristics of this population.

The study found that 90 percent of those convicted for being uninsured were male, and were relatively young; 60 percent were under 25 years old, and almost half of those were under 20 years old. Urban areas were also over-represented as locations of residence for uninsured motorists.[7]

Other groups identified as likely to be uninsured were older motorists, and organisations that had made the deliberate commercial decision to ‘self-insure’. Self-insurance is when a vehicle owner accepts that they may cause damage to another’s property and is confident that they can compensate property owners for that damage.

We can also be reasonably certain that vehicle insurance is not likely to be purchased by those on a low income.

Anecdotal evidence from the Citizen’s Advice Bureau suggests that, of those people who visit bureaux for help following a vehicle crash, uninsured motorists are most likely to be low-income people, young people and new migrants. It is those motorists who believe that they cannot afford insurance who are the least able to afford to compensate property owners in the event of an at-fault vehicle crash, and would therefore benefit most from third party insurance.

QUESTIONS

2. Why do you think some New Zealand motorists choose to drive uninsured?

3. If you are uninsured, what is the most important factor in your decision not to insure your vehicle?

4. If you deal with uninsured motorists, what do you believe is the most important factor in their decision not to insure their vehicle?

COST OF THE UNINSURED MOTORIST

A survey to determine numbers of uninsured vehicles has not been conducted since 1987, and industry estimates range from five to 45 percent.[8]

It is estimated that, if the number of motor vehicle policies provided by the Insurance Council of New Zealand (ICNZ) members (adjusted to account for the five percent of policies not covered by ICNZ members) is

[7] Greenaway, Prof D., ‘Uninsured Driving in the United Kingdom’, Report to the Secretary of State for Transport, July 2004.
[8] Compare a December 2006 Colmar Brunton survey conducted for the Insurance Council (finding five percent of participants uninsured) with Insurance Council estimates quoted in the New Zealand Herald (5 May 2005) that between 40 and 45 percent of drivers have no insurance.

compared with the total number of vehicles on the Motor Vehicle Register, then the proportion of uninsured motor vehicles is about 25 percent.[9]

This is approximately 975,000 vehicles, and includes those who choose to self-insure their vehicles, as it is not possible to distinguish between those who self-insure and those who are uninsured.

At present, the cost of damage caused by uninsured motorists is recouped by insurance companies by building the cost into the premiums of existing customers. Therefore, the 75 percent of motorists who are insured are paying for the damage caused by uninsured motorists.

The 1988 Select Committee Inquiry estimated that 11 percent of all motor vehicle claims involved uninsured parties, and that the costs of three percent of all motor vehicle claims were not recoverable because of unidentified or uninsured motorists. Based on this information, it is estimated that the total cost of uninsured motorists (including recoverable and non-recoverable costs) in 1988 was approx $36 million at that time.[10]

It must be noted that there are nearly four times as many vehicles on New Zealand roads now than there were in 1988.

The experiences of insurance companies regarding the current cost of the uninsured motorist vary. Current estimates provided by several members of the insurance industry on the cost of recovering damages caused to insured vehicles by uninsured motorists range from 6.9 percent to 11 percent of total motor vehicle insurance costs. These figures reflect the sum for those recoveries instigated by insurance companies where the uninsured driver was at fault.

Based on the estimates from these insurance industry members, the cost of uninsured motorists, including recoverable and non-recoverable costs, is between $53.5 and $85 million per year.[11] The costs of one financial year are part of the operating costs of the following financial year, which the income from premiums must be able to cover. Therefore, the costs of uninsured motorists are passed on to the motorists who have vehicle insurance.

QUESTIONS

5. Do you agree with our estimates regarding the number of uninsured drivers in New Zealand? Why or why not?
6. Do you have additional information that may alter our estimate?
7. Do you have additional information regarding the costs of uninsured motorists?

RECOVERY OF PROPERTY DAMAGE LOSS BY MOTORISTS

When an at-fault driver is uninsured and refuses or is unable to compensate property owners, the cost of property damage can be recovered through an insured, not-at-fault driver's own insurance company, the Disputes Tribunal or the courts. This can be a long and time-consuming process.

For a policy holder to claim from his or her own insurance company, the property damage would need to be greater than the excess on the policy. Policyholders who do claim on their insurance may also risk losing their No Claims Bonus. However, some insurers offer customers a protected No Claims Bonus, allowing the policy holder to make claims that would have normally reduced their No Claim Bonus.[12]

The Disputes Tribunal costs between $30 and $100, depending on the amount claimed, and deals with claims of up to $7,500 (or up to $12,000 if both parties agree). There are also a number of hidden expenses such as lost wages, travel costs and childcare arising from attending the hearing. These costs cannot be recovered. The Tribunal can be used only when liability for the motor vehicle accident is disputed, and therefore it cannot be used for collecting unpaid debts.

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[9] [2,775,590 ICNZ member policies (beginning of 2007) x 1.05] / [3,900,000 vehicles on the Motor Vehicle Register (Dec 31 2006)] x 100 = 75 percent. From this it can be estimated that 25 percent of vehicles on the Motor Vehicle Register are not covered by an insurance policy.

[10] Mr Geoffrey Braybrooke, Chair, *Report on the Inquiry into Compulsory Third Party Property Damage Insurance for Motor Vehicles*, 1988. Non-recoverable costs amounted to 3% of total claims, and were equivalent to $10 million. 11 percent of total claims can therefore be estimated to be $36 million.

[11] 11 percent of the $739,416,181 paid out by ICNZ members in 2006, adjusted by five percent to include the policies not covered by ICNZ members, is roughly $85 million. 6.9 percent is roughly $53.5 million.

[12] For example, AMI offers freeBmax, which allows for up to two claims that would have normally reduced the No Claim Bonus discount in any 12-month period (www.ami.co.nz).

An action brought in the District Court costs $140 to file and $750 per half-day of hearing, with lawyers fees in addition to this. These costs may be partially recovered. The District Court may be used to collect unpaid debts resulting from a vehicle crash with an at-fault, uninsured motorist.

When loss is recovered through the Disputes Tribunal or the courts, it is possible that the full amount of property damage loss may not be awarded. If the respondent is unable to pay, the court may also allow the award to be repaid in weekly instalments.

QUESTIONS

8. Have you used any of these recourses for compensation when the at-fault driver was uninsured? Was the result satisfactory?

9. If you are uninsured, and have had to pay for property damage that you have caused, how did you compensate the property owner? Did you pay for the full cost of damage?

OPTIONS FOR ADDRESSING THE PROBLEM

In addressing the problem of uninsured motorists, we have considered three options:

- Keep the current situation, in which insurance is not compulsory and vehicle owners decide whether or not to insure their vehicle.
- Raise awareness of vehicle insurance, and the protection that third party insurance provides in the event of an at-fault vehicle crash.
- A compulsory third party vehicle insurance regime, where vehicle owners would be required to insure their vehicle before the vehicle could be driven on the road.

These options were evaluated against the aim of increasing the level of insured vehicles in New Zealand.

Keeping the current situation is not considered to be a satisfactory option as around 25 percent of all registered vehicles – a quarter of the New Zealand fleet – are now uninsured (compared with 15 percent in 1988).

Efforts to raise the awareness of insurance, and its benefits, have been underway since the 1988 Select Committee Inquiry. Such efforts have largely been undertaken by the insurance industry, and individual insurance companies through their own advertising, rather than by the government. In effect, raising awareness has been part of the current situation for some years.

It is considered that an information or education campaign regarding the benefits of third party insurance may address the misinformation that exists about the function of insurance. However, an educational campaign alone is not expected to result in a significant decrease in the number of uninsured vehicles.

A compulsory third party insurance regime is considered to be the option that will result in the most significant increase in the level of insured vehicles in New Zealand.

QUESTIONS

10. Have all the options been identified? Are there other options (or sub-options) that should be considered?

THE CURRENT SITUATION

COVERAGE

A vehicle owner has three choices when considering vehicle insurance coverage. These are: comprehensive, third party (including third party, fire and theft), or no insurance. A vehicle owner may also be refused coverage by an insurance company if it is considered that the driver and vehicle combination poses a 'bad' risk.

The insurance industry estimates that, out of the 75 percent of vehicles that are insured, 94 percent of these policies provide comprehensive cover in the event of an accident. Comprehensive insurance covers damage to the policy holder's own vehicle, as well as damage to other vehicles and property caused by people covered by the policy. The remaining six percent of policies are for third party (damage to others' property) or third party fire and theft (which includes damage caused by theft or fire).

Twenty-five percent of drivers are estimated to have no insurance for property damage caused by them as a result of a motor vehicle accident.

This figure does not take into account vehicles that are no longer on the Motor Vehicle Register (ie, vehicles that have not been relicensed for a period greater than one year and are still being driven – illegally – on public roads. It also does not take into account those motorists who may legitimately self-insure.

PROTECTION AGAINST UNINSURED MOTORISTS

ICNZ members offer an Uninsured Motorist Extension (UME) to policyholders who have either comprehensive insurance or third party insurance. The UME means that policyholders who claim on their own insurance policy will not attract a loss of their no-claims bonus, and will not have to pay the excess if involved in a not-at-fault accident. To be eligible for the UME, the other driver involved must be positively identified and clearly at fault.

Comprehensive policyholders have no limit on the cost of damages that are covered, but limits are placed upon the compensation for damages that can be awarded to third party policyholders, with most insurance providers capping this at $3,000.[13] Therefore, most motorists who are currently insured have a method for obtaining compensation for damage caused by an identified uninsured motorist.[14]

The UME is not considered an effective response to the problem of uninsured motorists. While the UME provides an avenue for compensation after a vehicle has been damaged by an uninsured vehicle, it provides no incentive for vehicle owners to insure. Relying on the UME scheme continues the inequity that exists when uninsured motorists do not bear the full costs of the damage that they cause. Also, as the UME is offered as part of vehicle insurance, owners of other property damaged (such as fences and buildings) do not have access to compensation through the UME.

QUESTIONS

11. Were you aware that you had recourse to a UME if your vehicle was damaged by an identified uninsured motorist? How did you find out about it (for example, from the policy documents, from the insurance company, word of mouth)?
12. If you were aware of the UME, have you used the UME to obtain compensation? What was your experience?
13. If you were not aware of the UME, have you been in a situation where you would have been eligible had you claimed?

[13] This is based on the third party (including third party, fire and theft) insurance policy documents available in Jan 2008, from State, Tower, and AMI insurance.
[14] Further information on UME's can be found at http://www.icnz.org.nz/downloads/guide_motor.pdf

SELF-INSURED

Most drivers in New Zealand effectively self-insure for property damage to a certain extent. This is because most, if not all, insurance policies have an excess below which the policy holder must meet any liabilities.

In addition, policyholders may choose to pay for any minor property damage that they cause, to avoid the loss of a No Claims Bonus or the rise in premiums that may result from claiming on their own policy. Some motorists choose not to insure their vehicle with an insurance company.

Self-insured drivers are different from uninsured drivers, as self-insured drivers accept that they may cause damage to another's property and are confident that they can compensate property owners for that damage.

It is also common for companies that own a large number of vehicles to manage the cost of accidents internally, rather than to take out insurance. This may be done within the company or through a contracted fleet manager. The Crown has traditionally self-insured.

A recent survey of owners of large vehicle fleets, carried out by the Ministry of Transport, found that 27 percent of survey participants either did not have insurance, or had an excess of $10,000 or greater on their policy.[15] For those vehicle owners, compensation for property damage caused by their drivers would be considered a business cost.

QUESTIONS

14. Private vehicle owners: Do you self-insure? Why?

15. Corporate vehicle owners: Do you self-insure? Why?

ASSISTANCE FOR PEOPLE ON LOW INCOMES

There are no specific provisions within existing welfare programmes to provide financial assistance for costs associated with motor vehicle insurance. Financial assistance is considered on a case-by-case basis. Assistance with the cost of third party vehicle insurance could be provided, if there was an immediate need and the insurance was considered an essential item or service.

Existing programmes, such as the Recoverable Assistance Programme for non-beneficiaries and the Advance Payment of Benefit for beneficiaries, provide assistance towards meeting an essential item or service. To qualify for assistance, a person must meet an income or means test and be able to identify the particular immediate need for the essential item or service. Currently, it is difficult to establish that vehicle insurance is an essential item or service. Any assistance provided must be repaid.

QUESTIONS

16. Have you driven a vehicle uninsured because you could not afford the insurance premiums? If there had been an avenue for obtaining some financial assistance, would you have used it?

ACCESS TO FINANCE

According to the Financial Services Federation, it is almost universal that companies financing vehicle purchases require comprehensive insurance to be held on the vehicle. This ensures that during the first year of finance, the vehicle is insured. After this period it is difficult to be certain that this remains the case. However, it is possible for finance companies to seek the permission of the loan applicant for sharing their details with the insurance industry.

[15] A postal survey was sent to the 485 vehicle owners with the largest fleets as listed in the Motor Vehicle Register in March 2007 and 127 organisations responded (38 percent).

The Financial Services Federation also believes that there are more private sales than sales through vehicle traders. In the case of a private sale that is financed, it is difficult to ensure that vehicle insurance is maintained.

QUESTIONS

17. Do you think that there should be penalties placed on those who cancel or fail to maintain an insurance policy while the vehicle is subject to finance?

18. Are there any other aspects of the current vehicle insurance system that you think ought to be considered, regarding uninsured motorists?

WHAT IS A COMPULSORY THIRD PARTY VEHICLE INSURANCE (CTPVI) REGIME?

A CTPVI regime would make it compulsory for all registered vehicle owners to hold at least third party property damage insurance. Failure to do so would result in penalties placed upon the uninsured vehicle owner.

It can be difficult to obtain compensation from an uninsured at-fault vehicle owner. CTPVI would seek to ensure that if a motorist was involved in a not-at-fault crash then they could be confident that the at-fault motorist would be driving an insured vehicle. Therefore, the not-at-fault vehicle owner would be fairly compensated for the damage caused to their property – usually their vehicle.

This would also include owners of property such as fences, power poles and buildings damaged as a result of a vehicle crash. However, the third-party-insured vehicle owner would still have to bear the costs of damage to their own vehicle, which could be significant.

BENEFITS OF A CTPVI REGIME

There are two benefits that overseas jurisdictions look to to gain with compulsory insurance regimes. These are road safety benefits and equity benefits.

ROAD SAFETY – DRIVER BEHAVIOUR AND VEHICLE CHOICES

If vehicle insurance was compulsory, then motorists could be forced to pay for the level of risk that they pose on the road. These motorists, who are identified as posing a greater level of risk than most, could face higher annual premiums on their insurance policy, than they would under the current insurance system. Insurance companies in New Zealand currently use this risk rating system as a way of setting individual premiums.

Factors and characteristics that increase their on-road risk include the age, gender and driving experience of the driver, whether the driver has a history of driving-related offences, and the type of car driven. A CTPVI regime that allows insurance premiums to be priced according to the risk of the driver(s) may result in road safety benefits, through both improved driver behaviour and safer vehicle choices.

If a driver has to pay a high annual premium as a result of their high risk, they will have a strong incentive to reduce their risk.

The risk of a driver can be reduced in several ways. The driver could change to a less powerful (or non-modified) vehicle, or to one that is fitted with modern safety features. The driver could also change their driving behaviour in order to avoid traffic infringements and at-fault accidents. However, there is also the possibility that if the premium were set too high, the high-risk motorist may be tempted to drive uninsured.

SOCIAL EQUITY – PROTECTION AGAINST FINANCIAL LOSS OR HARDSHIP

Third party vehicle insurance protects the policyholder from the financial liability of causing damage to another person's property. Making third party vehicle insurance compulsory would help to ensure that everyone who may be liable for a vehicle crash (ie, all who drive vehicles on New Zealand roads) are able to compensate property owners for any damage that they cause.

When property is damaged by an uninsured vehicle, the owner of any property damaged is often left to bear the costs of replacing or fixing their property – for example, a vehicle, fence, building or lamp post.

Third party vehicle insurance will also protect the policyholder from the often substantial cost of damage to others' property. Motor vehicle insurance ensures that an insured motorist does not suffer undue and long-term financial hardship as a result of an at-fault vehicle crash.

An equity-based insurance regime seeks to ensure that all vehicles are insured, with less emphasis placed on differentiating premiums based on the motorist's risk. As a result, in those regimes that primarily look for equity benefits, the premiums of individual policies are largely of the same value, with little or no variation according to age, gender or location.

There is very little comparative research available on the road safety effects of an equity-based compulsory insurance regime. Of the research that has been published, a study conducted by the Fraser Institute in 2003 compared the three Canadian provinces that had social equity-based insurance with the seven provinces that had risk, or market-based, insurance.

The study found that the provinces with equity-based vehicle insurance had higher vehicle collision, death, injury and property damage rates than those with market-based insurance. Fatalities were found to be 18 percent higher, and the admission of young males (the drivers with the highest risk) to hospital was 59 percent higher. It was concluded that the likeliest explanation for these differences was that the Canadian equity-based insurance regimes produce too many subsidised high-risk drivers.[16]

While this was the Canadian experience, the same may not necessarily happen in New Zealand under a social equity-based CTPVI regime. This is because, in a New Zealand CTPVI regime, the at-fault motorist would have to bear the costs of damage to their own vehicle.

[16] Mark Mullins, *Fraser Alert: Public Auto Insurance: A Mortality Warning for Motorists*, The Fraser Institute, September 2003.

The 1988 Select Committee Inquiry noted that an equity-based CTPVI regime may act to increase disparities in social equity. If an average or set premium is charged to all motorists, then low-risk drivers are charged a premium which is disproportionate to their level of risk, while they subsidise the premiums of high-risk drivers.

This may provide a disincentive for low-risk drivers to maintain safe driving practices as they will not receive discounted premiums for their caution. It also fails to provide an incentive for high-risk drivers to improve driving behaviour. (Conversely, a benefit of an equity-based regime would be that high-risk drivers may be less tempted to drive uninsured than they would be if required to bear the cost of their risk.)

Such a regime may result in an increase in vehicle crashes, as most drivers have a reduced incentive to employ safe and cautious driving practices.[17]

The economic benefit of introducing CTPVI to the individual vehicle owner cannot currently be quantified. Mandatory insurance is likely to have the effect of reducing insurance premiums, as the costs of insurance and repairs would be spread across a larger pool of motorists than at present.

The ICNZ have argued that the administration costs and increased claims resulting from a mandatory system may have the effect of inflating insurance costs. However, the increase in the size of the insurance pool may offset these costs, as less time and resources are likely to be committed to recovering costs from at-fault motorists.

QUESTIONS

19. Do you think that a CTPVI regime should primarily address social equity (making sure that drivers are responsible for any property damage they may cause)? Why?

20. Do you think that a CTPVI regime should primarily address road safety (encouraging behavioural change and safer vehicle purchasing choices)? Why?

TIME AND COST OF RECOVERING COMPENSATION

The time and cost involved in attempting to gain compensation from an at-fault driver may be reduced under a CTPVI regime. In many cases, compensation for property damages will be arranged by the respective insurance companies, as currently occurs when all parties to a vehicle crash are insured. However, a motorist with third party insurance will still be required to meet the costs of damage to their own property as a result of an at-fault vehicle crash.

The ICNZ has stated that there may be situations where an insured motorist has their insurance voided by their own actions – for example, for driving while drunk or disqualified, dangerous driving, the non-disclosure of modified vehicles, or failing to comply with the provisions of a learner or restricted licence. If involved in a vehicle crash under these conditions, the motorist will be treated as if they had been driving an uninsured vehicle.

In the event of a vehicle crash with an uninsured at-fault driver, the insured not-at-fault vehicle owner will have the same recourse to compensation as under the status quo. They may also have access to a Nominal Defendant Fund. Options relating to a Nominal Defendant Fund are discussed in detail in the next section.

QUESTIONS

21. Do you have information about how often insurance policies are invalidated by the insured motorist’s actions?

REDUCTION IN COURT TIME AND RESOURCES

If the number of vehicle crashes – in which one or more of the parties are uninsured – decreases, it is assumed the amount of court time and resources to settle insurance claims would also decrease.

[17] Mr Geoffrey Braybrooke, Chair, *Report on the Inquiry into Compulsory Third Party Property Damage Insurance for Motor Vehicles*, Second Session, Forty-First Parliament, 1988.

The remaining court cases would result from one or more of the at-fault motorists being uninsured, or where the liability for a vehicle crash is disputed. This may be partially offset, at worst, by an increase in the number of disputes over liability – identifying who was most at fault.

This is because, after an at-fault vehicle crash or a crash where liability is not clear, a motorist is faced with an increased annual insurance premium as a result of their increased risk. They may then have a greater incentive to dispute the liability.

However, it is expected that there will be a net benefit of a decrease in court time.

QUESTIONS

22. What do you consider to be the MOST IMPORTANT benefit of a possible CTPVI regime? Why?

23. Do you believe there are additional benefits arising from a CTPVI regime not identified above? Please describe these benefits.

KEY ELEMENTS OF A SUCCESSFUL CTPVI REGIME

There are many different types of compulsory insurance regime that could be adopted. In considering how a CTPVI regime could work, it is useful to consider the experiences of other countries with compulsory vehicle insurance.

The *Greenaway* and *Causes of Uninsured Driving* reports, commissioned by the Department for Transport in the United Kingdom, emphasised the elements of a successful regime. These included:

- good and real-time information sharing between insurance and enforcement agencies
- comprehensive and easily available information regarding the purpose and cost of insurance
- visible enforcement
- penalties set at an adequate level to provide deterrent (the existing penalties having proven insufficient)
- the ability for insurance providers to set premiums based on risk
- an ability to discourage the cancelling of insurance policies
- a strategy for encouraging young drivers to take out insurance.[18]

This section will consider the options regarding the possible form of a CTPVI regime. This will include whether the regime could be state-administered or privately administered, and whether the insurance will relate to the vehicle or to the driver, and the options for an associated register of information.

[18] Greenaway, Prof D., 'Uninsured Driving in the United Kingdom', Report to the Secretary of State for Transport, July 2004; IFF Research Ltd, 'Causes of Uninsured Driving', Qualitative Research Report for Association of British Insurers, November 2003.

OPTIONS FOR A CTPVI REGIME

CTPVI – STATE OR PRIVATELY ADMINISTERED?

There are two options for the administration of a possible CTPVI regime:

- A privately administered regime (which would operate as the motor vehicle insurance industry does now)
- A state-administered regime (uncommon in other jurisdictions).

As New Zealand already has a successful privately administered regime, the preferred option for a CTPVI regime in New Zealand is a privately administered one.

Privately administered regime

The compulsory third party insurance regimes in other jurisdictions are most commonly privately administered. This is the case in the United Kingdom, western Europe and most states in America.

A privately administered regime would operate as the insurance industry does now, with a number of companies offering insurance products that consumers can select from. This also allows motorists to 'shop around' and select a provider based on the merits of the policy and the premium offered.

This regime would price risk on a market basis, where collision costs would be biased towards the higher-risk drivers. A privately administered regime might therefore achieve positive road safety outcomes, as drivers seek to lower their premiums and risk by purchasing safer vehicles and driving more safely.

The majority of overseas jurisdictions with compulsory vehicle insurance have privately administered regimes. In all western European countries, each insurer is free to establish its own set of premium rates.

In jurisdictions with low non-insurance rates, insurance information is used to identify potentially uninsured vehicles or individuals. This is usually done by way of a cross-checking mechanism, such as random checks of insurer information, or by integrating a central insurance database with an existing register of motorist or vehicle data.

Some people may be concerned that a privately administered regime would involve giving the insurance industry a market with a high incentive to become insured. This may mean a disincentive for industry to maintain competitive prices, particularly for high-risk individuals.

A regulatory body may be required in order to ensure that the industry acts in a way that is fair to all individuals who are required to purchase insurance.

State-administered regime

A state-administered regime would involve the New Zealand government either as the direct insurance provider, such as the regime for personal injury liability insurance through ACC, or indirectly by tendering the contract to one company. Tendering the contract would result in one insurance company being responsible for all the vehicle insurance policies in New Zealand.

A state-administered regime is not common in other jurisdictions, and only three Canadian provinces have been identified as using this structure. A common feature of all three regimes is that the risk of each policy is priced to address equity, rather than road safety. A comparative study of the Canadian provinces found that three of the four provinces with the most expensive average premiums were those administered by the province.[19]

While the Canadian regimes do not financially penalise the individuals who pose a higher risk on the roads, they do attempt to ensure that motorists are capable of reimbursing a not-at-fault driver in the event of a vehicle crash.

It may also be possible for a state-administered scheme to adopt a risk-based pricing structure for motor vehicles. The levies that ACC charge employers (and the self-employed) are based on risk ratings which generally reflect the claims record of particular occupational groups.

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[19] Brett J. Skinner, *The False Promise of Government Auto Insurance: Estimating Average Auto Insurance Premiums in Ten Provinces, 2004-05*, Fraser Institute, February 2007.

However, for motor vehicle injuries, ACC does not use a risk rating. Injuries from motor vehicle crashes are paid for by motorists via a levy, which is included in the annual licensing fee, and a portion of the excise duty on petrol sales. Therefore, relative risk is addressed through the petrol levy by ensuring that those with the most exposure to injury on the road – with petrol usage as a proxy for distance travelled – will pay the most for personal injury cover.

A more sophisticated level of risk-based pricing, incorporating more driver and vehicle factors, is possible in a state-administered regime. However, this would require a substantially higher level of investment in training and increased ongoing administration costs than a pure equity-based regime.

QUESTIONS

24. Do you think a CTPVI regime in New Zealand should be privately administered or state-administered? Why?

COVERAGE

A CTPVI regime would aim to ensure that all vehicles on New Zealand roads are insured with at least third party coverage. It would still be possible for motorists to purchase comprehensive motor vehicle insurance. Currently, 75 percent of all vehicles on the Motor Vehicle Register (MVR) have insurance, while 25 percent have no insurance or are self-insured.[20]

If CTPVI is implemented in New Zealand, it is expected that a significant portion of those who are currently uninsured would purchase third party (rather than comprehensive) vehicle insurance,

Third party insurance will cover a motorist for any damage caused by that motorist to another person's property. It will not provide compensation to the at-fault driver for damages caused to that driver's own property. So, while a CTPVI regime will protect the not-at-fault party, it does not protect the third party-insured driver from the possibility of considerable financial loss.

Who would the CTPVI requirement apply to?

This would apply to motor vehicles as defined in the Transport (Vehicle and Driver Registration and Licensing) Act 1986. Mobility devices are not defined as motor vehicles, so users of mobility scooters or other mobility devices would not be affected by CTPVI. Motorcycles are defined as motor vehicles, and would therefore be included within a possible CPTVI regime.

With regard to motor vehicles, it may be necessary to distinguish which vehicles will be required to be insured, and which vehicles, if any, will be exempted. A distinction that already exists in the personal injury coverage provided by ACC is between on-road and off-road vehicle crashes. Injuries from off-road use of vehicles are covered by the work levy (employers and self-employed), as well as the earner's levy, and the non-earner's levy paid by government.

Creating a distinction between on-road and off-road vehicles could be useful in a CTPVI regime. If an off-road vehicle is involved in a single- or multi-vehicle crash, any property damaged is likely to be owned by the vehicle owner. Business and/or farm insurance would cover the policy holder for any damage to vehicles, buildings or livestock. Making insurance compulsory for these vehicles would add a compliance cost where little value for the individual could be obtained.

QUESTIONS

25. Do you think that those who can prove the vehicle is used exclusively off-road should be exempt from having to be insured? Why?

[20] ICNZ advise that 94 percent of policies are for comprehensive insurance and 6 percent are for third party. 94 percent of the 75 percent of insured vehicles is equivalent to 2,739,506 vehicles, or 70.2 percent of the registered vehicle fleet. The remaining 6 percent of the insured vehicle pool represents 4.8 percent of the registered vehicle fleet.

What about people who are 'bad risks'?

A CTPVI regime would make it compulsory for all vehicles which are operated on New Zealand roads to be insured for at least third party insurance.

In a privately administered regime, the individual insurance companies would be able to choose whether or not to insure a vehicle, and what the annual premium for that vehicle or person would be. An insurance company may be free to decline insurance to anyone that the insurance company believes to be a very high or 'bad' risk, so it could be possible that a person who wishes to become insured, to comply with the law, is unable to find an insurance company that will accept their level of risk.

In the jurisdictions in the United States where vehicle insurance is compulsory, current law confirms that if you are licensed to drive, you are legally entitled to insurance. Insurance companies retain the right to accept or decline a customer, and set the premium appropriate to the risk of the individual.

Each state has also created and regulates a 'market of last resort' for those who cannot obtain coverage by any other means. These drivers are able to obtain an Assigned Risk Automobile Insurance Plan, at a high annual premium. The individual is then assigned to a specific insurance company on a 'fair share' basis.

A CTPVI regime in New Zealand, if the insurer's right to decline insurance is retained, will need to provide an avenue through which any individual can comply with the legal requirement regardless of their level of risk.

This could be done through a 'last resort' insurance policy, whereby a driver is eligible for coverage if they have been declined insurance because of their risk. Any 'last resort' policy would necessarily be subject to a high premium to dissuade drivers from relying upon this coverage. A plan of this nature may provide an incentive for the high-risk individual to actively reduce their risk and improve driving behaviour.

QUESTIONS

26. Should insurance companies retain the right to decline insurance? Why or why not?
27. If so, should a 'last resort' plan be made available to those who wish to be insured, but cannot find a provider that will accept their level of risk?

THE SUBJECT OF THE INSURANCE

It is important to consider whether the insurance relates to the vehicle or the driver.

The current New Zealand insurance system insures the vehicle, using characteristics of the driver(s) to evaluate the on-road risk of that vehicle being involved in a vehicle crash.

In compulsory regimes in European Union countries, as in New Zealand, it is the vehicle that is insured. This allows an easy linkage to be made between the insurance policy, and the vehicle registration.

It has been found that the countries with the lowest rates of uninsured driving are those with a vehicle registration or licensing system integrated with an insurance policy database. This helps to identify uninsured vehicles for enforcement.

However, a vehicle-based insurance system can present problems when trying to calculate risk-based premiums, as assessing risk is relative to the driver, not the vehicle. This is increasingly being addressed by requiring the insured drivers to be named on the insurance policy, and their characteristics and driving histories to be disclosed, which is common practice in New Zealand.

The subject of the insurance policy can also be the driver, as is the case in the United Kingdom. The reason for this approach is that it is the driver who is responsible for the risk, not the vehicle, but insuring the driver, rather than the vehicle, can present problems for a monitoring system, as it is difficult to identify whether the driver is compliant.

It is important to note that linking vehicle insurance to the driver, rather than the vehicle, is in contrast with current insurance practices, where the driver is just one factor in the assessment of the premium to be paid on a policy.

QUESTIONS

28. Do you think that a CTPVI regime in New Zealand should treat the individual driver or the vehicle as the subject of the insurance? Why?

EVIDENCE OF INSURANCE

There are several mechanisms for providing evidence of insurance. These include issuing each policy holder with a certificate of insurance which would have to be produced on demand, or a visible sticker attached to the windscreen of the vehicle.

Certificate produced on demand

Having to produce an insurance certificate or papers, as evidence of insurance, would provide a low-cost option. This is the evidence required under Germany's compulsory insurance regime, while in The Netherlands a green card (issued by the insurance company) is required.

A certificate-based form of evidence could be difficult to enforce, as a driver would have to be pulled over by an enforcement officer in order to check compliance.

Certificate-based evidence could be susceptible to fraud. This may result in a perception that there is a low risk of getting caught, and such a perception could promote non-compliance. To counter this perception, greater enforcement effort may be required – physically checking the insurance documents as well as data-matching to ensure that the insurance papers are valid.

Visible sticker

A visible sticker for insurance would operate in a similar way to a Warrant of Fitness (WoF) or a Certificate of Fitness (CoF), and would be operable only if the vehicle was the subject of the insurance. A visible sticker may assist enforcement, as enforcement officers would be able to identify whether a vehicle was uninsured, and issue an infringement notice, without the driver needing to be present. The use of a tamper-evident sticker would assist in preventing insurance fraud.

As insurance policies are renewed on an annual basis, a sticker would correspondingly be issued on an annual basis. An investigation of a sticker-based system would include identifying how a sticker would be obtained (for example, whether from the insurance company or an appropriate agent of authority) and would need to accommodate those insurance policies where the annual premium is paid in regular instalments. Also, as an insurance policy would not be transferred to a new owner if a vehicle is sold, policyholders would need to be educated to remove the sticker upon sale.

QUESTIONS

29. What do you think is the most effective way of providing proof of insurance?

LINK TO EXISTING VEHICLE OWNERSHIP OR DRIVER LICENSING DUTIES

Linking the purchase of insurance and the production of insurance papers with other vehicle ownership duties, such as renewing the vehicle's WoF or CoF or relicensing the vehicle, may assist compliance with CTPVI and reduce any incidents of accidental 'uninsurance'. Accidental uninsurance occurs when a person drives without insurance, unaware that they are doing so. This happens (in overseas jurisdictions) when the policy holder forgets to renew either their insurance policy or their required vehicle safety inspection (such as a WoF).

Some participants in a United Kingdom quantitative study said they felt that uninsured driving would be reduced if the renewal dates of all vehicle ownership duties were coordinated. This suggests that linking the purchase of insurance with other ownership duties may be help to promote compliance.[21]

Registering the presence of valid insurance as part of the current vehicle ownership duties ensures that the insurance is current only for the day that it is produced for inspection. Linking the requirement to maintain valid insurance to a register such as the MVR or the Driver Licence Register (DLR) allows enforcement agencies to monitor and enforce the requirement.

New Zealand Police consider that compulsory insurance would be more effective if combined with WoF/CoF or licence label. A CTPVI regime linked to an existing register would aid enforcement and promote the integrity of the regime by providing Police and local authorities with roadside information.

This approach would be suitable if it was decided to retain the current vehicle-based insurance system.

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[21] IFF Research Ltd, 'Causes of Uninsured Driving', Quantitative Research Report for Association of British Insurers, November 2003.

Required as part of driver licensing

The DLR contains the information of all drivers with a New Zealand driver's licence. Licences are issued on a ten-yearly basis, and once a driver has obtained a full licence, they will have limited contact with the DLR. Linking insurance to an infrequent event, such as driver licensing, does not provide an appropriate means of guaranteeing that insurance is purchased annually. Additionally, within those ten years a driver may or may not own a vehicle, and their relative risk may change significantly as their age, location of residence, type of vehicle owned and their driving behaviour change.

Required as part of WoF or CoF

This option would require that, in a privately administered system, evidence of a valid insurance policy is to be produced as an element of obtaining a WoF or CoF for a vehicle. If the recognised evidence of insurance needs only to be sighted as part of the WoF/CoF inspection (recorded via a yes/no tick box), then this system may be a way to link the purchase of insurance with a regular ownership duty.

However, such a system would lack the ability to ensure that the insurance policy is valid during the term of the WoF/CoF and that the policy is maintained and not cancelled. If a vehicle owner could not cancel a third party insurance policy, then this problem would not occur.

Required as part of vehicle licensing

Research has found that in western Europe the countries with the lowest levels of uninsured driving had matched vehicle and insurance databases.[22] Through data matching, enforcement officers are able to identify uninsured vehicles. This helps to ensure that the vehicle insurance is continuously valid, rather than simply mandating that insurance is to be purchased as a pre-requisite of vehicle licensing.

The MVR contains the details of all vehicles registered for use on New Zealand roads. Each vehicle will usually be registered once, although substantial modification of the vehicle may require re-registering. Once the vehicle is registered, a licensing label is required to be renewed on a three, six, or twelve-monthly basis. These events update the information held on the ownership of each vehicle.

There are nationwide agents for vehicle registration that have the existing infrastructure which may allow for the collection of insurance data. However, the Automobile Association (the AA) is one of the major vehicle registration agents and also an insurance provider. This will create a conflict of interest for the AA.

The impact of additional insurance services currently being undertaken by the Land Transport New Zealand vehicle licensing agent network may be significant for those agents (such as shop owners) whose principal business is not this work as vehicle licensing agents.

A vehicle can be licensed (and re-licensed) online, as well as in person at an agent. If a CTPVI regime involved checking a vehicle was insured at vehicle licensing, then it would need to allow for transactions carried out online as well as those carried out in person. This could be achieved by requiring a vehicle owner to show a valid insurance policy number as part of the transaction.

QUESTIONS

30. Which of the above do you believe to be the best option for a CTPVI regime in New Zealand? Why?

31. Do you think that there is a better way to administer CTPVI instead of linking it to a register? Please describe your suggestion.

[22] Watson Wyatt LLP, 'Uninsured Driving in Europe', report for the Association of British Insurers, March 2004. The author states that the one factor which links the low rates of Sweden, Germany and The Netherlands "would appear to be having a fully integrated car registration/licensing/insurance system with a cohesive database" (p. 38).

COMPLIANCE WITH CTPVI

The experience of overseas jurisdictions shows that, even with compulsory CTPVI, total compliance will not be achieved, just as there are motorists who do not comply with vehicle licensing and WoF requirements.[23] This is the case regardless of the regime.

The uninsured motorist represents approximately 6.5 percent of the driving population in the United Kingdom, while the available data suggests that Sweden, Germany and The Netherlands have the smallest proportion of uninsured drivers, at less than one percent of the driving population.[24]

In the United States, the Insurance Research Council estimated in 2006 that 14.6 percent of all motorists were uninsured. The percentage of uninsured motorists by individual states ranged from four percent in Maine and six percent in Vermont and Massachusetts, to 25 percent in Alabama and California and 26 percent in Mississippi.[25] It is estimated that there are 52,600 passenger cars and vans that are currently unregistered – that is, the registration has been cancelled after remaining unlicensed for a period of time.[26] This number may include vehicles that have been taken off the road, but have not been properly deregistered by completing a MR15 form. It is unknown how many unregistered vehicles are being illegally driven on the road.

Overseas experience has shown that non-compliance is higher in jurisdictions where a driver feels that there is a low chance of being caught driving uninsured. Visible enforcement of the requirement and meaningful penalties are likely to mean increased compliance. It is important that it is perceived to be difficult to ‘escape’ the requirement to be insured.

DETECTING NON-COMPLIANCE

At the most basic level, non-compliance would be identified when insurance documents need to be produced. If these are to be presented as part of existing ownership duties, such as re-licensing a vehicle, non-compliance will mean being unable to re-licence the vehicle. This may provide the owner with the incentive to purchase insurance to obtain a vehicle licence.

Alternatively, this may lead to non-compliance with both requirements – having to be insured and having a current vehicle licence. Non-compliance can also be identified by an enforcement officer, if the driver of a vehicle is unable to produce valid evidence of insurance.

However, it can be difficult to detect if the insurance has been cancelled or, if paid in instalments, whether or not the payments have been maintained. There are several methods by which insurance evasion and fraud could be detected:

- Third party insurance (or the third party insurance part of a more comprehensive insurance package) could not be cancelled. This is the case in some Australian states. It is proposed that if third party insurance was compulsory, a policy would not be able to be cancelled for the period of the vehicle licence or WoF (depending on which event it was linked to). Cancellation could only occur if evidence of the sale of the vehicle was presented.
- Insurers could be asked to verify the insurance of randomly selected vehicles. This would require recording the policy number and insurance company for each vehicle at the time of vehicle licensing or at the WoF check.
- A central insurance database could collate the information on insurance policies as held by the insurance companies and cross-match the information with an existing register, such as the MVR. This would ensure that when a motorist cancels or fails to maintain a policy, they are flagged as uninsured and an enforcement agency is notified.

The United Kingdom and more recently some Australian states use automatic number plate recognition technology to check the vehicle against a list of vehicles highlighted within the central insurance database as potentially uninsured. Using a database to detect non-compliance could allow for future changes and adoption of vehicle detection technology in New Zealand.

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[23] In 2007, there were 83,487 infringement notices issued for using an unlicensed vehicle; 108,111 notices issued for failing to display valid evidence of inspection (WoF); and 947 notices issued for using an unregistered motor vehicle. These figures were supplied by Land Transport New Zealand.
[24] Hansard, ‘House of Commons Written Answers’, 18 October 2007; Watson Wyatt LLP, ‘Uninsured Driving in Europe’, report for the Association of British Insurers, March 2004.
[25] Insurance Research Council, *Uninsured Motorists: 2006 Edition*, 2006. In America, 48 states and the District of Columbia have compulsory third party insurance.
[26] This figure does not include those vehicles that have been de-registered through the proper process. This figure was provided by Land Transport New Zealand.

PENALTIES FOR NON-COMPLIANCE

Overseas studies of compulsory third party insurance regimes have noted that the level of penalties for non-compliance must provide a deterrent. In the United Kingdom, using an uninsured vehicle is subject to a £200 fixed fine and 6 to 8 penalty points (equivalent to 50 to 65 demerit points in New Zealand). A significant factor in decisions not to become insured is that the fine is a fraction of the cost of an average premium. [27]

It is expected that, under a possible CTPVI regime, police officers or local government enforcement officers will be empowered to issue infringement notices for vehicles found to be operating without valid insurance. This is similar to the powers these officers have with vehicles that do not have a valid WoF or a current vehicle licence.

In New Zealand it has been found that the size of an infringement fee can have little deterrent effect on those drivers who habitually fail to comply with WoF, vehicle licensing and licence restrictions.

An additional infringement fee for driving without current insurance (for example, of $200) may not be useful, as this would simply add to other infringement fees and would have a limited deterrent effect on habitual offenders. Penalties combining a monetary fine and demerit points could be applied to driving an uninsured vehicle.

In the United Kingdom, following the recommendations of the Greenaway Report in 2004, police and local authorities were empowered to seize uninsured vehicles. Greenaway had noted that the existing fine and penalty points had not been an effective deterrent against uninsured driving.

QUESTIONS

32. What would be an appropriate level of penalty for being found to be driving without insurance?

NOMINAL DEFENDANT FUND

Compulsory insurance regimes in other jurisdictions often include a fund which provides compensation for not-at-fault property damage when an at-fault uninsured driver is incapable of meeting reparation costs. This is called a Nominal Defendant Fund.

When property is damaged by an uninsured driver, and there is no other source of compensation, the Fund would act as the default insurer of the uninsured driver. The ultimate cost of the Fund falls to the law-abiding motorists via insurance premiums. It is estimated that maintaining the United Kingdom Nominal Defendant Fund costs £380 million per annum, which equates to about £30 per vehicle insurance policy.[28]

Based on information available, the average cost currently added to each motor vehicle policy to cover the costs of uninsured drivers is estimated to be between $18.30 and $29.15 per policy per year.[29]

QUESTIONS

33. Do you think that a Nominal Defendant Fund is a necessary element of a possible CTPVI regime? Why or why not?

34. If deemed necessary, how should this be funded?

35. Can you suggest any alternatives?

[27] IFF Research Ltd, ‘Causes of Uninsured Driving’, Quantitative Research Report for Association of British Insurers, November 2003.
[28] Greenaway, Prof D., ‘Uninsured Driving in the United Kingdom’, Report to the Secretary of State for Transport, July 2004.
[29] 2,775,590 ICNZ member policies, increased by 5 percent to account for the policies that are provided by non-members, results in an estimate of 2,914,370 motor vehicle insurance policies as at beginning of 2007. Estimates provided by some insurance companies indicate the total cost of uninsured motorists is between $53.5 and $85 million. This is equivalent to $18.30 to $29.15 for each policy.

HOW TO PROVIDE FOR SELF-INSURED ORGANISATIONS AND INDIVIDUALS

It is currently impossible to discern between uninsured drivers and self-insured drivers, so it is unknown how many motorists who do not hold an insurance policy are actually self-insured. Self-insured individuals and organisation fleets could be considered as part of a CTPVI regime and, if so, how this would be allowed.

In the United Kingdom, companies with large fleets of cars can be self-insured. To do this, £500,000 must be deposited with the Accountant General of the Supreme Court.

In the United States, the ability to be self-insured varies by state. For example, in Wisconsin a vehicle owner can be self-insured if they own more than 25 vehicles and can satisfy the Wisconsin Department of Transportation that they have the financial ability to pay for any damages they may be liable for. If successful, a certificate is issued for a one-year period. In California, a motorist is considered to have provided evidence of their individual financial responsibility if USD$35,000 is deposited with the Department of Motor Vehicles.

As evidence of insurance will be needed under a CTPVI regime, a certificate of self-insurance would be required. This would be issued for the same term as a standard insurance policy, and would be produced when evidence of insurance is required.

To obtain a self-insurance certificate, an individual motorist or a large fleet owner (for example, a company) will need to satisfy an appropriate authority that the owners of any property damaged as a result of an at-fault accident would be fairly compensated. A bond deposited with the appropriate authority, or an income or means test, could show evidence of financial responsibility.

QUESTIONS

36. Do you think provisions in a CTPVI regime should be made for those who wish to self-insure their vehicles? Why or why not?

37. If so, how could an authority ensure that a driver could genuinely afford to meet any financial liabilities?

HOW TO BEST REGULATE AND MONITOR THE INSURANCE INDUSTRY

In a privately administered CTPVI regime, market forces should maintain competitive premium prices for the majority of motorists. This may be the case particularly for low-risk motorists as insurers compete to obtain and retain the premiums of motorists who rarely claim on their insurance.

Conversely, high-risk motorists may face higher premiums than at present, as companies attempt to dissuade motorists who represent an overly high or ‘bad’ risk from becoming clients. This may have a negative effect upon young and novice drivers, who may be faced with significantly higher premiums because they are recognised as high-risk drivers on the grounds of their inexperience, rather than due to negligent driving behaviour. It should be recognised that the majority of young motorists are law-abiding drivers.

The insurance industry in New Zealand is largely self-regulated. A privately administered CTPVI regime may need a method of regulating the rates that insurance companies can charge customers. The Insurance and Savings Ombudsman cannot currently become involved in a dispute about an insurance company’s commercial decision – for example, whether or not to insure a person, or at what level a premium should be set.

A privately administered CTPVI regime would provide an opportunity to examine whether the mandate of the Ombudsman should be extended. Part of developing a regulatory framework may include investigating whether the Insurance and Savings Ombudsman’s mandate can be extended to include these issues, or whether a separate regulatory system needs to be developed.

In the unlikely event of a fully state-administered CTPVI scheme operating in New Zealand, there are a number of regulatory issues to be addressed.

A state-administered regime exists when there is a single motor vehicle insurance provider. Without competition, it is important to protect the law-abiding citizen from unduly expensive insurance premiums that may arise from a monopoly situation.

An option for regulating a state-administered CTPVI regime is to create a statutory Crown entity via an Act of Parliament to administer the scheme, as was done for ACC. This would allow government to ensure that there is a statutory obligation for the Crown entity to provide a fair and sustainable scheme. Establishing such a body, and the administrative costs involved, is likely to add to the cost of the annual premium.

QUESTIONS

38. What is the best way of regulating the insurance industry under a possible CTPVI regime? For example, in terms of how much they can charge, who they must insure, and what conditions they can impose.

COSTS OF A CTPVI REGIME

DEVELOPMENT AND ADMINISTRATION COSTS

The costs of developing and administering a CTPVI regime will vary, depending on the form and structure of the regime. For example, a privately administered regime under which the policy papers represent evidence of insurance (presented only to pass a WoF check) would involve relatively low costs. However, without any method of registering and confirming the validity of a policy, or extra enforcement efforts, such a regime is unlikely to be successful in significantly reducing the number of uninsured vehicles on the road.

Overseas experience and research has shown that where drivers perceive that there is little chance of being caught, non-compliance rates are high.[30] A CTPVI regime that ensured that third party insurance could not be cancelled would avoid any additional non-compliance. A regime under which the majority of those who are currently uninsured are able to remain uninsured will only add a burden of cost on the compliant motorists, without addressing the problem of uninsured driving.

A CTPVI regime in which there is an effective system for registering and monitoring the validity of an insurance policy, including identifying potentially uninsured vehicles and visible enforcement, is more likely to increase compliance. Such a regime, however, will also have higher costs of administration, infrastructure, resources, training and monitoring.

LEGISLATIVE CHANGES

Legislative changes will be required to implement a CTPVI regime. Uninsured driving would be an offence, equivalent to driving a vehicle without a current WoF or vehicle licence. Should a statutory regulatory body be created, legislation would also be required to establish the roles, responsibilities, limits of authority, and any remedies or sanctions that it may administer.

ENFORCEMENT

Any CTPVI regime implemented in New Zealand would require an enforcement regime.

Overseas experience shows that those penalty regimes achieving best results appear to draw on strong coercive powers, as well as electronic vehicle recognition, supported by instantaneous access to insurance information held by commercial insurers. It also shows that compliance rates increase as the probability of detection increases.

New Zealand Police believe that an enforcement regime will need to have a strong deterrent focus, as opposed to a fine-based system. However, this extra level of enforcement to ensure compliance would be unnecessary if CTPVI was linked to WoF/vehicle licensing and was unable to be cancelled.

Linking CTPVI to a register would provide support to a visible enforcement regime. There are two ways in which this could be done:

- Asking insurance companies to verify the insurance status of randomly selected vehicles from data obtained at WoF checks or re-licensing
- Automatic and frequent cross-matching between a central insurance database and an existing register, such as the MVR. It is expected that officers who are currently empowered to issue infringement notices for traffic offences would be able to issue notices for driving an uninsured vehicle.

QUESTIONS

39. What level of enforcement do you think will be required to ensure a CTPVI regime is complied with?

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[30] See Cassandra R. Cole, Randy Dumm and Kathleen McCullough, 'The Uninsured Motorist Problem: An Investigation of the Impact of Enforcement and Penalty Severity on Compliance', *Journal of Insurance Regulation*, vol. 19(4), 2001; Greenaway, Prof D., 'Uninsured Driving in the United Kingdom', Report to the Secretary of State for Transport, July 2004.

COMPLIANCE COSTS

There will be costs associated with establishing a CTPVI regime, but these may be offset by a reduction in costs incurred in recovering compensation for damages from uninsured motorists. How large these costs or benefits are, and who they are most likely to affect, will depend on how the regime is administered and the structure of the regime.

For insurers

The insurance industry is likely to be faced with realignments in costs. The size of these will depend on how the continuity of insurance is monitored – by random checks or by data-matching with an insurance database, or by some other method.

Investment in the software and knowledge needed to access, input and update the information held in a central insurance database would be greater than the cost of resources involved in confirming the insurance policies of randomly selected vehicles.

There will also be added costs for insurance companies in the administration and contribution to a Nominal Defendant Fund, if such a Fund is thought to be necessary.

If a ‘last resort’ policy is made available to high-risk drivers, insurance companies will also face a form of compliance costs through the increased level of risk that must be carried.

For motorists

Under CTPVI, the owners of the estimated 25 percent of vehicles in New Zealand that are currently uninsured will be compelled to insure their vehicles. Depending upon the relative risk of those vehicle owners, this could be a significant individual cost. Motorists who do not comply with the requirement will face penalties.

It is not known how a compulsory insurance regime may affect the annual insurance premium of individual motorists. There may be some increase to annual premiums, if the costs of implementing and maintaining the regime are passed on to those who will benefit from the regime.

Currently, the costs of claims are spread over 75 percent of all motorists. By making insurance compulsory, the cost of those claims will be spread over a wider pool of motorists. This may reduce individual premiums, but having more insured drivers may result in more claims made against insurance companies. This will increase the costs of total claims, which may in turn increase the cost of individual premiums.[31]

We can assume that there will be an overall reduction in individual costs under CTPVI. At present, most of the existing costs of uninsured drivers are covered by motorists through their annual insurance premiums. Under CTPVI, a significant portion of these uninsured motorists will become insured and contribute towards the total costs borne by insured motorists. So, the costs of uninsured motorists will be reduced as the numbers of uninsured motorists decrease, while the number of people who will bear the costs caused by uninsured motorist will increase.

There are also likely to be a few indirect costs for some vehicle owners. Low-income individuals and beneficiaries are likely to be over-represented as uninsured drivers. For this group the cost of insurance, despite the potential costs of an accident, may be perceived as problematic. CTPVI may have two effects upon these vehicle owners:

- To purchase insurance to retain their mobility, the low-income individual or beneficiary, and their family, are likely to use money that would otherwise be spent on other necessities for the household.
- The cost of insurance, on top of current licensing costs, may reduce the accessibility of transport to the vehicle owner and their family. For some people, access to a vehicle is essential for employment or job-seeking, particularly in rural areas. Additional compulsory costs may hinder employment or provide a disincentive to seek employment.

[31] It is estimated that 25 percent of all registered motor vehicles are uninsured – equivalent to 975,000 vehicles. It is likely that there are a number of vehicle crashes at present between uninsured parties. These crashes, and the costs that arise from them, are not included in the estimated costs of uninsured drivers. These costs will add to insurance claims under a CTPVI regime.

QUESTIONS

40. Do you agree with these estimates of compliance costs? Why or why not?
41. Do you have any additional information that may change our estimates?
42. Do you think that the possible benefits of compulsory insurance outweigh the possible costs associated with a CTPVI regime?

ACCESS AND MOBILITY

The overall costs or savings associated with establishing a CTPVI regime will depend upon the structure of the regime. These may ultimately be passed on to the policyholder. Further, the 25 percent of registered vehicles that are currently uninsured will be required to become insured, at a direct cost to vehicle owners. There will also be a transfer of costs from those who are currently insured, as uninsured motorists become insured and contribute to the yearly cost of uninsured motorists,

The requirement to purchase insurance, and the possibility of increased premiums, will not affect all drivers equally. The sections of the community most likely to be affected by these costs are those on low incomes, including beneficiaries, older drivers and young and novice drivers.

Low-income individuals are more likely to own older and less expensive cars. Some of these people may not currently have vehicle insurance if the cost is considered to be prohibitive, choosing instead to risk the consequences of driving uninsured. Making vehicle insurance compulsory will increase the cost of owning a vehicle for these drivers if they are currently uninsured. This may make owning a vehicle too expensive, and reduce the mobility and employment or educational opportunities of the low-income individual and their family.

Alternatively, the added cost may promote non-compliance with the requirement to insure a vehicle, and the ownership activity to which it is attached, such as WoF checks or vehicle licensing. The combination of these infringement fees will also be significant for low-income drivers.

Vehicles can be modified and registered so that a person with a disability can be a passenger, or so that a person with a disability can be the driver. To retain equitable access to transport for owners and users of disability-modified vehicles, a CTPVI regime will need to ensure that third party vehicle insurance remains reasonably affordable for the owners of these vehicles. Currently, such people do not pay a premium that is greater than that for able-bodied motorists.

AFFORDABILITY

Other jurisdictions have identified young drivers and older drivers as more likely to be uninsured than the rest of the driving population.

In New Zealand, it is more appropriate to note that low-income individuals are most likely to be significantly affected by CTPVI. Low-income individuals may not be able to afford insurance under the current situation. With compulsory insurance, a driver does not have the option of continuing to drive legally if they cannot afford insurance.

Other places, particularly in the United States, have implemented various methods of increasing the affordability of compulsory third party insurance for low-income motorists who pose a relatively low risk on the road. Some states offer a ‘good student’ discount, for young drivers who maintain a good grade average at school. Young drivers are often treated as high-risk drivers because of their inexperience, and such a scheme recognises that some statistical studies have shown that students who are high achievers at school are less likely to be involved in a vehicle crash.

California offers a low-cost policy scheme for low income drivers. If a driver meets the criteria regarding level of income, the ‘good driver standard’ (a relatively low-risk driver), has held a licence for over three years, and has a vehicle valued at less than USD$20,000, then the driver is eligible for the low-cost policy. This scheme provides an avenue through which good drivers on a limited income are able to insure their vehicles and comply with the law.

Some insurers in the United Kingdom offer a GPS-based scheme, whereby vehicles are fitted with an under-dash box which uses satellite technology to register the vehicle's movements. From this information, insurance cover can be calculated according to when, where and how far the vehicle travels each month. This information can be used to encourage young drivers to avoid driving at times and locations where they are at higher risk of vehicle crash and personal injury. For example, one company charges young drivers a low rate during the day, while at night the rate is 20 times greater.

In New Zealand, there are several options for assisting good drivers on a low income with the cost of compulsory insurance. A low-cost policy scheme similar to that offered in California could be made available to drivers who meet strict criteria, including a clean driving record, being of a certain age and not driving a modified or performance car. It may also be possible to offer a level of discount to novice drivers who complete a certified defensive driving course.

Existing welfare programmes have little scope for the inclusion of insurance premiums as an emergency cost. Under a compulsory regime, lack of insurance due to an inability to pay the premium may need to be considered as an emergency need with respect to mobility and access to transport for some people.

The Ministry of Social Development notes that in looking at whether to extend existing welfare programmes, consideration should be given to the significant fiscal implications of doing so. Recoverable assistance may increase client debt to the Ministry of Social Development, while non-recoverable assistance may result in significant financial costs for that Ministry.

QUESTIONS

43. If third party insurance was to be made compulsory, do you think financial assistance should be made available to people on low incomes in order to meet their premiums? Why or why not?

44. Are there some situations where you think that assistance should be provided in full (for example, in cases of disability), and some situations where only partial assistance, or no assistance, should be provided?

PRIVACY CONCERNS

An effective CTPVI regime depends upon access to reliable and accurate information about vehicles and the insurance policies applicable to those vehicles. This information would be subject to the 12 information privacy principles of the Privacy Act 1993. These principles clearly set out the obligations and restrictions regarding the use, protection and storage of information gained. If data-matching between an insurance database and an existing register such as the MVR is required, this would be subject to section 10 of the Privacy Act.

QUESTIONS

45. Overall, which do you believe are the most significant costs involved with a CTPVI regime?

OTHER CONSIDERATIONS

OPTIONS FOR AN EDUCATIONAL CAMPAIGN

Regardless of the form and structure of a possible CTPVI regime, introducing the regime would need an information and educational campaign. This would include information about the motorist's obligation to purchase and maintain valid insurance, and any possible penalties that would result from non-compliance.

Research of the compulsory insurance regime in the United Kingdom found that education was an integral part of reducing uninsured driving.[32]

The Citizens Advice Bureau has informed the Ministry that people seeking advice from bureaux, particularly young and low-income drivers, often do not understand the purpose of insurance. They do not become insured because they believe that third party insurance insures their own vehicle from damage rather than protecting them from the costs incurred if they cause damage to another driver's vehicle.

Incorrect information and misunderstandings about insurance also lead to non-insurance when the driver believes that the cost of insurance is too great compared to the value of the vehicle. A significant barrier to these drivers becoming insured is the cost – and that they often overestimate the cost of obtaining third party insurance.

Educational initiatives designed to address the lack of knowledge about the purpose and cost of insurance, including the ability to pay insurance in instalments, may result in an increase in insured vehicles among young and low-income drivers.

QUESTIONS

46. Do you think an education campaign by itself (ie, without a CTPVI regime) may help address the uninsured motorist problem, or do you think that it has to be used in conjunction with compulsion and enforcement?

[32] Greenaway, Prof D., 'Uninsured Driving in the United Kingdom', Report to the Secretary of State for Transport, July 2004.