



Brotherhood
of St Laurence

Working for an Australia free of poverty

Pranged

The real cost of optional vehicle insurance
in Australia

Tony Robinson
Financial Inclusion Program

2017

The Brotherhood of St Laurence is a non-government, community-based organisation concerned with social justice. Based in Melbourne, but with programs and services throughout Australia, the Brotherhood is working for a better deal for disadvantaged people. It undertakes research, service development and delivery, and advocacy, with the objective of addressing unmet needs and translating learning into new policies, programs and practices for implementation by government and others. For more information visit <www.bsl.org.au>.

Tony Robinson is Senior Manager of the Brotherhood's Financial Inclusion Program team.

Brotherhood of St Laurence
67 Brunswick Street
Fitzroy, Victoria 3065
Australia

ABN 24 603 467 024

Ph: (03) 9483 1183

www.bsl.org.au

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Acronyms

ABS	Australian Bureau of Statistics
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities and Investments Commission
BSL	Brotherhood of St Laurence
CLC	Community legal centre
CTP	Compulsory Third-Party [insurance]
FCA	Financial Counselling Australia
FOS	Financial Ombudsman Service
GICGC	General Insurance Code Governance Committee
IC	Industry Commission
ICA	Insurance Council of Australia
NRMA	National Roads and Motorists Association (NSW)
RAA	Royal Automobile Association [South Australia]
RACV	Royal Automobile Club of Victoria
TPPI	Third-party property insurance
UME	Uninsured motorist extension

1 Introduction

The Brotherhood of St Laurence promotes social inclusion through the development of effective financial inclusion programs for low-income Australians, and through its advocacy for policies and programs that enable the building and protection of assets over a person's lifetime.

Access to fair and affordable credit and financial services allows Australians to take advantage of economic and social opportunities. When a person's access to suitable services and products is limited, whether as a result of family disruption, limited education, a poor credit rating or a lack of work, they face financial exclusion. This can have extremely serious consequences.

In 2014 the Fire Service Levy Monitor, an entity established to oversee the transition of Victoria's fire service levy from insurance policies to municipal rates, provided funding to the Brotherhood to undertake research and policy development 'in support of consumer insurance issues'. The Brotherhood used this funding to produce *Uninsured Australia*, a study of the strengths and weaknesses of for-profit insurers (Robinson 2017). The paper argued that an alternative not-for-profit approach to insurance coverage might help overcome the historic resistance among low-income Australians to purchasing important, but optional insurance cover.

Uninsured Australia foreshadowed further papers dealing with specific insurance challenges. This paper deals with one of these: third-party property motor vehicle insurance (TPPI). In contrast to the obligation imposed on all Australian vehicle owners to pay for compulsory third-party (CTP) personal injury insurance, third-party property insurance remains optional. As such it is not taken up by all car owners, with a significant number of drivers lacking the protection. The consequences of not having insurance can be severe: an at-fault uninsured motorist becomes personally liable for the damage to another party's property as well as for the cost of repairing damage to their own vehicle.

This paper explores the scale of problems arising from uninsured motorists on Australian roads by estimating a number of specific costs that can be linked directly to vehicle insurance being a choice rather than an obligation. The Brotherhood does not claim the costs are precise but produces them to help broaden the discussion about the merits of the current approach.

In this report the expressions 'uninsured driver' and 'uninsured vehicle' are used interchangeably. Readers may note the report avoids the specialised issue of vehicle insurance as it affects taxi drivers. This omission is deliberate. In the past few years the Federation of Community Legal Centres and the former Footscray Community Legal Centre (now known as WEstjustice) have exposed deficiencies in the way insurance protects taxi drivers. Reforms have been introduced as a result of their excellent work.

2 Motor vehicle insurance

As noted in *Uninsured Australia*, state governments across Australia mandate CTP insurance but leave vehicle owners to determine whether they will purchase insurance to protect them against any property damage that they suffer or inflict. The available property damage protection products are comprehensive insurance, which protects drivers against damage to their vehicle and any damage they cause to other vehicles or property, regardless of fault, and TPPI, which originated as a limited form of protection against damage to the property of others.

Optional motor vehicle insurance products exist because car accidents are a fact of life. With almost 18.8 million vehicles registered for domestic and commercial use in Australia in early 2017 (ABS 2017), accidents are, not surprisingly, a common occurrence.

Motor vehicles represent a significant asset for most Australian adults as well as a vital enabler for economic and social interaction. Insurance is a sensible precaution to protect against unexpected loss or damage.

The regulation of general insurance in Australia is the responsibility of the Australian Prudential Regulation Authority (APRA), which reported that in 2016–17 motor vehicle insurance premiums paid by domestic and commercial vehicle owners amounted to \$11.289 billion. The premiums covered a total of 16.908 million individual risks (APRA 2017, Tables 1g and 1i).

Most general insurers in Australia comply with a code of conduct that is overseen by the General Insurance Code Governance Committee (GICGC). The committee publishes an annual report and works closely with the Financial Ombudsman Service (FOS), an authority established under Commonwealth law to receive and investigate complaints about general insurers as well as other financial services providers.

Comprehensive motor vehicle insurance

As the description suggests, comprehensive insurance provides motorists with protection in the event of vehicle loss or damage regardless of who, if anyone, is responsible. Not all claims are triggered by human fault. For example, storms cause occasional but significant damage to vehicles exposed to the elements; a severe Sydney hailstorm in 1999 damaged around 40,000 vehicles and the total cost of building and vehicle damage was estimated at \$1.7 billion (Allianz Insurance 2017). Because comprehensive policies offer broad protection the premiums can be expensive, especially if the driver is young and inexperienced. An inquiry on the RACV website in mid-2017 found that insurance on a 2011 Holden Commodore based at a middle

Melbourne suburb generated quotes ranging from \$1,068 for a 25-year-old to \$1,932 for a 19-year-old.¹

Third-party property insurance

TPPI is available to Australian motorists in two forms: basic TPPI and TPPI with fire and theft. In 2011 the Australian Securities and Investments Commission (ASIC) reviewed general insurance claims handling and internal dispute resolution procedures. It noted that two-thirds of all TPPI policies in 2009 were the basic version (ASIC 2011). The slow historic shift away from theft coverage has been attributed in large part to the falling real-terms cost of cars and the decline in car theft rates linked to technological improvements such as vehicle immobilisers. A 2015 news report noted that:

In the peak 12 month period of 2000–2001 there were 142,000 cars stolen across Australia. Today the number has fallen to the lowest on records which date back to the 1970s, with 52,000 cars stolen annually (Dowling 2015).

TPPI protects drivers from the common-law consequences of their action. The law of negligence applies to drivers: they owe each other a duty of care and when a driver errs and property damage arises that duty of care is breached and becomes actionable.

TPPI is considerably cheaper than comprehensive insurance. Using the same descriptors as for the earlier comprehensive policy quote, basic TPPI coverage (no fire and theft) through RACV ranged from \$594 to \$925, approximately half the price of comprehensive cover.

Excesses and no-claim bonuses

A standard feature of all vehicle insurance policies is an excess, an amount that the insurer and the customer agree will be paid by the customer in the event of a claim. With RACV insurance the standard excess is \$700 and means that in any claim the insured party will be responsible for paying the first \$700 of repairs. Excesses are used by insurers to discourage claims for minor damage and allow some risk to remain with the customer. This, in turn, allows insurers to set premiums lower than would otherwise be the case.

Another feature of motor vehicle policies is the no-claims bonus which provides consumers with a premium discount after a specified number of years without a claim. The bonus can represent a significant benefit, with RACV claiming its bonus is worth up to 65 per cent of the annual premium for qualified customers.

¹ Quote was based on male driver who obtained licence at 18, vehicle not under finance, used privately, market value, \$625 excess, rating protection and no previous claims. RACV subsequently adjusted the standard excess to \$700.

Uninsured motorist extension (UME)

UME has been a feature of basic TPPI policies for at least 20 years and provides some protection for drivers if their vehicle is damaged by an uninsured motorist who is unable to pay. Not all TPPI policies feature UME and different insurers attach different conditions to its operation. The absence of published UME data makes it impossible to evaluate the feature's effectiveness. Some UME protection is highly qualified. For example, the Budget Direct insurance product disclosure statement tightly defines the operation of its UME feature:

If the car is involved in a no fault accident with an uninsured vehicle, we will cover your damage up to \$3,000 or the market value of the car, whichever is the lesser, but only if you report the accident to the police and provide evidence that the other vehicle is uninsured. We will not provide this cover if the other vehicle is owned or registered in your name, or in the name of any relative or person who lives with you (Budget Direct 2016).

The Budget Direct policy differs from the standard UME requirement which appears to only require provision of the name and address of the at-fault motorist as well as the registration number of the vehicle they were driving. To require a driver to also provide evidence that the other driver is uninsured seems particularly challenging. Where the offending driver is uncooperative it may be exceptionally difficult to ascertain whether they have insurance coverage or not.

The obligation to report accidents to police exceeds the duty drivers have under road rules laid down by transport authorities. In Victoria, for example, drivers involved in accidents are only required to report the matter to police if a person is injured or if the property owner suffering damage is not present (VicRoads 2014).

As it has done in the past the insurance industry will claim today that UME obviates the need for any wholesale reform of optional vehicle insurance in Australia. The proposition can only be proven, however, with data that has never been made available by insurers. Consumer confidence in motor vehicle insurance would be enhanced by transparency in the role that UME plays. Reporting on the incidence and value of successful claims against the UME feature would be two ways of demonstrating its value to Australian motorists. We believe that because competitive pressure is unlikely to lead any insurer to take this step, the disclosure should be incorporated into the industry's reporting regime.

RECOMMENDATION 1: That the General Insurance Code Governance Committee require general insurers offering motor vehicle insurance to disclose data regarding the operation of UME.

Comprehensive insurance vs TPPI

When considering the purchase of motor vehicle insurance, consumers will weigh up a number of factors including income, vehicle value and their day-to-day dependency on the vehicle. ANZ research found that in 2014 11 times as many consumers purchased comprehensive coverage for their vehicles as purchased TPPI products (ANZ 2015, p. 90). In its 2011 review ASIC found that 86.6 per cent of all policies sold were comprehensive (ASIC 2011). Twenty years earlier a Royal Automobile Association (RAA) submission to the South Australian Parliamentary inquiry claimed that 69.8 per cent of registered vehicles carried comprehensive insurance while 17 per cent had TPPI coverage (Economic and Finance committee 1995, p. 8).

Table 1 charts changing consumer choice in car insurance. Over the past 20 years comprehensive policies have become more popular. This growth is curious, as the average age of Australia's domestic car fleet has barely changed: the Australian Bureau of Statistics (ABS) found an average age of 10.1 years in 2016 compared to 10.4 years in 2003 and a similar age in the mid-1990s (ABS 2004, 2017). It is generally accepted that motor vehicles depreciate at around 15 per cent per year, thus reducing the value of a car purchased new for \$35,000 in 2006 to around \$6,800 today. Over the past 20 years it seems that more Australians have been prepared to pay a significant premium to comprehensively insure something worth less than seven times that amount and that continues to decline in value.

This paper assumes that currently in Australia 85 per cent of vehicle insurance policies sold are comprehensive policies.

Table 1 Ratio of comprehensive insurance policies to TPPI policies

Source	Year	% of vehicles with comprehensive cover	% of vehicles with TPPI only cover	Ratio of comprehensive: TPPI
RAA	1995	69.8	17.0	4.1
ASIC	2011	86.6	13.4	6.5
ANZ	2014	88.0	8.0	11.0

Sources: RAA, ASIC, ANZ

Public policy

The principle of CTP universality has not been extended into the realm of property damage arising from motor vehicle usage, although various authorities have considered the potential benefits or shortfalls of mandatory property damage insurance. Apart from its own examination in 1995 (Industry Commission 1995, p. 217), the Industry Commission (IC) noted a number of other investigations:

- Australian Transport Advisory Council, 1972
- South Australian Parliament, 1972
- Victorian Department of Management and Budget, 1987
- New South Wales Government, 1986
- Tasmanian Legislative Council, 1988
- New Zealand Parliament, 1988
- VicRoads, 1992
- South Australian Parliament, 1994–95.

In addition to the above inquiries the New South Wales Opposition, through Richard Amery MP, introduced a private member's bill proposing a compulsory system for that state (NSW, Legislative Assembly 1992).

None of the listed investigations resulted in a scheme being established in either Australia or New Zealand.² The failure to develop a statutory response demonstrates the reluctance of Australian legislatures and governments to interfere with insurance markets. The Commonwealth Treasury's John Murphy summarised this reluctance in 2012 when he stated that intervention and financial support of the insurance market was only warranted in cases where there is a clear market failure. By way of examples, Murphy cited the establishment of Australia's terrorism insurance scheme following the withdrawal of private insurers after the September 11 terrorism incidents in 2001 and the government's intervention following the collapse of the country's largest medical indemnity insurer the following year. By comparison, he said the difficulties arising from accidents involving at-fault uninsured motorists do not lend enough urgency for a government response (Murphy 2012). Optional motor vehicle property damage insurance means Australian roads are populated by two groups of motorists: a larger group of insured motorists and a smaller group of uninsured motorists. This suggests that governments and insurers, for different reasons, do not consider the financial loss, hardship and inconvenience arising from optional coverage as sufficiently problematic to justify a policy intervention. For governments, the costs of a new mandatory scheme have always to be weighed against the benefits created. For insurers, any mandatory scheme risks undercutting the market share and product diversity they have worked to establish, particularly if that mandated scheme involves a government provider as opposed to for-profit providers. In support of the status quo it can be argued that vehicle owners concerned about their exposure to uninsured drivers have the option of purchasing comprehensive insurance which they can claim against if no other option exists for recompense of damage. Why would government consider a policy change?

² The New Zealand Ministry of Transport website notes that a survey of 4,000 New Zealanders found that 92.4 per cent had some form of motor vehicle insurance, while only 7.6 per cent of vehicle owners had an uninsured vehicle or did not know whether their vehicle was insured. This suggests the level of optional third party insurance in New Zealand is similar to Australia.

In considering whether change is justified it is necessary to understand the full range of costs and consequences of optional vehicle insurance. Few attempts have been made in recent years to quantify these and only when they are fully laid out can the current public policy position be evaluated.

3 Uninsured vehicle accidents

Incidence and accident cost formula

Among submissions from the insurance industry, the 1995 South Australian Parliamentary Committee inquiry into compulsory insurance received one that laid out a formula for estimating the cost of uninsured motorists:

Number of vehicles x percentage of uninsured x accident rate x responsibility rate x average damage per accident

The RAA calculated the non-insurance rate among South Australian motorists in 1994 to be 12.6 per cent and the accident rate to be 10 per cent. The formula produced the following result for South Australia in 1994:

$931,000 \times 12.6\% \times 10\% = 11,731$ accidents arising from uninsured drivers
(Economic and Finance Committee 1995, p. 11).

The responsibility rate recognised that not all accidents involving an uninsured driver were the fault of that driver. The responsibility rate presumption allowed the number of accidents counted to be halved, meaning that in 1994 in South Australia some 5,865 accidents were believed to be the fault of uninsured drivers.

How many cars are uninsured?

There is no precise data about the number of Australian motorists who are not insured against any property damage that arises from their negligence, but an estimate can be made by comparing ABS motor vehicle registrations with APRA vehicle insurance data. According to the ABS Motor Vehicle Census there were 18.781 million motor vehicles registered on Australian roads in January 2017. The total, which includes passenger vehicles, motor cycles, buses, trucks and campervans, had grown by 2.1 per cent in the preceding year (ABS 2017). Assuming the preceding year's growth continued, the registered vehicle population would have grown to 18.945 million by June 2017. APRA's mid-2017 report recorded a total of 16.908 million vehicle policies, producing an uninsured rate of 10.8 per cent.

Before accepting this figure we must consider the number of unregistered vehicles on Australian roads. Unregistered vehicles are unlikely to be insured because their owners are actively seeking to avoid add-on costs and standard insurance policy terms give insurers the right to deny claims made by the driver of an unregistered vehicle. Every state and territory requires vehicles to be registered and the vast majority of Australian vehicle owners comply. Estimating the number of unregistered vehicles is challenging. The Insurance Council of Australia (ICA) advised the South Australian Parliamentary committee in the mid-1990s that it believed the rate in that state to be between two and four per cent but more recent reports suggest the figure could be lower.

In 2005 it was reported that the number of Victorians driving unregistered vehicles the previous year was 46,601 (*The Age*, 23 August 2005). The ABS vehicle census of 2004 recorded 3.565 million registered vehicles in Victoria, suggesting an unregistered rate equivalent to 1.3 per cent of the registered total (ABS 2004, p. 11). Technological advances have provided new insights. In 2014 Victoria Police reported that new automatic number plate recognition capability had detected 53,000 possible unregistered vehicles from more than four million number plate scans, again a rate of 1.3 per cent (*Herald Sun*, 12 October 2014 [p.?).

If we assume that the current national rate is around the same level as indicated in 2004 and 2014 Australia's unregistered vehicle population is equivalent to 1.3 per cent of the registered vehicle population, the national vehicle population in June 2017 rises to just under 19.2 million. If all unregistered vehicles are uninsured the revised uninsured rate is 11.9 per cent.

Table 2 lists characteristics of the Australian vehicle fleet that underpin a number of calculations in this paper:

Table 2 Australian vehicle population characteristics July 2017

Category	Number	Rate (%)	Number	Rate (%)	Number	Rate (%)
Registered	18,945,539	98.72				
Unregistered	246,292	1.28				
Insured			16,908,000	88.10		
Uninsured			2,283,831	11.90		
Comprehensive					14,371,800	85.00
TPPI					2,536,200	15.00
Total	19,191,831	100.00	19,191,831	100.00	16,908,000	100.00

Reasons for non-insurance

Uninsured Australia outlined reasons why Australians, particularly those on low incomes, avoid purchasing insurance. A lack of affordability ranked as the most consistent reason. Another reason for non-insurance and under-insurance is confusion about the different types of vehicle insurance. Financial counsellors have reported to the Brotherhood that some clients mistakenly believe their registration payment includes property insurance coverage:

Most of my clients believe that they are covered [for] third party through their rego.
(Salvation Army Money Care Program worker May 2017, email advice)

The ICA also noted consumer confusion in 2014 claiming that 21 per cent of vehicle owners with basic insurance coverage mistakenly believed they were covered against damage caused by an uninsured driver. This finding supports those of an earlier survey mentioned by NSW MP Richard Amery in 1992 in which 28 per cent of uninsured motorists expressed a mistaken belief that their registration payment provided property damage insurance (NSW, Legislative Assembly, 27 March 1992, pp. 2184–9).

It is clearly in the interests of general insurers to address the confusion that some consumers experience in relation to vehicle insurance.

RECOMMENDATION 2: That car insurers more actively promote and clarify the purpose of optional vehicle insurance to reduce the number of uninsured motorists on Australian roads. That governments consider partnering with insurers in an awareness campaign, to benefit taxpayers from a reduction in accidents caused by uninsured drivers.

A West Heidelberg Legal Service 2004 report found that many uninsured vehicle owners made a deliberate decision based on risk assessment: 44 per cent of drivers decided to take the risk and not insure. In the same report 32 per cent of respondents cited unaffordability as the reason they had not purchased any insurance coverage (Curran & Caruso 2004, p. 50).

As noted in *Uninsured Australia* state government-imposed stamp duty inflates the cost of coverage and therefore helps perpetuate the reluctance of many low-income drivers to purchase vehicle insurance.

RECOMMENDATION 3: That state governments consider removing stamp duty from vehicle insurance policies, specifically from those that have been developed by insurers for low-income drivers, in order to encourage uptake among previously uninsured drivers.

Incidence of accidents involving uninsured motorists at fault

Before applying the RAA formula to contemporary Australia it is necessary to identify key rates. As noted earlier the uninsured rate is assumed to be 11.9 per cent. The accident rate is maintained at the RAA's earlier estimate of 10 per cent and the responsibility rate at 50 per cent. Using these figures the formula produces the following estimate of accidents in which uninsured motorist were at fault:

19,191,831 vehicles x 11.9% x 10% x 50% = 114,191 accidents caused by uninsured motorists

Categories of accidents caused by uninsured motorists

The vehicle fleet and accident assumptions provided earlier in this paper allow the 114,191 accidents identified as being the fault of uninsured drivers to be broken into two categories. Table 3 identifies the number of accidents in each category.

Table 3 Breakdown of accidents caused by uninsured motorists

Category	Other vehicle involved in collision	Percentage of total	Number of accidents caused by uninsured drivers
A	Insured	88.1	100,602
B	Uninsured	11.9	13,589
Total		100.00	114,191

Misleading insurance industry assumption

In submissions to South Australia's Economic and Finance Committee in the mid-1990s the insurance industry based its objection to a mandatory third-party insurance scheme on a misleading assumption. The committee summarised the RAA claimed as follows:

The extent of any uninsured motorist problem was effectively limited to accidents involving only uninsured motorists and only to that proportion of the accidents where the at-fault driver is unable or unwilling to pay for the damage caused to the other party's vehicle (Economic and Finance Committee 1995, p. 10).

In calculating the incidence of unrecoverable loss both the RAA and the ICA proceeded to exclude all those innocent drivers who avoided loss by claiming on their insurance policies, allowing the RAA to calculate that only 739 motorists were unable to recover the cost of damage to their vehicle while the ICA's more conservative assumptions reduced this number to only 130. Both organisations argued that the net cost of the problem (\$130,000 and \$1.152 million respectively) did not justify a policy change by the South Australian government.

The equivalent argument today, using the categories of accidents in Table 3, would contend that the only shortcoming of Australia's optional vehicle insurance system is the unrecoverable loss arising from the relatively few accidents arising in category B. In the remaining cases, which represent over 88 per cent of the total, innocent vehicle owners could rely upon their own policies if the uninsured motorist lacked the means to pay for the damage they had caused. That does not mean however, that they should have to do so.

The insurance industry's dissembling on this point has been called out before. Amery's speech in support of his private member's bill referred to the National Road Motorists

Association's (NRMA) claim that only 784 vehicle owners a year in New South Wales would benefit from a compulsory scheme. Amery contrasted the NRMA view with the denial it drew from the state's bus and coach industry, which he said wrote off \$5 million to vehicles annually from accidents caused by uninsured drivers, an expense that added \$1,000 a year to the running costs of each bus and coach operating in the state (NSW, Legislative Assembly, 27 March 1992, pp. 2184–9).

A more accurate version of the insurers' argument is that the loss arising from accidents caused by uninsured motorists is reduced where insured motorists are prepared to pay more for greater protection, whether through add-ons to basic policies or the more expensive comprehensive coverage. Herein lies the central public policy problem: optional insurance forces responsible motorists to pay more in order to reduce the risk of loss arising from vehicle owners who choose not to purchase any insurance or simply cannot afford to do so.

4 Specific costs of optional insurance

The aim of this paper is to draw attention to a number of direct and indirect costs of optional vehicle insurance that are borne by consumers, insurers, community groups and taxpayers. It may be that because costs are borne widely no single group has mounted a compelling and effective case for change. By indicating the breadth and scale of costs this report invites consideration of whether policy reform is justified.

We believe these costs are not confined to direct property damage, although it is an obvious cost that will be dealt with first. This paper does not argue for a specific alternative to optional insurance but, for the purpose of estimating the following costs, a hypothetical policy setting of universal coverage is assumed.

Cost 1 – Unrecovered property damage

In submissions to the South Australia's Economic and Finance Committee inquiry the insurance industry argued that direct property damage arising from collisions involving only uninsured vehicles was both the most obvious and largest cost arising from optional insurance. The Brotherhood disagrees with this proposition, but acknowledges that it is first necessary to understand the cost of direct property damage arising from accidents caused by uninsured drivers. A simple way of calculating the total is to ascribe an average financial loss per accident using the earlier formula. However, determining a reliable average cost is difficult as earlier estimates varied. In the 1995 South Australian Parliamentary inquiry the RAA stated an 'average claim amount' of \$1,560 (Economic and Finance Committee 1995, p.11). The IC inquiry around the same time received a submission from the ICA stating an average TPPI claim cost of \$2,750.

According to a 2014 report the cost of claims varied across Australia with New South Wales having the highest average claim size (\$3,190) for collisions and other sources of damage as at September 2013 (Deloitte Access Economics 2014, p. 31). With this estimate in mind, we believe it prudent to ascribe a national mid-2017 average vehicle repair cost of \$3,000. This produces a gross cost of \$342.6 million for accidents caused by uninsured drivers.

This figure requires adjustment because of the excesses which are a characteristic of contemporary insurance policies. A standard universal excess of \$700 would ensure that \$80.7 million of the above losses would be borne by motorists, thus reducing the loss that universal vehicle property insurance coverage could have avoided in 2016–17 to \$261.9 million.

A further adjustment is required because a proportion of this uninsured loss is subsequently recovered, although exactly how much is uncertain. Amery's 1992 speech quoted a Victorian report, which estimated that around 43 per cent of loss was recovered, whereas a 2009 Victorian Parliamentary internship report referred to an earlier NRMA claim of around 50 per cent (Tilleard 2009 unpub., p. 16). Neither figure

reveals what cost is incurred by insurers in seeking recovery. For the purpose of this paper it will be assumed that 50 per cent of the estimated loss is recovered through payments by uninsured parties, a rate which reduces the loss to \$131 million.

Where the cost borne by innocent vehicle owners is concerned, this figure needs to be further reduced because insurers cover the cost of repairs for insured parties claiming on their policies even where the insurer is unable to recover. What is not known is how many insured motorists who could claim the costs of repairs against their own policies choose not to do so. Their reluctance may be motivated by the loss of a forthcoming no-claim bonus or a fear of higher future insurance premiums. This is an understandable reaction as the cost of claiming on a policy can reverberate through higher premiums for several years. Owners in this category bear the cost as either a repair bill or loss of vehicle value, both of which would not have to be borne if property damage insurance coverage were universal. If 10 per cent of the \$131 million loss recognised above is borne by vehicle owners in this way an attributable cost of \$13.1 million is recognised.

A sobering reminder of financial hardship is required at this point. The plight of innocent motorists unable or unwilling to seek insurance-based reimbursement for damage to their vehicles pales in comparison with the hardship experienced by the uninsured party. Applying the same average claim of \$3,000 to these drivers aggregates the loss suffered to almost \$350 million. The fact that many within this group simply cannot afford insurance coverage defines both their income inadequacy and their heightened exposure to loss. For them, a car accident brings much financial pain and while it will not be recognised as a cost in this paper it nonetheless ranks as a recurring issue of financial disadvantage for a significant number of low-income Australians.

Cost 2 – Higher comprehensive policy premiums

Because comprehensive insurance policy holders are able to claim for accidents which are not their fault, insurers factor this likelihood into the cost of those policies. Insurers are not required to disclose the claim rate of these customers but some guidance is available through the IC, which in 1995 estimated that claims of this kind amounted to between \$22 million and \$65 million per annum (Industry Commission 1995, p. 13). Both the cost of repairs and, as noted earlier, the rate of comprehensive coverage have grown since then.

Insurers will always aim to more than cover their anticipated exposure to these claims in the retail price of the policy. Even a small allowance accounts for a large additional consumer cost. Of the total \$11.289 billion paid in vehicle insurance premiums in 2016–17, comprehensive policies account for \$10.377 billion. This estimate is based on comprehensive policies accounting for 85 per cent of all policies sold and an average policy costing double a TPPI policy. If five per cent of total comprehensive policy premiums are due to insurers pricing in potential repairs of vehicles whose drivers were not responsible for the accident, the attributable higher premium cost is \$518.9 million.

Cost 3 – Higher TPPI policy premiums

As noted earlier many TPPI policies feature UME which is designed to provide protection to drivers for damage to their vehicle caused by an at-fault uninsured motorist. In the mid-1990s insurers concerned about the possibility of a mandatory TPPI scheme advised the South Australian Government's Economic and Finance Committee that UME was a common feature of TPPI policies. The committee noted, however, that the UME feature varied. A survey conducted by the RAA found that three out of 27 insurers (approximately 11 per cent) did not include UME in any of their policies while another nine required at-fault drivers to be 100 per cent responsible for the accident. Just over half the insurers limited the UME benefit to \$3,000 while others were prepared to offer as much as \$5,000 (Economic and Finance Committee 1995, p. 13).

Differences remain today in UME features embedded in TPPI policies. For example, Suncorp provides UME as part of its basic TPPI policy, while RACV and Allianz feature it only in the enhanced TPPI product that includes fire and theft cover. A \$5,000 maximum appears common although NRMA offers cover up to \$10,000. The current value of UME is unknown but this paper will assume that most TPPI policies include UME.

It is disappointing that some insurers have allowed their UME feature to diminish in value. The Reserve Bank of Australia website calculates inflation at around 75 per cent between 1994 and 2016 yet some insurers, including Budget Direct as noted earlier, retain the \$3,000 UME limit that was common in the mid-1990s. Inflation has effectively reduced this value by over 40 per cent and drivers are poorly served by diminished protection, all the more so when insurers do not offer an option to increase the limit.

RECOMMENDATION 4: That Australian car insurers standardise the UME feature of insurance policies to increase consistency for the benefit of Australian vehicle owners, ensuring at the same time the feature is not so qualified as to render it inaccessible or impractical. That the Australian government consider mandating a standard to at least \$5,000, should insurers be unwilling or unable to do so.

The same argument of attributable higher premiums can be applied to TPPI policies featuring UME. Because the feature allows motorists to receive a level of coverage for accidents caused by uninsured drivers, the cost of potential claims is factored into the retail price of the policy. If 90 per cent of the above noted TPPI policies feature UME at an annual cost of \$50 an attributable cost of \$114.1 million is recognised.

Cost 4 – Comprehensive insurance as risk mitigation

As mentioned earlier, the growth in popularity of comprehensive insurance despite the static average age of motor vehicles suggests that more consumers are choosing the most expensive form of insurance as a protection against the risks that optional vehicle

insurance presents. By contrast, a system of universal coverage would eliminate the need to purchase comprehensive coverage to guard against loss arising from the fault of an uninsured driver. We estimate the number of comprehensively insured vehicles in Australia in 2017 as 14.3718 million. If the owners of 10 per cent of these vehicles chose comprehensive coverage in order to mitigate the risk of accidents caused by uninsured motorists and an additional cost of \$500 is assumed, the cost of the mitigation is \$718.6 million.

Cost 5 – Insurer losses

Out of the estimated 114,191 accidents caused by uninsured drivers each year in Australia, no two insurance claims are identical and neither are the claims procedures used by insurers in each jurisdiction. After obtaining the required information from the innocent party making a claim the insurer exercises a right of subrogation and initiates action to recover their loss against the uninsured motorist. In some cases the responsible individual satisfies the insurer's request and pays the claim in full, although this paper has assumed a recovery rate of 50 per cent, based on earlier estimates.

In many cases, however, the insurer has difficulty in fully recovering the payment it makes for a successful claim. In Victoria, Centrelink recipients present insurers with an impediment due to section 12 of the state's *Judgment Debt Recovery Act 1984*, amended in 2006 to provide:

An instalment order shall not without the consent of the judgment debtor be made if the income of the judgment debtor is derived solely from a pension benefit allowance or other regular payment under the Commonwealth *Social Security Act 1947* or section 24 of the *Children, Youth and Families Act 2005*.

The Victorian protection is echoed in national legislation, the Commonwealth *Social Security (Administration) Act 1999*³ also providing at section 60 (1) that:

A social security payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

These legislative provisions prevent insurers from proceeding with recovery actions against many at-fault uninsured motorists who are dependent on Centrelink payments and own few if any assets. Where debtors have a significant asset such as a home to protect they may be forced to consent to an order for payment. In this case the amount of payment is often negotiated. Different insurers adopt different ways of determining acceptable cents-in-the-dollar settlements. Community legal services represent many clients in these circumstances and are well practised in seeking partial payment or waiver of the debt. The hardship provisions inserted into the General Insurance Code of Practice some years ago has enabled the waiver of debts by insurers. More generally, in recent years insurers have been encouraged to waive debts through hardship programs

³ *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*

arising out of the Bulk Debt Negotiation Project, an initiative of the West Heidelberg Legal Service.

The Victorian legislation is regarded as superior to the national legislation, giving greater protection to uninsured at-fault drivers. According to WEstjustice's Denis Nelthorpe in a personal communication in September 2017:

...the Social Security provision is dated with significant uncertainty to the actual meaning and application of the term "inalienable". The Victorian provision has been accepted and understood without difficulty.

Financial counsellors also appreciate the different strengths of the two Acts, one financial counsellor advising the Brotherhood that:

Insurance companies are relentless in their pursuit of these individuals and are very hard to negotiate with in relation to an inability to pay, in particular in states where there are no judgement proof protections (Uniting Communities financial counsellor, email, June 2017).

The Judgment Debt Recovery Act is well established in Victoria and insurers appear to have no difficulties accepting its application. It has undoubtedly helped avoid much distress for impecunious low-income and vulnerable Victorians and we believe there is a compelling case for other jurisdictions to adopt the protection.

RECOMMENDATION 5: That non-Victorian jurisdictions adopt Victoria's Judgment Debts Recovery legislation to achieve a nationally fairer and more consistent treatment of uninsured drivers with little or no capacity to manage debts arising from at-fault motor vehicle accidents.

Legislative protections prevent general insurers from fully recovering the cost of claims arising out of accidents caused by uninsured drivers. Insurers respond to the unrecovered cost by always factoring in at least an equivalent value to the retail price of their policies, as outlined in Costs 2 and 3 of this paper.

Cost 6 – Community legal centre operating costs

Community legal centres (CLCs) assist clients who either cause or are victims of uninsured driver accidents. Much of the CLC workload involves identifying where responsibility lies. It is often difficult for those on opposing sides of a disputed accident to reach agreement about responsibility and some cases result in a determination of shared fault.

An examination of some individual legal centre annual reports suggests the proportion of cases generated by motor vehicle accidents varies by location (see Table 4).

Table 4 Motor vehicle accident case load as reported by Victorian CLCs

Community legal centre	Share of total case load (%)	Year
Barwon	12 (est.)	2014–15
Community West	7 (est.)	2014–15
Darebin	3	2015–16
Eastern–Deakin University	6	2014–15
Eastern–Maroondah	4	2014–15
Eastern–Manningham	7	2014–15
Eastern–Whitehorse	7	2014–15
Eastern–Yarra Ranges	5	2014–15
Springvale–Monash	9.6	2015–16

Source: CLC annual reports

Interstate experience is similar. The Community Legal Centres NSW 2014–15 annual report noted that centres across the state provided 3,620 advices during the year. Motor vehicle accidents ranked ninth in type of matter handled (Community Legal Centres NSW 2015, p. 10).

The 2014–15 Victoria Legal Aid annual report stated that 2,625 motor vehicle accident cases were handled by the service (Victoria Legal Aid 2015, p. 84).

If vehicle property insurance were universal the question of fault would still need to be determined but this task would be undertaken by insurers rather than CLCs and funded out of the premiums paid by motorists.

Although the available data is not comprehensive it does allow an approximation of CLC costs arising from uninsured motorists. Currently the Commonwealth’s contribution to community legal services amounts to around \$50 million per annum (Murphy & Brennan 2016). If seven per cent of the Commonwealth’s expenditure caters for uninsured motorist case load, a cost of \$3.5 million is attributable. This would be a minimum cost as state and territory governments also provide some complementary funding for legal centres. In addition it is likely that some state-level legal aid services, funded by both levels of government, are provided to vehicle owners as a result of accidents involving an uninsured party.

Cost 7 – Private legal costs

The Brotherhood is not aware of any previous estimate of private legal fees generated by collisions caused by drivers of uninsured vehicles. Owners not wishing to resort to

their insurance policy lest it contribute to higher future premiums may resort to private legal action in order to secure recompense. Similarly, property owners who have suffered damage may seek redress via the same approach, especially if their building insurance does not cover that contingency or includes a high excess.

As a guide, if 10 per cent of the 114,191 accidents caused by uninsured drivers led to the engagement of legal services at an average cost of \$750, the costs would amount to \$8.6 million.

Cost 8 – Financial counselling

The work of Australian financial counsellors includes cases arising from uninsured drivers involved in accidents, whether as the responsible part or an innocent victim. We made inquiries via Financial Counselling Australia and received numerous responses from financial counsellors by email in May and June 2017:

Yes, I have seen a number of clients in the past with claims against them from insurance companies. I estimate probably one case per quarter; however in some cases there are multiple claims ...

I would average one case per month...

It would be probably one per month ...

... on average I would have one uninsured motorist per client per quarter.

One per quarter is average.

At least one a month.

CLCs are often collocated with financial counsellors and referrals are regularly made by CLC staff when the client responsible for damage is at risk of losing assets. It is difficult to estimate the cost incurred by financial counselling services as a result of uninsured driver clients because the sector is funded from multiple sources. In 2014 the Australian Department of Social Services announced funding of \$21.3 million for general financial counselling, including face-to-face and phone servicing. State governments also contribute around \$23 million to the sector but this varies considerably by jurisdiction (Financial Counselling Australia 2015). At the same time utilities, banks and insurers provide some support. Suffice to say, a proportion of the demand for financial counselling services in Australia is attributable to optional TPPI. In the absence of any previous estimates we believe it is reasonable to assume that around \$2 million of financial counselling services annually arises due to accidents involving uninsured drivers.

Cost 9 – Court costs

Disputes over property loss caused by at-fault drivers often progress to court. A mid-2017 Brotherhood of St Laurence survey of the Magistrates' Court of Victoria identified that across three sitting days the civil list of 194 cases featured 48 (24.7 per cent) vehicle property damage cases.⁴ In 2015–16 over 60,000 civil cases were filed with the Magistrates' Court of Victoria (Court Services Victoria 2016, p. 28). Although the Brotherhood survey results do not apply to the entire annual case load it seems likely that tens of thousands of vehicle owners are engaged in the legal process each year as a result of vehicle accident damage.

Two forms of court costs are apparent. The first set is incurred by parties to the legal action as a result of court-imposed fees and charges. In Victoria the Magistrates' Court applies charges on parties wishing to commence a motor vehicle claim. These range from \$983 for claims between \$1,000 and \$5,000 to \$2,341 for claims totalling more than \$70,000.⁵ Cases proceeding to trial are more expensive still, the Victorian General Civil Procedure Rules indicate that in vehicle accident cases claiming between \$1,000 and \$5,000 a charge for counsel of \$545 applies.

Taxpayers bear the second cost. The Magistrates' Court of Victoria budget in 2015–16 was \$125 million and it is reasonable to assume that some of this is expended on cases arising from uninsured motorists. However, attribution is impossible because the Magistrates' Court does not categorise vehicle property damage cases by insurance coverage (Chief Magistrate 2017, pers. comm.).

The number of vehicle insurance cases being pursued through the courts cannot be solely attributed to dissatisfaction with insurer behaviour. Parties to insurance claims have recourse to the Financial Ombudsman Service. In 2015–16 FOS accepted 22,376 financial services disputes, just under one-third of which were general insurance related. Of that number less than half comprised disputes arising from motor vehicle insurance claims. The resulting number, less than 3,000 across Australia, is much lower than the number of vehicle damage cases being listed in one state's lower court.⁶

The propensity of motorists to seek judicial determination of their property damage disputes raises a broader policy issue. It is unclear that the Magistrates' Court produces judgements that are any fairer than the determinations of insurers. With around 90 per cent of vehicle owners insured it appears that many are using the courts as an alternative to insurer resolution, a choice that imposes costs on taxpayers. What public policy objective is served by allowing this practice to continue? We are not convinced this represents efficient or effective policy and believe that state governments should evaluate whether an alternative dedicated vehicle accident tribunal would be a

⁴ Survey undertaken by Tony Robinson for June 3, 6 and 7 June 2017.

⁵ See Magistrates Court of Victoria website for Fees and Costs Ready Reckoner.

⁶ Figures are derived from the *FOS Annual review 2015–16*

preferable means of resolving disputes of this kind. In this respect New Zealand's Dispute Tribunal may be a model worth considering. Along with a range of other matters, insurance disputes are heard by an accredited referee whose decision can be enforced by a court. The tribunal can hear cases involving claims of up to \$20,000. It is a low cost option with a fee of \$180 for disputes involving claims above \$5,000.

RECOMMENDATION 6: That the Victorian Government consider alternative methods of resolving disputes arising from motor vehicle accidents, particularly in view of the considerable workload this generates for the state's Magistrates' Court and the likelihood of cheaper and quicker determinations. That other state and territory governments consider the extent to which their courts are similarly being used to determine liability in vehicle accident cases.

Cost 10 – Bankruptcy

Uninsured drivers pursued for financial loss arising from accidents they caused may find their financial liability is greater than the value of their income and assets. In such situations the individual may consider personal bankruptcy. Those with no assets or income are considered to be 'judgement proof' under Victoria's *Judgment Debt Recovery Act 1984* and the Commonwealth's 1999 Social Security (Administration) Act and bankruptcy serves no purpose for the party pursuing payment. For those without this protection, however, bankruptcy may be the means by which they choose or are forced to deal with the matter.

Over recent years the incidence of uninsured motorists seeking or being forced into bankruptcy has fallen dramatically. Tilleard's 2009 report noted an earlier Insolvency and Trustee Service Australia estimate that 9.3 per cent of all bankruptcies in Australia were directly attributable to motor vehicle accidents (Tilleard 2009 unpub., p. 17). However, WEstjustice's Denis Nelthorpe has advised the Brotherhood that the earlier mentioned Bulk Debt Negotiation Project has fostered a practice of CLC requests for waivers on behalf of uninsured clients. Insurers are responding more positively to these requests and Nelthorpe believes the rate of bankruptcies attributable to motor vehicle accidents is now insignificant. No cost will be attributed in this paper (D Nelthorpe August 2017, pers. comm.).

The cost and burden of optional insurance

The costs generated by optional vehicle property damage insurance in Australia, which are listed in Table 5, fall on the Australian population in different ways. The greatest cost is borne by insured drivers whose premiums are significantly higher because insurers factor in the likelihood of unrecoverable claims and because many of them decide to mitigate risk by choosing more expensive comprehensive coverage. Table 5 indicates that insured drivers pay over \$1.3 billion more for their coverage than they would have

to if motor vehicle insurance were universal, an amount equivalent to around 12 per cent of the total premiums paid.

Table 5 Costs attributable to optional insurance excluding unrecovered property damage

Cost description	Annual cost (\$ millions)
Unrecovered property damage	13.1
Higher comprehensive insurance premiums	518.9
Higher TPPI insurance premiums	114.1
Comprehensive insurance as risk mitigation	718.6
<i>Total costs borne by insured drivers</i>	<i>1,364.7</i>
CLC operating costs	3.5
Private legal costs	8.6
Financial counselling	2.0
Total cost	1,378.8

A separate reflection is required in respect of low-income Australians, who have been shown to be less likely to insure their vehicles. Brotherhood of St Laurence research in 2011 found that 26 per cent of clients who had taken out an ANZ Progress Loan, a product designed specifically for low-income borrowers, reported having no insurance for vehicles they owned (Collins 2011, p. 23). This finding reinforced an earlier Brotherhood study of 126 individuals, 80 per cent of whom received Centrelink benefits, which found that only 45 per cent had contents or vehicle insurance (Sheehan & Renouf 2006, p. 5). NAB's 2014 financial exclusion report found that while 81.3 per cent of the population paid for one or other forms of general insurance coverage, the percentage contracted as income fell: the share of those earning between \$20,000 and \$25,000 who had coverage was only 76.2 per cent (Centre for Social Impact 2014).

One financial counsellor advised us that between 70 per cent and 80 per cent of her centre's clients had no vehicle insurance (UnitingCare financial counsellor 2017, pers. comm.).

This report assumes that 11.9 per cent of vehicles in Australia today lack insurance coverage, equivalent to 2.3 million drivers. It stands to reason that the majority of these drivers would earn less than average income. For them, accidents that are their fault incur two costs—the damage they inflict on another driver's vehicle or public and private property for which they can be pursued, as well as the damage to their own vehicle. As noted earlier the financial consequence of being uninsured can be financially crippling.

5 Conclusion

Far from the low cost estimated by general insurers in the mid-1990s, we estimate the real cost of optional vehicle insurance exceeds \$1.3 billion per annum. If the rate of uninsured drivers is not reduced the real cost will increase in future. This finding poses fundamental questions: are Australian motorists well served by optional insurance? Is the expense they are bearing a reasonable burden to carry? Do insurers and policy makers think the current arrangement is fair for all involved?

Neither the insurance industry nor any level of government in Australia has shown much recent interest in asking or answering this question. Insurer initiatives such as Suncorp's Essentials are a commendable attempt to make TPPI more affordable, but not even Suncorp believes this will result in universal coverage.

One reason for the absence of debate over vehicle property insurance might be that up until now no estimate of the total cost of an optional system has been attempted. Another might be that the most obvious alternative, mandatory TPPI, may be impractical. Asking people who simply cannot afford insurance to pay hundreds of dollars a year for coverage will not, of itself, result in all of them doing so. This latter point shows that good public policy has to consider the danger of solving problems in a way that creates new problems. Nevertheless, the Brotherhood believes the absence of an agreed alternative should not stop consideration of an alternative approach.

The case for a public policy response

In our view a public policy response is justified for three reasons. First, the inherent weakness of an optional insurance system is its inequity. Those who purchase insurance ought to be able to drive in the knowledge that, if they are involved in an accident that is not their fault, the damage to their motor vehicle will be paid for. The lack of universal TPPI and the inconsistency of the UME feature rob motorists of this peace of mind. They also impose additional costs on consumers through higher premiums that factor in the cost of unrecoverable claims and more expensive comprehensive coverage. In this sense the current situation can be characterised as plainly unfair to those Australian motorists who act responsibly by purchasing insurance.

A second consideration concerns low-income Australians who suffer disproportionately from a continuation of the current system. Many lack the means of insuring their vehicles yet are dependent on them for day-to-day life, particularly in outer suburban and regional areas with high private transport dependency. This group of Australians are exposed to financial loss when they cause an accident as well as when another uninsured driver is at fault.

The third concern arises in respect of the insurance industry. Motor vehicle insurance currently represents an annual investment, by around 88 per cent of Australian vehicle owners, of over \$11 billion. We estimate that their premiums are inflated by almost 12

per cent because more than two million drivers, for a range of reasons, exercise a non-insurance prerogative. Whether this expenditure represents an efficient investment is debatable, given that it does not prevent some insured drivers from sustaining loss. Industries that are demonstrably inefficient to the detriment of consumers should be reformed.

The insurance industry's argument 20 years ago was, in effect, that reform was not required because motorists could pay for protection against property damage. That argument can only be accepted if its disingenuousness goes unchallenged. The industry's support for the status quo requires motorists, in effect, to make multiple payments to manage risk. The industry's argument is that motorists can protect themselves adequately, not by purchasing a basic TPPI policy or even a TPPI policy with UME, but paying for more expensive comprehensive insurance. This product affords them only one advantage that TPPI doesn't offer: if they cause the accident the damage to their vehicle will also be covered. Comprehensive coverage only serves a purpose while TPPI remains optional in Australia.

A role for insurers and governments

Even if the industry maintains its mid-1990s stance on optional insurance today there are steps insurers can take to improve the way the current system works and they should be urged to do so. There is nothing stopping insurers, for example, from initiating an awareness-raising campaign about the role of car insurance. This would address confusion among consumers, and could encourage some uninsured drivers who can afford coverage to purchase it. Similarly, there is nothing stopping the industry from standardising the UME feature in policies, a measure that would benefit many low-income Australians who cannot afford to purchase comprehensive coverage.

Governments, too, have a role to play through examining the application of stamp duty to insurance policies as well as the way courts are being used as an insurance clearing house. None of these initiatives requires a better alternative to optional insurance to be immediately identified and enacted, but all would help address weaknesses identified in this paper.

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