

## ACT Compulsory Third Party insurance scheme

Pedal Power ACT is the community group for Canberrans who cycle for transport, recreation and fun. As well as our 7,600 members, 26% of Canberrans ride a bicycle in a typical week and 46.5% rode in the past year. Pedal Power ACT makes this submission to place before the Citizens Jury the perspective of a significant portion of the ACT population: the people who cycle on our roads, paths and elsewhere.

As a community group that reflects such a broad cross-section of the Canberra community Pedal Power ACT does not seek to advocate for a particular solution to compensating fairly people who are injured on our roads. Rather, we ask Citizens Jury members to take into account and give appropriate weight to the matters that are particularly relevant for people who are injured whilst cycling.

### Summary

Pedal Power ACT asks the Citizens Jury:

- if the Jury considers it appropriate to recommend the removal of fault as a keystone for CTP coverage, the Jury should recommend other effective mechanisms that ensure people who drive exercise particular care towards those who are more vulnerable to injury and death on our roads
- to include in the CTP scheme people injured in a single or multiple bicycle crash (i.e. a crash that does not involve a motor vehicle)
- to consider that the cheapest CTP scheme is not the best; and that the ACT community with the highest national average earnings, has the capacity to provide a CTP scheme that provides appropriate and similar compensation to people with a similar type and severity of injury.

The Citizens Jury is being asked: What should the objectives of an improved CTP scheme be to best balance the interests of all road users?

A preliminary question to ask is: What societal need does a CTP scheme seek to address? This suggests the first objective for a CTP scheme should be to compensate fairly people who are injured on our roads.

As ACT's CTP scheme is funded from premiums levied on motor vehicle owners a question which follows is: what form of benefits/compensation is it fair to require motor vehicle owners to pay.



*More Canberrans cycling, more often, for a better community*

*Cycling Advocacy*

*Recreational Rides*

*Five Peaks Challenge*

*Centenary Trail Blaze*

*Fitz's Challenge*

*Amy's Big Canberra Bike Ride*

*Ride to Work*

*Ride or Walk to School*

*Ride Safe to School Day*

*Cycle Facilities Rating*

*New Horizons*

*Bicycle Maintenance*



## **Fault**

The keystone to the ACT's CTP scheme which locks in place those who benefit from it and locks out those who don't, is the concept of fault. The scheme benefits only people who can show that another driver was at fault. It is based on the principle that a driver has a duty to take sufficient care to ensure that what they do, or don't do, does not cause injury other persons on the road. This means that drivers who do not take sufficient care and do cause injury must compensate the person they injure. At its simplest: you should pay for your own mistakes.

The fundamental weakness here is that drivers at fault pay no more than their annual premium, while all motor vehicle owners contribute the balance of compensation paid to the injured person.

If, as the Citizens Jury riding instructions require, the scheme is to be based on a common pool of funding to which all motor vehicle owners contribute, then there appears to be less justification for giving the concept of fault 'keystone' importance.

That does not mean that fault, or responsibility should be disregarded entirely. The road rules impose a range of duties on people who use our roads, and impose significant penalties for not complying with those duties. It seems anomalous to require people to be accountable for their actions under the road rules and yet have no responsibility under a CTP scheme.

This is of particular significance for the members of our community who are more vulnerable on our roads: people who walk, cycle and build and repair our roads. The 2014 ACT Legislative Assembly's Vulnerable Road Users Inquiry made 28 recommendations to help reduce these people's vulnerability. Recommendation 21 states:

The ACT government examine the introduction of a strict liability scheme in the ACT. This examination should assess the impact of the scheme and include an analysis of alternative approaches, such as cascading rebuttable presumption.

To remove completely component of the CTP scheme that in theory at least imposes a level of responsibility on people who drive would be to send the wrong message to the community.

If fault is to be removed from the CTP scheme, the Citizens Jury should consider other means of reinforcing the principle that people who are in control of large fast moving steel objects (motor vehicles) owe a particular duty of care those who are more vulnerable to injury and death on our roads. It would be regrettable if the Citizens Jury's instructions prevent it from recommending measures that send a price signal to motorists that it is in their interests to exercise care to those who are more vulnerable on our roads.

A community rating approach might be appropriate to pricing health insurance where people have less control over their health needs and consequent expenses. People have much greater ability to control their driving habits (avoiding distractions such as phones, and controlling speed) that can have a significant effect on the likelihood and severity of road injuries.

Pedal Power ACT suggests the Citizens Jury ask the Stakeholder Reference Group to identify the measures that address this deficiency in the current system.

### **The extent of coverage**

The current ACT scheme compensates certain people for their full loss. They are compensated provided they can show that another driver was at fault. Not only are people involved in, for example, single vehicle crashes excluded (other than the catastrophically injured); people injured in a single or multiple bicycle crash are also excluded.

Given that people who cycle are amongst the most vulnerable of people who use our roads, there is a case for including them in the CTP scheme where they are injured on the road in a crash that does not involve a motor vehicle. If the object is to provide similar compensation for all people who are injured on the road with a similar type and severity of injury then it would be appropriate include them all in the CTP scheme. A relatively small number of people injured in a single or multiple bicycle crash compared to the number injured in motor vehicle crashes suggests that this would not result in a significant increase in CTP claims or premiums and would be a small price to pay for protecting the more vulnerable.

### **The cost of the scheme**

Much is being made of the raw statistic that ACT CTP premiums are higher than other jurisdictions, with the blame attributed to higher damages payouts and legal costs.

Many things are higher in the ACT, from participation in physical activity to the level of education. Of particular relevance to a CTP scheme however, is the level of earnings. The ACT has the highest level of average weekly ordinary time earnings<sup>1</sup>. Victoria, NSW and Queensland whose CTP schemes are touted as providing lower premiums than the ACT all have lower average earnings than the ACT. This suggests not only a higher capacity to pay in the ACT, but also suggests an indication of a willingness to pay more for a better product. It is analogous to Scandinavian countries where higher income tax levels are accepted in return for higher levels of state expenditure on social goods.

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<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6302.0Main%20Features5May%202017?opendocument&tabname=Summary&prodno=6302.0&issue=May%202017&num=&view=>