PRIVATE GREENSLIPS, TEN YEARS ON

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The market privatisation of compulsory third party insurance (CTP or 'Greenslips') in New South Wales occurred in 1989. Its tenth anniversary provides a useful opportunity for review of the scheme. The fact that 1999 sees the scheme undergoing its third major legislative overhaul in five years, once again to reduce prices and limit claims, demonstrates that this has been far from an exercise in 'deregulation'. On the contrary, the NSW system of CTP has become one of the most highly regulated insurance schemes in the country. It is pertinent to ask what motivated this combination of privatisation and regulation and what it has achieved.

Privatisation has been traditionally defined as the sale of government enterprises or assets, or the contracting out of the provision of public goods and services to the private sector (Abelson 1987: 1). However, where the effective market of a public service is given over to private investors, we can usefully regard this as a 'market privatisation'. The CTP scheme may be regarded as a 'market privatisation', because of the effective marginalisation of the former public monopolist, the GIO, which had its market share reduced from 100% to 7% in just a few years (MAA 1993).

Unlike some other privatisations of former state monopolies, the subsequent CTP private oligopoly has been a broad one. Ten years on, there are fourteen private insurers in the market. However, there remains an intense debate over pricing and there are regular demands for increased regulation. Did the scheme introduce some competitive efficiency into the CTP market? Did it relieve some burden on public finances, as is sometimes suggested in privatisation? Or does this privatisation demonstrate the state acting as a consistent facilitator of private corporate interests?

Greenslips: the Background

Greenslips insure drivers of motor vehicles for personal (not property) injury to persons other than the driver. CTP insurance is compulsory for all registered vehicles, so in revenue terms the market is strong and stable. Most Australian states maintain public CTP schemes, and as at 1999 only New South Wales, Queensland and the ACT had privatised their CTP markets. However, Greenslips in NSW are now a substantial part of the private general insurance business, with premium revenue in the order of $7 billion per year (APRA 1998).

Prior to 1987 the state-owned Government Insurance Office (GIO) had monopolised the CTP market, in what is now referred to as the Old Third Party Scheme. However this scheme had been running at a loss for some time. After Liberal Premier Nick Greiner was elected in 1988, he blamed the GIO's $2 billion shortfall on former Labor Premier Neville Wran's "vote buying" cuts to fees in the early 1980s (Moore and Lagan 1989). As it would have been politically unpopular for a public monopoly to substantially raise prices, the Liberal-National government delegated this task to a highly regulated private market (Hunt 1995). In 1989 Greiner replaced an interim scheme, TransCover (1987-89), with the Motor Accidents Scheme (MAS) under the *Motor Accidents Act* 1988. In the MAS a number of private general insurance companies were licensed to issue Greenslips. A new regulatory body, the Motor Accidents Authority, was also set up under this Act. Across Australia, private general insurance (including CTP) is also prudentially regulated by the Australian Prudential Regulation Authority, under the *Insurance Act* 1973. The APRA prudentially regulates the insurance companies, while the MAA regulates the CTP system. So Greenslip-issuing companies operate under both federal and state legislation, and both federal and state regulatory bodies.

In 1989 a levy was imposed on CTP premiums, to pay for old claims, and prices were artificially raised until they were 'deregulated' in 1991.

Prices then fell in this newly competitive market, but rose again steadily throughout the 1990s (see Table 1). Prices had climbed so high by the mid 1990s that state intervention in the regulatory framework was called on, to reduce premiums but maintain a viable private CTP industry. NSW CTP insurance is now the most expensive in Australia, despite a series of restrictions imposed on allowable claims.

Explanations for Privatisation

It is useful to ask what underpins the push for privatisation in general, before turning to the specifics of NSW Greenslips. What is the rationale for such a significant shift from the public to the private sector? There are three broad arguments for privatisation, which can be termed the 'efficiency' argument, the 'fiscal conservative' argument and the 'corporate-servicing' argument. The first two are broad 'public interest' arguments, the third stresses sectional interest.

The 'efficiency' argument has it that privatisation, when accompanied by elements of private market competition, will create greater market efficiency, with consequent lower prices for consumers. This draws on neoclassical theory, which holds that elements of private competition (even if limited) will expose previously sheltered enterprises and service providers to the pressures of a competitive market, and the requirement to generate a return on capital. Accountability to shareholders will then intensify the need to reduce input costs, including labour, and to develop more effective techniques of production or service provision. Suggested general efficiency gains through privatisation are therefore closely linked to notions of a cost-reducing, competitive regime and the pressure to extract a surplus from investment. It is implicitly suggested that general efficiency gains will outweigh any 'leakage' of resources to non-reinvested profit; that is, to private profits transferred out of the industry.

The Industry Commission (1996: 4-22) claims that competitive tendering and the contracting out of various government services has recently led to cost savings, most of which represent efficiency gains, and that these savings are mainly driven by "competition or the threat of competition".

However, before equating costs savings with efficiency gains, we need to consider:

- whether the same level and quality of service has been provided, at the lesser cost,
- whether the savings represent more than the total productivity gains which would otherwise have been made, and
- whether community service obligations (including access to information and opportunities for public review) been maintained and properly accounted for.

A suggestion often associated with the 'efficiency' argument stresses increased consumer choice as an allied benefit of privatisation, with private enterprise said to be more inventive and better able to generate new commodities (NCAAC 1988: 5-6). This may be the case in some industries, if privatisation actually serves to diversify ownership, rather than concentrate it. The insurance industry, however, presents an extremely homogenous product with few distinctive features, in terms of consumer choice. In the case of compulsory third party insurance, the significance of consumer choice is limited by the necessary and regulated homogeneity of the product, so analysis of 'efficiency' claims here must focus on the price benefit for consumers, and on the maintenance or expansion of the general quality and breadth of insurance cover.

The 'fiscal conservative' argument is that privatisation removes the need for public expenditure. The state either does not possess the resources to fully develop the enterprise, or else it is claimed that state resources would be better used elsewhere. This is more pragmatic than the efficiency argument, but draws on some similar liberal assumptions. In particular, the state is assumed to have limited economic functions and is not supposed to expand its sphere of investment, certainly not in competition with private investors.

By this argument, privatisation might reduce some demand for public investment and will release some funds to the state in the short term, to meet other needs. Several motives for such divestment have been suggested:

- the state may not wish to raise taxes for new public capital investment, such as purchasing new aircraft for a publicly-owned airline,
- reinvestment in alternative ventures may provide a better return of funds (Walker 1994: 28-29), for example as 'seed money' for more private investment (ICRSF 1993: Vol 2),
- the proceeds of privatisation may be used to reduce public debt, or to reduce the government budget deficit.

The Federal Labor Government in the mid-1990s expressed interest in cutting its deficit by privatisation (Bartholomeusz 1994: 23). The Federal Liberal-National Government two years later renounced this but supported retiring government debt by privatisation (LPA 1996a). Both are similar strategies, one aimed at a flow deficit, the other at a stock deficit.

The deficit-reducing and debt-retirement explanations, however, represent particularly narrow views of public finance. Attempting to cover recurrent expenses with asset sales, firstly, will only provide a very short term and one-off benefit and, secondly, in the case of productive assets, may actually reduce income in the longer term. Both Walker (1994) and Hamilton (1995: 15) have pointed out that detailed and longer term cash flow analyses are required to justify the claim that asset sales will actually save public funds. Such analyses must also take into account the costs of new regulatory regimes and discount savings for the impact of privatisation on reduced quality of service and loss of public accountability.

In the case of privatising compulsory third party insurance there was indeed a question of public finance, though not because consumers were paying for an inefficient and expensive public enterprise operation. The claim was rather that the scheme was inefficient because it had become too cheap, the GIO being under constant political pressure, and that a substantial debt had built up. Private competition was said to be able to introduce the discipline of the market. Whether this in fact happened deserves further examination.

Finally, the 'corporate-servicing' argument suggests that the state's major policy initiatives are not really driven by a broad public interest, but rather by a need to serve the capital accumulation needs of private investors in the corporate sector. For this reason, privatisation outcomes may not provide fiscal benefits to the state or lower prices for consumers. Neo-marxist theories of the state, from such writers as Block (1977) and Offe (1987), provide a basis for this viewpoint. Block says that structural imperatives require that the state supports the interests of capital, so that high levels of economic activity, employment, prosperity, political support and taxation are maintained. The state may sustain some autonomy, but only subject to close alignment with the corporate sector. Offe describes similar links, and points to the role of the state in legitimising the corporate domination of policy, through repeatedly equating public interest with investor interest. These writers stress the essentially symbiotic relationship between the modern capitalist state and the corporate sector.

From this third perspective we may understand privatisation as the state acquiescing to the corporate sector's incessant demand for new markets and new surplus producing investments. Such pressure to service the corporate sector by providing new markets in the public sector has been intense in wealthy, industrialised countries affected by their generally lower productivity and growth rates, at least from the 1970s onwards (UNIDO 1985: 23f). Thus the 'colonisation' of the public sector in some industrialised countries may be seen as a process parallel to the powerful search for new export and foreign investment markets, responding to the flagging productivity and growth rates of the past two decades. We can usefully situate the NSW Greenslip privatisation in this broader context.

The Greenslip Privatisation

The market privatisation of compulsory third party insurance in NSW is distinctive for two reasons. Firstly, there has not been a collapse to narrow oligopoly – there are currently fourteen insurers in the market. Secondly, the demands for political intervention in the arena have not abated since privatisation, with the issue being prominent in the 1999 election campaign (Channel Seven, 1999; Doherty 1998), despite extensive legal reregulation of the scheme in 1995 and 1998.

In the privatised scheme, a $40 levy was imposed on car registration fees, on top of a $70 increase already imposed, to pay off pre-1989 GIO claims (Mohanlall 1995: 51-53). The scheme was privatised (though the GIO was not, at that stage) with more than a dozen private insurers joining the GIO to offer CTP policies. However, fees were regulated at a very high initial level, for two years, before they were allowed to fall again (MAA NSW 1990: 17). The regulatory regime thus changed twice in two years. Each change saw a fall in the number of claims (see Table 1), which the MAA explained this way:

> Under TransCover [1987-89] the claim rate dropped significantly [from that of the pre-1987 third party scheme] and under the Motor Accidents Scheme [1990-93] it dropped again. This decrease was partly due to the nature of these schemes in that they both provided less incentive for people with minor injuries to claim by generally limiting payments to the reimbursement of out of pocket expenses. (MAA NSW 1994a: 5)

Attorney General John Dowd had announced that the Government's intention was that:

> when insurers have gained experience with the new scheme and are able to determine for themselves the premium needed to meet their potential liabilities under their policies ... premiums will be determined by the insurers in the same way they determine premiums for comprehensive motor vehicle or other general insurance lines: according to ordinary insurance principles. (Dowd 1988: 3830)

The Motor Accidents Authority (MAA) was set up to regulate the scheme, but with the view that price regulation would not persist. This may have been wishful thinking. By 1993, the previous monopolist, the GIO, held only 7% of policies, ranking 5th of 14 insurers in market share (MAA 1993). Such marginalisation of a former public monopoly is hard to conceive of in an industry where physical infrastructure is important (eg telecommunications); however, it was able to be quite a rapid process in an industry based on the issuing of simple financial promises.

The removal of fixed prices in 1991 initially led to relatively low premiums (see Table 1). However, by 1995 the MAA-regulated prices had risen to higher real levels than had been the case under the GIO monopoly. All insurers claimed they were losing money, and all applied to the MAA for, and received, substantial rises in fees. The MAA's regulatory brief involved keeping the scheme viable, as well as preventing overcharging. By 1998 the MAA's strategic priorities, to do with its public duties as regulator, were:

- to ensure that there is "a strong competitive insurance industry with long term viability, within an effective regulatory framework, fair and efficient claims processing, equity of compensation, available, affordable and adequate CTP premiums, community understanding of Green Slip Issues including rights and obligations" and
- to ensure that there is "effective participation in the achievement of Road Safety 2000 targets, [consistent with the] MAA commitment to effective injury management".

The MAA also had to keep the Minister advised of "all relevant issues" (MAA 1998a: 5-9).

Pressure on premiums led the NSW Government to legislate in 1995 to limit allowable claims. The general propensity to claim had fallen after the beginning of the new scheme, but then increased rapidly throughout the 1990s, as shown in Table 1.

Why had the CTP prices climbed again? A 1995 report confirmed that while there had been a fall in serious and fatal injuries (police and public education campaigns had helped reduce the 'road toll') there had been a rise in the number and cost of small claims (MAA 1995). Insurers blamed lawyers and the courts; however, a Law Foundation report insisted that judges and arbitrators had "interpreted [the Act] consistently" since 1989 (Worthington and Delaney 1995: 44). In 1995 the NSW Labor Government legislated to prevent premiums escalating to $500 (Sharp 1995). These amendments to the *Motor Accidents Act* 1988 more strictly limited claims for minor injuries, non-economic loss and associated (non-vehicle collision) injuries (Palestrant 1996a), removed non-economic loss payments for minor injury (physical impairment levels deemed below 15%) and scaled down non-economic loss for medium injuries (physical impairment levels deemed between 15% and 33%). The amendments significantly reduced the propensity to claim (MAA 1998b: 10-11). Claims had risen from 41 per 100 injuries in 1990, to 67 per 100 in 1995, but fell back to stabilise at 60 per 100 in 1997 and 1998 (MAA 1998b: 5).

Table 1: Greenslip Premiums and Claims, 1985-1998

	Average Sydney Car Premiums ($)	Premiums in (1990) Prices ($)	Claims per 1000 Vehicles	Claims per Injury	Claims Incurred	Total Injured
1985			13.5	1.00	40,404	40,403
1987	262	326	11.6	0.88	28,384	39,178
1989	350	378	6.4	0.57	14,528	35,015
1991	345	328	4.2	0.43	13,390	30,929
1992	214	199	4.1	0.48	12,966	27,257
1993	198	183	4.1	0.51	13,453	26,501
1994	236	214	4.7	0.57	15,521	27,311
1995	254	223	5.3	0.67	17,563	26,170
1996	385	324	4.8	0.61	16,245	26,786
1997	386	321	4.5	0.60	15,426	25,806
1998	422	351	4.3	0.60	(7,618)*	(12,660)*

Source: MAA NSW (1994a) (1994b) (1995a) & (1998a); ABS 6401.0 series (to index prices to CPI). *Notes*: Premiums are at June of each year; * = half yearly figures

The level of legal representation had also increased in the early 1990s (51% in 1990 to 65% in 1995) as had the rates at which insurers rejected liability (3.3% in 1990 to 9.5% in 1995). Following the 1995 amendments, legal representation had fallen to 57% by 1998 (MAA 1998b: 5, 14). However, dispute has remained about the extent to which litigation formed part of the pressure to increase premiums. By mid-1998 the State Government was arguing that legal fees were forcing up the price of green slips, yet the Law Society of NSW complained that legal fees comprised less than 12% of premiums, over a period when premiums had risen by 16% to 24% (Law Society of NSW 1998). In late 1998 the State Government moved further amendments to the *Motor Accidents Act*. These were to give greater power to the Motor Accidents

Authority to reject premiums, to force early settlement of claims, to create legal costs rules and to ensure medical and rehabilitation expenses were paid pending the final settlement of a claim (MAA 1998c). The NSW Bar Association (1998) claimed that these amendments denied many accident victims their rights to litigate.

Evaluation

By the mid 1990s, compulsory third party insurance had become a large and increasing share of private general insurance business, other than life and health insurance. Between 1993 and 1997 CTP premium income rose from the fifth largest to the third largest source of revenue for private general insurers (APRA 1998: 5). The regulator claimed there had been a general "trend towards the privatisation of public sector insurers" across Australia (APRA 1998: 3). However, as at late 1997 NSW and Queensland were the only states with privatised CTP schemes. This makes the relative significance of the CTP market even more pronounced.

Table 2: General Insurance Premium Revenue (top five categories) by State, 1997

	States ($million*)								
	NSW	Vic	Qld	SA	WA	Tas	ACT	NT	AUST
CTP motor vehicle	806	0	393	0	0	0	50	0	1,249
Domestic motor vehicle	1,034	466	210	107	248	19	41	2	2,128
House owner/householder	659	234	192	79	132	16	18	3	1,334
Employers' liability	49	643	1	4	212	50	28	11	997
Commercial motor vehicle	156	109	98	40	54	11	12	4	485

Source: APRA 1998: 36.

Note: *for the 11 months ending November 1997 (latest available data)

Table 2 shows premium revenue from the largest five categories of private general insurance. CTP revenue is third highest, but it would be second highest if there were not public CTP schemes in most states. Note also that employers' liability appears low because of the counter-privatisation (or socialisation) of workers' compensation schemes in several states, including NSW. This counter-trend gives some additional force to the neo-marxist explanation of the state subsidising private, corporate employers.

The market share of the oligopoly, dominated by the NRMA (Table 3), has been relatively stable throughout the 1990s. There has not been significant concentration of market share. Yet neither has there been vigorous or corrosive competition, as there have been rising prices (Table 1) in conditions of fairly stable demand.

Table 3: Market Share of the NSW CTP Scheme

	1991-92	1997-98
AAMI	4.9	7.1
AMP	9.9	1.1
CIC	6.7	4.9
Commercial Union	1.9	0.0
FAI	4.1	8.2
GIO	7.3	6.2
MMI	9.5	9.6
Mercantile Mutual	7.3	2.0
NRMA	27.9	32.3
NZI	3.1	3.0
QBE	7.3	9.9
R & SA	3.4	5.8
VACC	3.5	2.4
Zurich	3.3	7.2
SGIO	0.0	0.2
Total	100	100

Source: MAA 1998b: 36

Despite repeated attempts to limit and streamline claims, ten years after privatisation New South Wales has the most expensive CTP scheme in the country. CTP schemes in different States are differently constructed, and difficult to compare. However, in 1995 there were approximately 20,000 new claims per year in Victoria, compared to 17,500 in NSW.

This represented a higher absolute number of claims in Victoria, and an even higher claim rate per vehicle. In 1995 average Victorian CTP premiums were $255, comparable to NSW (Randall 1995). However, Victorian CTP prices only rose to $300 by 1999, compared to over $400 in NSW (Doherty 1998). Despite the Victorian Government's penchant for privatisation, that state retains a public CTP body, the Transport Accident Authority (established in 1987), which also has significant responsibility for road safety campaigns (Randall 1995). There are some differences between the benefits of the two schemes. According to the Insurance Council of Australia, the Victorian Transport Accident Commission paid $460 million in benefits to motorists in 1996-97, compared with a combined NSW payout of $860 million. The ICA claimed this difference had a lot to do with Victorian accident victims not being paid for loss of earnings for the first five working days, and income support stopping after only 18 months (Doherty 1998). By 1999 average premiums were $331 in the ACT, $246 in Queensland and $243 in South Australia (Doherty 1998). Queensland, like New South Wales and the ACT, has private insurers in its CTP scheme, whereas South Australia, like Victoria, has a public authority.

While there is no easy way to compare the various state systems, it is clear that the expensive New South Wales system has returned to record high real premium prices (when the artificially high regulated price of 1989 is discounted). This is despite successive degradations, through interventionist regulation, in the extent of cover offered. The private competitive market, it seems, has not been able to deliver sustainable lower prices with the same level of service.

Meanwhile, Greenslips have become a very profitable part of the general insurance business. Fortunately for the companies involved, continued revision of the regulatory regime in New South Wales has kept the 'wolf' of corrosive competition from the door. The fourteen companies issuing Greenslips (Table 3) gained a combined revenue of almost $7 billion from Greenslips over the fiscal year 1996-97, and enjoyed a combined $928 million in after-tax profits. Most of that ($607 million) profit was made by the NRMA (MAA 1998b: 40).

Greenslip prices again became a political issue in the 1999 state election. The Coalition parties made high Greenslip prices an election issue, claiming a rise of "79% since the Labor Government was elected" (Doherty 1998: 4). This figure was mistaken, as it was based on current rather than real prices. However, the ironic aspect of this claim was that the rises had occurred under the privatised but highly regulated scheme set up in 1988 by a Coalition Government. A Liberal-National television advertisement containing this claim (Channel Seven, 1999) was withdrawn after the Federation of Commercial Television Stations (FACTS) held that it was misleading, by suggesting that Greenslip prices were 'taxes' (Sydney Morning Herald 1999). However Labor responded to the criticism, promising that there would be price cuts (Doherty 1998), and eventually delegating a minister to engineer $100 Greenslip price reductions, after the election (Illawarra Mercury 1999). In June 1999 Labor Special Minister of State John Della Bosca announced that such reductions would be engineered by further legislation, which would cap premiums, introduce mediators to settle claims and move away from "cash-based compensation [towards] treatment and rehabilitation" (Humphries 1999: 1). This is the third legislative move in five years, yet again aimed at premium reduction and control of claims.

How does this experience of CTP insurance relate to the three general explanations for privatisation discussed earlier in this article? Most evidently, it shows that the market privatisation of Compulsory Third Party insurance cannot be properly explained or justified by arguments of 'efficiency'. The benefits to consumers of a number of private operators, acting under a heavily regulated 'competition' regime, are simply not evident. To the contrary, the evidence points to rising costs for consumers. The 'fiscal conservative' argument has some relevance, though not in the ordinary sense. The old CTP scheme was a liability, because it was politically unpopular to raise premiums. Delegating this role to private companies and a quasi autonomous regulator thus seemed to remove a fiscal dilemma for the state. However, there was no substantial reason why the scheme, operated properly, should have been a drain on state finances. Further, the state was ultimately drawn into price control, through successive amendments to the *Motor Accidents Act*. The 'corporate servicing' argument serves better to explain state behaviour, particularly when the significance of CTP to the private general insurance industry is considered (Table 2). A large, stable and profitable market could be delivered to private insurance corporations, as happened in the late 1980s. The state government could at the same time divest itself of an embarrassingly unfinancial scheme, and present itself as the effective economic manager of 'NSW Inc'.

Conclusion

Privatisation of the New South Wales Compulsory Third Party motor insurance scheme illustrates how privatisation may involve heavy regulation of prices and service regimes, to support private markets and sustain private profitability. In this case the privatisation was also influenced by a wish to delegate responsibility for unpopular pricing decisions to a 'competitive' private sector. However, the evidence tends to contradict claims that such competition as there is has benefited consumers, despite the maintenance of a relatively large group of private insurance providers. The NSW CTP scheme has changed in nature so much that it is now difficult to make direct comparisons with the past schemes, but it is notable that purchasers of current Greenslips now pay higher real prices than before (excepting the artificially raised prices of 1989), despite the conversion of a public monopoly into a 14-player regulated oligopoly and despite a succession of restrictions on allowable claims. The price is higher but the service is poorer.

Public interest explanations for privatisation have based themselves on a "shifting series of justifications" (Matthews 1989: 5), precisely because the public interest arguments are so problematic. In this case there were no demonstrable efficiency gains (rather the reverse) and no substantial benefits for public finance. Nor has the state escaped its responsibility to regulate and refine the system. Privatisation in some circumstances may create greater consumer choice and innovation in services, but it did not do so in this case.

On the other hand, privatisation also diminishes the role of citizenship by reducing participation in public services. In Victoria the Transport Accident Commission uses its resources to engage directly in road safety campaigns, with the Victoria Police. In NSW the Motor Accidents Authority has a similar role, but the private insurers do not.

The Motor Accidents Authority, a public regulatory agency, has found itself the guarantor of profit levels acceptable to the private general insurance industry, and corporate-consumer battles over liability and subsequent litigation have clearly aggravated the costs of the system. Returns to the private industry are now better regarded as 'rent' than as competitive profits, in that they reflect the peculiarities of the market restrictions associated with heightened MAA control of premiums. This raises the question: what public interest is there in a public agency rigorously calculating and distributing 'rent' to a collection of private companies, when there is a public cry for cost reductions? If this question seems difficult, it is because the public interest explanations of privatisation are inadequate to the task.

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