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STANDING COMMITTEE ON LAW AND JUSTICE

2018 review of the Compulsory Third Party insurance scheme

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2018 review of the Compulsory Third Party insurance scheme

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Table of contents

	Terms of reference	v
	Committee details	vi
	Chair's foreword	vii
	Recommendations	viii
	Conduct of inquiry	ix
Chapter 1	Overview	1
	Oversight role of the committee	1
	Overview of the CTP scheme	1
	Role of SIRA	4
	Insurance providers	5
	Recommendations from the 2016 review of the CTP insurance scheme	6
	Focus of this review	7
	Recommended consolidation of the workers compensation and CTP insurance schemes	8
Chapter 2	Effectiveness of the new scheme	9
	Measuring scheme performance against the NSW Government's objectives	9
	Increasing benefits to the most seriously injured	10
	Faster resolution of claims	13
	Reducing opportunities for claims fraud and exaggeration	16
	Reducing the cost of Green Slip premiums	16
	Committee comment	24
	Claims frequency	24
	Insurer profits	25
	Risk Equalisation Mechanism	25
	Profit Normalisation Mechanism	26
	Committee comment	27
	Effectiveness of the CTP Assist and Dispute Resolution Service	27
	Committee comment	29
	New definition of 'minor injury'	30
	Committee comment	34
	Return to work and recovery outcomes	34

	Views of medical practitioners	36
	Committee comment	38
	Reporting obligations	38
	Publishing comparative data	40
	Committee comment	41
Chapter 3	Other matters raised regarding the CTP insurance scheme	43
	Claims farming	43
	Committee comment	44
	Foreign tourists	45
	Committee comment	46
	Surveillance by insurers	46
	Committee comment	47
Appendix 1	Submissions	49
Appendix 2	Witnesses at hearings	50
Appendix 3	Minutes	52
Appendix 4	Dissenting statement	66

Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
 - (a) Workers' Compensation Scheme
 - (b) Workers' Compensation (Dust Diseases) Scheme
 - (c) Motor Accidents Scheme
 - (d) Motor Accidents (Lifetime Care and Support) Scheme.

2. In exercising the supervisory function outlined in paragraph 1, the committee:
 - (a) does not have the authority to investigate a particular compensation claim, and
 - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 19 November 2015.

Committee details

Committee members

The Hon Natalie Ward MLC	Liberal Party	<i>Chair</i>
The Hon Lynda Voltz MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon David Clarke MLC	Liberal Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Daniel Mookhey MLC	Australian Labor Party	
Mr David Shoebridge MLC	The Greens	

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Chair's foreword

This was the committee's first review of the Compulsory Third Party insurance scheme since legislative reforms were implemented through the *Motor Accident Injuries Act 2017* on 1 December 2017.

This review focused on a range of matters, including how the new scheme is performing in relation to the NSW Government's objectives of reducing the time taken to resolve claims, increasing the proportion of benefits provided to the most seriously injured road users, reducing the cost of Green Slip premiums and reducing opportunities for claims fraud and exaggeration. It also looked at whether there has been a reduction in claims frequency since 1 December 2017 and the impact of the new definition for 'minor injury' among other things.

As the new CTP scheme only came into effect on 1 December 2017, it is too early to comprehensively assess the performance of the scheme against its objectives, given it has only been in place for approximately a year.

However there appear to be positive signs that the new scheme is enabling a greater proportion of benefits to be paid to seriously injured road users, and that processes have been put in place to support the faster resolution of claims and disputes. There has also been a substantial reduction in the cost of Green Slip premiums for most road users.

To ensure the committee remains informed about the progress of the new scheme, the committee has recommended that SIRA provide its file review of the first 1,000 claims of the scheme. The committee has also recommended that SIRA expedite its work on the development and distribution of educational resources on the definition of minor injury and develop comprehensive criteria to measure insurer performance and publicly report this data annually.

On behalf of committee members, I sincerely thank all those who participated in the inquiry, via written submissions and oral evidence at public hearings. I thank my committee colleagues for their considered engagement throughout the inquiry. I am also appreciative of the support provided by the committee secretariat staff, Tina Higgins, Samuel Griffith, Janina Moaga and Sonya Kim.

I commend the report to the Parliament.



The Hon Natalie Ward MLC
Committee Chair

Recommendations

- Recommendation 1** **30**
That the State Insurance Regulatory Authority publish its evaluation of the Legal Advisory Service as soon as possible.
- Recommendation 2** **34**
That the State Insurance Regulatory Authority provide the Standing Committee on Law and Justice with the file review of the first 1,000 claims of the new CTP Green Slip Scheme once it is finalised.
- Recommendation 3** **34**
That the State Insurance Regulatory Authority expedite its work on the development and distribution of educational resources on the definition of minor injury for the benefit of injured road users in New South Wales.
- Recommendation 4** **41**
That the State Insurance Regulatory Authority work with scheme insurers to develop a less onerous approach for insurers to provide comprehensive real time data to the authority.
- Recommendation 5** **41**
That the State Insurance Regulatory Authority, in consultation with the legal profession and insurers, develop comprehensive criteria to measure insurer performance in the CTP insurance scheme and publicly report this comparative data, on an annual basis.
- Recommendation 6** **46**
That the NSW Government investigate the cost of amending the *Motor Accidents Injuries Act 2017* to ensure foreign tourists who are injured on New South Wales roads receive the same medical treatment benefits as Australian residents.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 November 2015.

The committee received 12 submissions and held three public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter provides a brief overview of the New South Wales Compulsory Third Party insurance scheme, including the committee's oversight role and key changes implemented in 2017 through the *Motor Accident Injuries Act 2017*.

Oversight role of the committee

- 1.1 Under s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Compulsory Third Party (CTP) insurance scheme are required to be supervised by a committee of the Legislative Council.
- 1.2 The Standing Committee on Law and Justice has been designated by the Legislative Council to perform this oversight role. The resolution appointing the committee requires it to report to the Legislative Council in relation to the scheme at least once every two years.
- 1.3 The same resolution also requires the committee to supervise the operation of other insurance and compensation schemes established under the state's motor accidents and workers compensation legislation, including the Motor Accidents (Lifetime Care and Support) scheme, the Workers' Compensation scheme and the Workers' Compensation (Dust Diseases) scheme.¹ Those schemes are subject to separate reviews by the committee.
- 1.4 This report is the second review of the scheme since the State Insurance Regulatory Authority (SIRA) assumed its regulatory role in 2015.² However, this will be the committee's first review of the scheme since further legislative reforms were implemented through the *Motor Accident Injuries Act 2017*.
- 1.5 The committee's previous reviews of the scheme, including those under the former regulator, the Motor Accidents Authority, can be found on the committee's website at www.parliament.nsw.gov.au/lawandjustice.

Overview of the CTP scheme

- 1.6 The CTP insurance scheme provides compensation for persons injured in motor vehicle accidents in New South Wales.³ Compensation payments are financed from CTP insurance policies, known as Green Slips, which must be taken out when registering a motor vehicle in New South Wales. As of March 2017, there were 5.3 million registered vehicles in the state.⁴
- 1.7 In March 2017 the NSW Parliament passed the *Motor Accident Injuries Act 2017* which introduced a new CTP insurance scheme in New South Wales. The scheme came into effect on 1 December

¹ *Minutes*, NSW Legislative Council, 6 May 2015, pp 62-65.

² Standing Committee on Law and Justice, NSW Legislative Council, *First review of the Compulsory Third Party insurance scheme* (2016).

³ SIRA, *What is a green slip?* <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>.

⁴ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

2017. The key objectives of these reforms were to reduce the time taken to resolve claims, increase the proportion of benefits provided to the most seriously injured road users, reduce the cost of Green Slip premiums and reduce the opportunities for claims fraud and exaggeration.⁵

1.8 When introducing the new legislation into the Parliament, the Hon Victor Dominello MP, Minister for Finance, Services and Property, described the previous scheme as 'seriously broken' and 'grossly inefficient', stating it was hampered by its adversarial nature and insurer 'super profits':

Why the need for reform? Put simply, the old CTP scheme is seriously broken. The adversarial nature of the scheme means that only 6 per cent of benefits are paid out in the first year, and 22 per cent by the second year. The majority of payments to injured road users do not start flowing until years three, four and five. Injured road users receive only 45¢ in every green slip dollar, with the balance being subsumed in costs. This is symptomatic of a grossly inefficient scheme. Under the new scheme, 55 per cent of benefits will be paid in year one, and 65 per cent by year two. In simple terms, this means that injured people on our roads will receive better payments faster so that they can focus on rehabilitation and return to good health, rather than being left out of pocket while a protracted dispute between lawyers and insurers ensues.⁶

1.9 Under the new scheme, which applies to injuries arising from a motor vehicle accident on or after 1 December 2017, injured people are entitled to claim statutory benefits for up to six months (26 weeks), which includes:

- a percentage of their pre-injury weekly income if they need time off work
- reasonable and necessary treatment and rehabilitation expenses
- commercial attendant care if they need help around the home while they recover.⁷

1.10 These statutory benefits apply to people regardless of fault. There are, however, certain categories in which such benefits will not be payable, for example, if a person is an at-fault driver or owner and the vehicle was uninsured, if the injured person has committed a serious driving offence or if compensation would be payable under the workers compensation scheme.⁸

1.11 If a person's injury is 'minor', such as soft tissue injury or a 'minor psychological or psychiatric injury', they are entitled to statutory benefits for up to six months only. An exception exists where treatment and care will improve the recovery of the person.⁹

1.12 In the previous scheme, common law damages for soft tissue and minor psychological and psychiatric injuries where fault was established contributed to 'a large spike' in costs and reduced the proportion of benefits to the most seriously injured.¹⁰ Under the new scheme, no damages

⁵ SIRA, *Why reform was needed*, <https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/why-reform-was-needed>.

⁶ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁷ SIRA, *What is a green slip?* <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>.

⁸ *Motor Accident Injuries Act 2017*, ss 3.35, 3.36 and 3.37.

⁹ *Motor Accident Injuries Act 2017*, ss 3.11, 3.28, 1.6(3); Motor Accident Injuries Regulation 2017, r 4(2).

¹⁰ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

for economic or non-economic loss are payable to a claimant if the only injuries arising from the accident were minor injuries.¹¹

- 1.13** If injuries are more serious, claimants may be able to claim benefits beyond six months.¹² Persons who have been severely injured, for example those with a spinal cord injury, brain injury, amputations, burns or permanent blindness,¹³ may also be eligible for support under the Motor Accidents (Lifetime Care and Support) scheme.¹⁴ The 2017 reforms have not affected the Lifetime Care and Support scheme for people who are severely injured.¹⁵ As noted previously, the Lifetime Care and Support scheme is subject to a separate review by this committee.
- 1.14** If a person dies as a result of a motor vehicle accident, the CTP scheme can cover the costs of their funeral. This can include funeral expenses such as professional fees and costs of the service, newspaper notices and the cost of obtaining a death certificate.¹⁶
- 1.15** The following table notes the benefits provided for under the new scheme.

¹¹ *Motor Accident Injuries Act 2017*, s 4.4.

¹² SIRA, *What is a green slip?* <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>.

¹³ icare, *Caring for people severely injured on the road*, <https://www.icare.nsw.gov.au/injured-or-ill-people/motor-accident-injuries/who-we-care-for/#gref>.

¹⁴ SIRA, *What is a green slip?* <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>.

¹⁵ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

¹⁶ SIRA, *Apply for funeral expenses*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/funeral-benefits>.

Table 1 2017 scheme benefits¹⁷

Benefit type	At fault		Not at fault (benefits may be adjusted for part fault)	
	All	Minor injuries ¹	Non-minor WPI ² ≤ 10%	Non-minor WPI > 10%
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident			
Weekly payments for loss of earnings	Up to 6 months	Up to 6 months	Up to 3 years	Up to 5 years
Future economic loss	No	No	Yes (after 20 months)	Yes
Non-economic loss (e.g. pain and suffering)	No	No	No	Yes
Treatment and care	Up to 6 months	Up to 6 months	Lifetime (LTCS ³ after 5 years)	Lifetime (LTCS after 5 years)
Funeral expenses	Available whether at fault or not at fault			
Compensation to dependants	Available whether at fault or not at fault			
Legal and other expenses	Available as prescribed under the 2017 Act and Regulations			

1.16 Green Slip premiums include the Fund levy which provide for ambulance and hospital fees, lifetime care for the severely injured and preserves funding for future treatment and care for those who are seriously injured and not at fault. The Fund levy replaced the Medical Care & Injury Services (MCIS) levy, which was calculated as a percentage of the premium under the previous CTP scheme. Under the new scheme, the Fund levy is a flat fee set by SIRA, based on vehicle type and garaging location.¹⁸

Role of SIRA

1.17 SIRA is the statutory body responsible for regulating the CTP scheme, as well as the workers compensation insurance and home building compensation schemes.¹⁹ SIRA's role is to regulate the scheme's insurers to ensure that the insurance and support systems in New South Wales 'deliver protection, recovery and restoration entitlements and good outcomes at an affordable price and in a sustainable way.'²⁰

¹⁷ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 6.

¹⁸ SIRA, *CTP: How prices are set*, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0020/347213/CTP-Prices-set.pdf.

¹⁹ *State Insurance and Care Governance Act 2015*, s 17; SIRA, *About us*, <https://www.sira.nsw.gov.au/corporate-information/about-us>.

²⁰ SIRA, *About us*, <https://www.sira.nsw.gov.au/corporate-information/about-us>.

- 1.18** SIRA issues and manages the Motor Accidents Guidelines which support delivery of the objects of the *Motor Accidents Injuries Act 2017* by establishing clear processes and procedures for key stakeholders such as insurers, legal representatives and health practitioners to follow.²¹
- 1.19** For motor vehicle accidents on or after 1 December 2017, SIRA operates an independent dispute resolution service, a free service for claims disputes between injured people and insurers.²² SIRA also continues to operate the Claims Assessment and Resolution Service (CARS) and the Medical Assessment Service (MAS) for disputes related to accidents that occurred before 1 December 2017 under the previous legislation, the *Motor Accidents Compensation Act 1999*.²³
- 1.20** Under the current scheme, if a claimant disagrees with an insurer's decision they must first go through an Insurer Internal Review.²⁴ If the claimant disagrees with the insurer's review decision, SIRA's dispute resolution service can assist to resolve the dispute by either:
- facilitating the understanding of issues in dispute between the insurer and injured persons to mutually resolve these disputes, or
 - arranging an independent and binding decision by an expert assessor.²⁵

Insurance providers

- 1.21** The CTP scheme is underwritten by private insurance companies licensed by SIRA.²⁶ Currently, there are six licensed insurers of CTP insurance policies operated by four organisations: Suncorp (AAMI and GIO), Allianz Australia (Allianz and CIC Allianz), NRMA and QBE.²⁷ During the June 2018 quarter, NRMA retained the largest market share with 31 per cent, followed by QBE with 25 per cent and GIO with 17 per cent.²⁸

²¹ SIRA, *Motor Accident Guidelines*, January 2019, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/325777/motor-accident-guidelines.pdf.

²² SIRA, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#After_1_December_2017.

²³ SIRA, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#After_1_December_2017.

²⁴ SIRA, *Insurer internal reviews*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/internal-reviews>.

²⁵ SIRA, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#Before_1_December_2017.

²⁶ Underwriting is the process of assessing risk and ensuring the cost and conditions of the cover are proportionate to the risks faced by the individual concerned: SIRA, *Green Slip scheme quarterly insights – June 2018*, <https://www.sira.nsw.gov.au/resources-library/green-slip-resources/publications/scheme-reports/quarterly-reports/green-slip-scheme-quarterly-insights-june-2018>.

²⁷ Zurich stopped issuing Green Slip policies to the public on 1 March 2016 under the 1999 scheme: SIRA, *Green Slip scheme quarterly insights – June 2018*, <https://www.sira.nsw.gov.au/resources-library/green-slip-resources/publications/scheme-reports/quarterly-reports/green-slip-scheme-quarterly-insights-june-2018>.

²⁸ SIRA, *Green Slip scheme quarterly insights – June 2018*, <https://www.sira.nsw.gov.au/resources-library/green-slip-resources/publications/scheme-reports/quarterly-reports/green-slip-scheme-quarterly-insights-june-2018>.

- 1.22** The Motor Accident Guidelines provide for the regulation of insurance premiums.²⁹ The guidelines state that SIRA seeks to achieve the following objectives in managing the CTP scheme:
- the promotion of competition and innovation in the setting of premiums
 - ensuring the sustainability and affordability of the scheme and fair market practices
 - keeping premiums affordable by ensuring that the profits realised by insurers do not exceed the amount that is sufficient to underwrite the relevant risk.³⁰
- 1.23** All proposed premiums must be filed with SIRA by insurers with information that includes the overall average premium cost, significant rating factor changes and an outline of the policyholder impact analysis.³¹
- 1.24** SIRA can reject a premium on the grounds that: it is excessive or inadequate in relation to actuarial advice and to other relevant financial information available to the Authority; it does not conform to the relevant provisions of the guidelines; or it will not fall within the range of transitional policies.³² The 2017 scheme enables SIRA to adjust premiums and Fund levies in cases of excess profits or excess losses.³³

Recommendations from the 2016 review of the CTP insurance scheme

- 1.25** In August 2016 the committee tabled its report into the first review of the CTP insurance scheme. The review was examining the operation of the previous scheme and included eight recommendations to government.³⁴ The government provided its response to the recommendations on 21 February 2017.³⁵ Both documents are available on the review's webpage.³⁶
- 1.26** In its submission to the current review, SIRA provided an update to the government's response noting that four of the eight recommendations were addressed through the introduction of the 2017 CTP reforms.³⁷

²⁹ *Motor Accident Injuries Act 2017*, pt 2, div 2.3; sch 4, cl 2. The guidelines came into effect on 13 July 2018 and apply to motor accidents occurring on or after 1 December 2017. Separate guidelines issued under the *Motor Accidents Compensation Act 1999* continue to apply to motor accidents from 1 October 1999 to 30 November 2017.

³⁰ Motor Accident Guidelines ss 1.4-1.5.

³¹ Motor Accident Guidelines s 1.10.

³² Motor Accident Guidelines s 1.11.

³³ *Motor Accident Injuries Act 2017*, s 2.25.

³⁴ NSW Legislative Council, Standing Committee on Law and Justice, *First review of the Compulsory Third Party insurance scheme*, August 2016, p viii.

³⁵ Correspondence from The Hon Victor Dominello MP, Minister for Finance, to the Clerk of the Parliaments, providing government's response to the inquiry into the First review of the Compulsory Third Party insurance scheme, February 2017.

³⁶ NSW Parliament, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2391>.

³⁷ Submission 4, State Insurance Regulatory Authority, p 9.

1.27 Regarding the other four recommendation, SIRA noted the following:

Rec. 1 That the State Insurance Regulatory Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual report.

As advised in the Government's response, it would not be appropriate to simply average the two figures to calculate a combined efficiency measure.

Rec. 2 That the State Insurance Regulatory Authority finalise the new forms for requesting allied health services and case manager or rehabilitation provider services, as soon as practicable.

SIRA has finalised the revised forms and guidance material for use by allied health professionals providing treatment services to CTP claimants. These are now available for use and being accepted by insurers and are available on SIRA's website.

Rec. 6 That the NSW Government consider how journey claims are treated under any CTP scheme.

The CTP Scheme continues to cover injuries caused by motor vehicles. People injured in a motor vehicle accident travelling to or from work will be covered by the CTP scheme. The new scheme has been expanded to provide benefits for up to six months regardless of fault.

Rec. 7 That the State Insurance Regulatory Authority consult with the Motorcycle Council of NSW to consider consolidating the current five classifications of motorcycles in NSW into the following two classes- Learner Approved Motorcycle Scheme (LAMS) and non-LAMS.

SIRA has been consulting with motorcycle representative groups and has provided data as requested and is awaiting options from these groups as to potential classifications.³⁸

Focus of this review

1.28 On 1 May 2018, the committee resolved that the 2018 review of the CTP insurance scheme should focus on the following eight aspects of the new scheme:

- whether it is achieving the NSW Government's stated objectives of:
 - increasing the proportion of benefits provided to the most seriously injured road users
 - reducing the time it takes to resolve a claim
 - reducing opportunities for claims fraud and exaggeration
 - reducing the cost of green slip premiums
- whether there has been a reduction in claims frequency since 1 December 2017 and if so, the projected impact on premiums
- the impact of the new profit normalisation and risk equalisation mechanisms in controlling insurer profits
- the effectiveness of the new CTP Assist and Dispute Resolution Services for statutory benefits claims

³⁸ Submission 4, State Insurance Regulatory Authority, p 9.

- the impact of the new minor injury definition, including on reducing fraudulent and exaggerated claims
- the impact of the changes on minor physical and psychological injuries
- the return to work and recovery outcomes of the new statutory benefits scheme
- the impact of the new reporting obligations on insurers which require them to report all new claims in real time to SIRA.

1.29 Therefore the next chapter will look at each of these eight aspects of the new scheme, and the final chapter will consider other important matters that were raised during evidence.

Recommended consolidation of the workers compensation and CTP insurance schemes

1.30 This review operated concurrently with the committee's 2018 review of the workers compensation scheme.

1.31 The committee recently tabled its report into that review where it recommended that the NSW Government progress to consolidate the workers compensation scheme and CTP insurance scheme dispute resolution systems into a single personal injury tribunal, by expanding the jurisdiction of the Workers Compensation Commission, but retaining two streams of expertise.³⁹

1.32 In making this recommendation the committee indicated that consolidating the system would address some of the systems' complexities and generate efficiencies:

... the committee considers that there are valid reasons for progressing towards consolidation of the two systems into a single personal injury tribunal. This will not only address some of the complexities raised within each system but will potentially generate efficiencies where similarities exist.⁴⁰

1.33 The committee noted that even though a number of stakeholders did not support consolidation, many acknowledged that it may nevertheless occur, and expressed largely similar views as to where and how such a tribunal should operate, including that it is preferable for the Workers Compensation Commission to be given jurisdiction.⁴¹

³⁹ NSW Legislative Council, *2018 review of the workers compensation scheme*, February 2019, p 24.

⁴⁰ NSW Legislative Council, *2018 review of the workers compensation scheme*, February 2019, pp 20.

⁴¹ NSW Legislative Council, *2018 review of the workers compensation scheme*, February 2019, pp 23-24.

Chapter 2 Effectiveness of the new scheme

This chapter examines the performance of the current Compulsory Third Party insurance scheme implemented under the *Motor Accident Injuries Act 2017*. It will focus on whether the scheme is meeting the NSW Government's objectives, including whether claims are being resolved faster, whether Green Slip costs have reduced and are affordable, and whether a greater proportion of benefits are available to seriously injured road users.

This chapter will also consider insurer profits, impacts of the new definition of 'minor injury' under the legislation, and how the scheme is performing in terms of improving recovery to work and health outcomes for injured road users.

Measuring scheme performance against the NSW Government's objectives

2.1 This section will focus on whether the new scheme introduced through the *Motor Accident Injuries Act 2017* is achieving its reform objectives, which were to:

- increase the proportion of benefits provided to the most seriously injured road users
- reduce the time it takes to resolve a claim
- reduce opportunities for claims fraud and exaggeration
- reduce the cost of green slip premiums.⁴²

2.2 Before exploring these aspects, it is important to note that the new CTP scheme has only been in operation for approximately a year. Given this, SIRA advised that it has 'not yet reached a stage of implementation where claim, premium, profit or other key trends could be expected to be reliably ascertained'. However, SIRA informed the committee that it is actively monitoring the performance of the scheme and intervening as regulator when required.⁴³

2.3 The Insurance Council of Australia also stated that it is too early to make any conclusions about the 2017 scheme and would be difficult to make comparisons between the previous and new schemes:

... conclusions about the operation of the 2017 Scheme would be premature and [that] some care is required when making comparisons between the 1999 and 2017 Schemes as they are not only fundamentally different by design, they are at very different stages of their evolution.⁴⁴

2.4 The Law Society suggested that an appropriate evaluation and assessment of the above objectives cannot be made until more comprehensive data is provided by SIRA.⁴⁵

⁴² SIRA, *Why reform was needed*, <https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/why-reform-was-needed>.

⁴³ Submission 4, State Insurance Regulatory Authority, p 10.

⁴⁴ Submission 10, Insurance Council of Australia, p 2.

⁴⁵ Submission 12, The Law Society of New South Wales, p 4.

2.5 SIRA in fact recently published its interim scheme performance report for 1 December 2017 to 30 June 2018 which noted the following about scheme performance:

- the average premium fell by 20 per cent from 30 June 2017 to 30 June 2018
- most motorists saved between \$130 and \$200 on their Green Slip
- fewer claims were reported (5,137) than expected which has largely been driven by the low level of reporting in the first two months of the new scheme
- at-fault claims for statutory benefits are currently lower than expected at this stage
- more claims have been assessed as minor injury than expected for the more developed accident months
- 93 per cent of payments made by insurers were for statutory benefits, such as treatment and care and weekly income benefits. Treatment and rehabilitation represented 43 per cent of payments and weekly benefits 50 per cent
- payments are lower than expected
- nine damages claims have been received in this reporting period
- injured people and their representatives agree that CTP Assist is making it easy to get help. Its Net Promoter Score of +46 sets a good benchmark.⁴⁶

Increasing benefits to the most seriously injured

2.6 When introducing the Motor Accidents Injuries Bill 2017, the Hon Victor Dominello MP, Minister for Finance, Services and Property, stated that the focus of new CTP scheme will be on 'rehabilitation of injured road users so they can return to good health sooner'.⁴⁷

2.7 The Minister described the old scheme as 'seriously broken'⁴⁸ and attributed the low pay out of benefits to injured road users, at 45 cents in every Green Slip dollar, to the adversarial nature of the scheme which subsumed the balance of premiums in costs.⁴⁹ In his second reading speech, the Minister cited two examples under the 1999 scheme where injured people were left with only 'a small fraction' of their original compensation payout after legal, insurance and other costs had been accounted for. In one case, an injured person who received \$150,000 was left with only \$60,000 and another person who received a payout of \$40,000 ended up with just \$479.⁵⁰

2.8 SIRA informed the committee that sources of the inefficiency of the 1999 scheme were large insurer profits, amounting to 22 per cent of the premium, and legal and investigation costs, amounting to 17 per cent of the premium.⁵¹

⁴⁶ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 3.

⁴⁷ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁴⁸ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁴⁹ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁵⁰ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁵¹ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 7.

- 2.9** Under the new scheme, 57 per cent of the premium dollar is expected to go to injured people. The remaining 43 per cent of the premium is expected to cover legal and investigation costs, claim handling expenses, insurer expenses, insurer profit and the Motor Accident Fund levy.⁵²
- 2.10** This relates to scheme efficiency, which SIRA explained is the proportion of the Green Slip premium which is provided to injured persons through the scheme, including payments made as part of Medicare.⁵³ While efficiency under the 1999 scheme was 46 per cent, SIRA informed the committee that scheme efficiency under the 2017 scheme cannot be determined 'with any certainty' in the first year because claims can take a number of years to be settled.⁵⁴ Nevertheless, SIRA estimated that approximately \$1.95 billion, excluding GST and levies, will be collected in premiums in the first year of the new scheme. SIRA anticipated that more than \$1.4 billion of this amount will be paid as benefits to injured persons.⁵⁵
- 2.11** The majority of this amount, \$1.1 billion (equating to approximately 79 per cent), is reserved for damages to be awarded to the most seriously injured people. The remaining amount of \$370 million is allocated for people with minor injuries which will be made over several years.⁵⁶ SIRA estimated that damages claims will be 73 per cent of the total claims cost of the 2017 scheme.⁵⁷
- 2.12** The following table provides a breakdown of the expected future distribution of premiums collected.⁵⁸

⁵² Excludes the Bulk Billing Arrangements, Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, pp 7-8.

⁵³ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 7.

⁵⁴ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁵⁵ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁵⁶ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁵⁷ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁵⁸ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 18.

Table 2 Future distribution of collected premiums⁵⁹

Breakdown	\$M
Paid to claimants	\$604
Paid to medical allied health	\$219
Paid to lawyers	\$260
Paid to insurer profits	\$118
Paid for acquisition costs	\$181
Paid for claim investigations	\$10
Paid for claim handling expenses	\$82
Paid for reinsurance expenses	\$5
Total (excl GST, levies BBA)	\$1,480

2.13 Of the \$1.4 billion that is anticipated to go to injured people, the committee heard from SIRA that, as at 31 August 2018, insurers have paid over \$41.7 million in statutory benefits.⁶⁰ The remaining payments are expected to be paid over the next five years as the statutory and damages claims are progressively finalised.⁶¹

2.14 The following table shows that for a comparable nine month period from January to September, the 2017 scheme has paid a larger amount of benefits compared to the 1999 scheme.⁶²

Table 3 Comparison of benefits paid⁶³

Scheme	Benefits paid 9 month period (\$M)
1999 Scheme*^	\$21.3
2017 Scheme#	\$42.8

*For payments in relation to accidents occurring between 1 January 2017 and 30 September 2017.

#For payments in relation to accidents occurring between 1 January 2018 and 30 September 2018.

^Inflated to 30 September 2018 values

⁵⁹ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 18.

⁶⁰ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁶¹ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 5.

⁶² Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 21.

⁶³ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 21.

- 2.15** While SIRA noted that there are observed delays in anticipated claims and payments to date, it is expected that the total payments when all claims for the current period are finalised will remain the same. SIRA provided the following table which notes the forecast and actual statutory benefits payments as at 30 September 2018.⁶⁴

Table 4 Statutory benefits payments as at 30 September 2018.⁶⁵

	Forecast	Actual	Remaining payments for first premium year
Statutory benefit payments	\$129.5 million	\$49.9 million	\$320.1 million

- 2.16** Mr John Murphy, Chair of the Motor Accident Insurance Committee at the Insurance Council of Australia, stated that he was confident the new scheme 'will lead to a greater proportion of benefits going to the most seriously injured road users'. He noted that seriously injured not-at-fault road users will now also receive treatment and care for life.⁶⁶
- 2.17** Mr Matt Kayrooz, Head of Accident and Trauma at Suncorp, noted a number of recent claims the insurer has paid to seriously injured people, emphasising the benefits of this under the new scheme:

We have had several claims come through over the last three or four months for which we have spent more than \$30,000 in medical treatment for seriously injured people. It is getting them back on track compared with before when there was a limited amount of money. For those people \$30,000 or \$40,000 in the first three or four months means severe injuries. As I said, it is a good step ... Some people's lives would be totally different if it was not for the introduction of the scheme and these changes.⁶⁷

- 2.18** However, Mr Kayrooz had some reservations regarding the current setup of the scheme where cover stops at six months for people who are or are considered to be at fault. He argued that some people with serious injuries actually need lengthier cover and it would not need 'all that much extra premium ... to be put in to extend that cover'.⁶⁸ He stated that 'we need to put in place activities to monitor and measure those people who are at fault, or considered at fault ... and track them to see what impact it has had on their lives and what has occurred to them'.⁶⁹

Faster resolution of claims

- 2.19** Another key objective of the 2017 scheme is the faster resolution of CTP claims. During his second reading speech on the Motor Accidents Injuries Bill 2017, the Hon Victor Dominello

⁶⁴ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 19.

⁶⁵ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 19.

⁶⁶ Evidence, Mr John Murphy, Chair, Motor Accident Insurance Committee, Insurance Council of Australia, 23 August 2018, p 40.

⁶⁷ Evidence, Mr Matt Kayrooz, Head of Accident and Trauma, Suncorp, 23 August 2018, p 50.

⁶⁸ Evidence, Mr Kayrooz, 23 August 2018, pp49- 50.

⁶⁹ Evidence, Mr Kayrooz, 23 August 2018, p 49.

MP indicated that the adversarial nature of the previous scheme meant that only 6 per cent of benefits were paid out in the first year and 22 per cent by the second year. The majority of payments did not start flowing until years three, four and five.⁷⁰

- 2.20** The Minister described this as 'symptomatic of a grossly inefficient scheme', stating that under the new scheme, 55 per cent of benefits would be paid in year one. The Minister also stated that injured people would receive their payments faster under the new scheme through improved claims and dispute resolution processes, 'rather than being left out of pocket while a protracted dispute between lawyer and insurer ensues'.⁷¹
- 2.21** SIRA explained that the new online submission process allows 'easy and fast access' for claimants through the Service NSW website, where the insurer of the vehicle at fault is automatically matched for the claim. It argued that this innovation 'aligns with the Government's strategy to allow easy and fast access for injured people to begin their claims process'.⁷²
- 2.22** SIRA's Green Slip scheme quarterly insights report from July to September 2018 noted that the digital claim form is 'very flexible and injured people can attach medical certificates, photos and videos, pinpoint the accident location through Google Maps and add information later'. Further, the system allows insurers to manage the claim on their systems and download relevant supporting material.⁷³
- 2.23** Relevant to claimant experience and timeframes for the resolution of claims is CTP Assist, a new support service that provides people with information about the scheme, including claims and dispute resolution processes.⁷⁴ It aims to improve the claimant experience and enable closer monitoring of insurer conduct and claims handling by SIRA.⁷⁵ SIRA advised that the service is intended to reduce disputes and legal costs as it can escalate issues arising from claim management to early regulator intervention.⁷⁶
- 2.24** CTP Assist is 'a multi-channel service' that provides claims support, advice and information both over the phone and online for injured people and other participants such as allied health professionals.⁷⁷ As at 31 August 2018, about half of the contact to CTP Assist was inbound calls, mostly about the new scheme.⁷⁸ The vast majority of the outbound calls were made by SIRA consultants as they routinely followed up injured people at weeks three, 10 and 23 after

⁷⁰ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁷¹ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁷² Submission 4, State Insurance Regulatory Authority, p 12.

⁷³ SIRA, *Green Slip scheme quarterly insights: July 2018 to September 2018*, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0005/434066/Green-Slip-scheme-quarterly-insights-September-2018.pdf.

⁷⁴ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

⁷⁵ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

⁷⁶ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

⁷⁷ Submission 4, State Insurance Regulatory Authority, p 12.

⁷⁸ Inbound calls 56.61%; online contact 32.07%; outbound calls – follow up 93%. Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, pp 6-8.

they lodged a claim, to ensure the claimants were getting the support they needed. SIRA advised that for continuity, the same consultant contacts the claimant each time.⁷⁹

- 2.25** SIRA indicated that client satisfaction results for CTP Assist are at 67 per cent, which means it is performing much better than the previous scheme figure of 45 per cent.⁸⁰ SIRA reported it has received eight complaints about CTP Assist since 1 December 2017.⁸¹
- 2.26** Suncorp expressed positivity in relation to this service, in terms of its 'direct access' for claimants and the reduction in the average time for initial claim lodgment from six days to 24 hours.⁸² Suncorp asserted that previously, when all communication was conducted via a third party legal representative, it restricted an insurer's ability to provide information and 'actively support a rapid return to work'.⁸³
- 2.27** Also relevant to whether claims are being resolved faster under the new scheme is how the dispute resolution service is performing in terms of resolving disputes quickly.
- 2.28** SIRA's current dispute resolution service is 'designed to resolve disputes in an efficient, timely and relatively informal manner'.⁸⁴ The service can facilitate a mutual resolution of disputes between claimants and insurers or arrange an independent and binding decision by an expert assessor.⁸⁵ The four broad categories of disputes the service can assist with are:
- merit reviews of disputes about income benefits and treatment and care
 - medical assessments related to disputes about permanent impairment and minor injury
 - claim assessments on damages
 - miscellaneous claims assessments.⁸⁶
- 2.29** Time limits apply to these processes to assist quicker resolution of the large volume of disputes. As at 31 August, the Dispute Resolution Service received 73 disputes in 2017-2018 in relation to the 2017 CTP scheme (0.7 per cent of all lodgments to the service) and had finalised 13 disputes. SIRA submitted that given the low number of disputes relating to the 2017 scheme, it is premature to compare the cost of operation to that of the 1999 scheme.⁸⁷
- 2.30** SIRA provided a comparison of the timeliness of resolutions on all dispute types against key performance indicators (KPIs) in 2017-2018. This noted that the 2017 scheme Dispute

⁷⁹ Submission 4, State Insurance Regulatory Authority, p 12.

⁸⁰ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 14.

⁸¹ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 8.

⁸² Submission 3, Suncorp Group, p 2.

⁸³ Submission 3, Suncorp Group, p 2.

⁸⁴ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

⁸⁵ State Insurance Regulatory Authority, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#After_1_December_2017.

⁸⁶ State Insurance Regulatory Authority, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#After_1_December_2017.

⁸⁷ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 4.

Resolution Service Merit Review averages 41 working days for resolution set against the KPI of under 28 working days. In addition, the 2017 scheme Dispute Resolution Service Medical Assessment average is 48 working days which is far exceeding its KPI of under 100 working days.⁸⁸

- 2.31** The effectiveness of the CTP Assist and the Dispute Resolution Service are also discussed from later in the chapter.

Reducing opportunities for claims fraud and exaggeration

- 2.32** One of the aims of the reforms to the CTP scheme was to reduce the opportunities for claims fraud and exaggeration. The Hon Victor Dominello MP stated that under the 1999 scheme fraud and exaggeration of claims cost motorists up to \$400 million per year and added about \$75 to the cost of each Green Slip.⁸⁹ He stated that the new scheme was intended to significantly reduce opportunities for fraudulent and exaggerated claims by providing statutory benefits for soft tissue and minor psychological injuries for up to six months and removing access to the common law scheme.⁹⁰ SIRA was also given stronger powers under the 2017 Act to investigate fraud, prosecute and enforce increased penalties for abusing the system.⁹¹
- 2.33** On this aspect, it is important to note that a multi-agency taskforce was formed in 2016 to deter, detect and prosecute fraudulent claims. SIRA noted that it worked with the NSW Police Force and CTP insurers, as well as other peak and investigative bodies as part of this process, resulting in the establishment of the NSW Police Strike Force Ravens in August 2016. This led to the arrest of 18 offenders for claims totaling over \$13.5 million.⁹² SIRA stated that it continues to support the NSW Police Force to combat CTP fraud.⁹³
- 2.34** At this early stage of 'a long tail' insurance scheme, particularly where common law damages cannot be pursued for 20 months, there is insufficient data available to examine whether there has been a reduction of claims fraud and exaggeration. SIRA noted, however, that no claims have been rejected or denied for fraud under the new scheme as at 31 August 2018.⁹⁴ Further, there have been no claims where an insurer has alleged fraud on the part of the claimant or service provider.⁹⁵

Reducing the cost of Green Slip premiums

- 2.35** In the last review, one of the measures taken into account when examining the performance of the CTP scheme was the cost of Green Slip premiums. While the last review considered whether

⁸⁸ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 5.

⁸⁹ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁹⁰ *Motor Accident Injuries Act 2017*, pts 3 and 4.

⁹¹ *Motor Accident Injuries Act 2017*, pt 10.

⁹² Strike Force Ravens was established in 2016 by Minister Dominello. Submission 4, SIRA, p 11.

⁹³ State Insurance Regulatory Authority, *CTP Fraud*, <https://www.sira.nsw.gov.au/fraud-and-regulation/preventing-fraud/ctp-fraud>.

⁹⁴ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 9.

⁹⁵ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 10.

premiums were affordable, this review focused on whether the 2017 scheme led to a reduction in the cost of premiums, as the reforms anticipated.

- 2.36** The Hon Victor Dominello MP stated that the introduction of statutory benefits under the new scheme was intended to provide more certainty to insurers who can now 'price risk more accurately'.⁹⁶ He argued that as a result of this reform and the elimination of insurer 'super profits', there should be a reduction in the price of Green Slips for all motorists.⁹⁷
- 2.37** SIRA predicted that the reduction in legal and investigation costs would 'return around \$240 million to vehicle owners' in reduced premiums.⁹⁸ It also reported that the 2017 reforms delivered a reduction in the Green Slip price of between \$130 and \$200.⁹⁹
- 2.38** SIRA advised that on 1 December 2017, the state-wide average cost of Green Slip premiums fell by more than \$120 to an average of \$528. Average premiums for Sydney passenger vehicles fell by 26 per cent and for country passenger vehicles by 10 per cent. Taxi premiums went down by thousands of dollars.¹⁰⁰
- 2.39** Average premiums for all vehicles fell by 20 per cent from 30 June 2017 to 30 June 2018. The table below compares the Sydney best prices for passenger motor vehicles in the current and previous schemes for drivers aged 30 to 54.¹⁰¹

Table 5 Premium trends¹⁰²

Insurer	30 June 2015	30 June 2016	30 June 2017	1 December 2017	30 June 2018
AAMI	\$505	\$572	\$622	\$475	\$475
GIO	\$509	\$555	\$606	\$475	\$471
Allianz	\$539	\$604	\$623	\$488	\$478
CIC Allianz	\$546	\$644	\$673	\$467	\$467
NRMA	\$545	\$588	\$640	\$468	\$468
QBE	\$519	\$587	\$613	\$470	\$470

⁹⁶ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁹⁷ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

⁹⁸ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 13.

⁹⁹ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 13.

¹⁰⁰ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 7.

¹⁰¹ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 15.

¹⁰² SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, pp 15-16.

2.40 Further, the table below shows how the 20 per cent premium reductions plays out across the state.

Table 6 Average premium reduction across New South Wales¹⁰³

	June 2017	June 2018	Savings \$	Savings %
Sydney passenger vehicles (Class 1)	\$721	\$564	\$157	22 per cent reduction
All NSW passenger vehicles (Class 1)	\$626	\$499	\$127	21 per cent reduction
Country passenger vehicles (Class 1)	\$491	\$436	\$55	12 per cent reduction
All vehicles in NSW	\$661	\$534	\$127	20 per cent reduction

2.41 The Insurance Council of Australia agreed that the objective of reducing the price of CTP Green Slips has mostly been realised, citing the fall in average premiums by nearly 19 per cent from March 2017 to March 2018.¹⁰⁴

2.42 SIRA also provided the committee with a review it had commissioned of the current premium parameters by independent actuaries to determine if premiums are set at the appropriate level to cover future claim costs or should be reduced further to avoid excess profits.¹⁰⁵ The report by Ernst & Young indicated the following:

- potential for a \$10 reduction based on updating the original costing for the latest experience from the 1999 scheme
- potential for a \$7 reduction if the emerging 2017 scheme claims experience is representative of a longer term trend
- increase of \$3 to allow for the changes to economic assumptions
- in total, a potential for an average premium adjustment of -\$16 (with a range of -\$4 to -\$28).¹⁰⁶

¹⁰³ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 17.

¹⁰⁴ Submission 10, Insurance Council of Australia, p 4.

¹⁰⁵ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 1.

¹⁰⁶ Ernst & Young, *Review of the NSW CTP Green Slip Scheme under the Motor Accidents Injuries Act 2017 (NSW)*, November 2018, pp ii-iii, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0006/435795/2018-EY-NSW-CTP-Premium-Parameter-Review-report.pdf.

- 2.43 Therefore Ernst & Young concluded that there is 'emerging evidence that would support the ... premium being adjusted to within the range of \$500 to \$524, with the centre of that range being \$512'.¹⁰⁷
- 2.44 This report was peer reviewed by independent actuaries Taylor Fry which agreed with Ernst & Young's assessment that the claims experience data for the 2017 Scheme 'justifies an overall reduction of about \$7 in the estimate of average premium (including GST and levies), with a range of +/- \$2'.¹⁰⁸
- 2.45 Taylor Fry also agreed with the following conclusions made by Ernst & Young:
- the total frequency of statutory benefits claims appears similar to Ernst and Young's initial projection for the "honeymoon period" following commencement of the 2017 scheme
 - the frequency of at-fault claims is less than the initial projection
 - the frequency of not at-fault minor injury claims is more than the initial projection
 - average claim sizes appear to be less than the initial projection for not at-fault minor injury claims
 - it is not possible yet to reach reliable conclusions about other aspects of claims experience for the 2017 Scheme.¹⁰⁹
- 2.46 Based on this advice the SIRA Board approved revisions to the Motor Accident Guidelines for a revision to premium parameters, with the average target premium being reduced from \$528 to \$499. The new premium parameters were effective from 15 January 2019.¹¹⁰

Taxis and ride-share operators

- 2.47 The NSW Taxi Council welcomed the reduction in Green Slip costs associated with moving to the new scheme.¹¹¹ In particular, the Taxi Council was 'pleased to see significant progress ... towards a more level playing field between rideshare and taxis'.¹¹²
- 2.48 The peak body however expressed disappointment with the delay of an increased rate for rideshare operators until 1 April 2018:

¹⁰⁷ Ernst and Young, *Review of the NSW CTP Green Slip Scheme under the Motor Accidents Injuries Act 2017* (NSW), November 2018, p iii, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0006/435795/2018-EY-NSW-CTP-Premium-Parameter-Review-report.pdf.

¹⁰⁸ Taylor Fry, *Peer review of advice provided by Ernst & Young on a review of experience for the NSW CTP Green Slip Scheme*, November 2018, p 4, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0005/435794/2018-Taylor-Fry-Peer-review-letter.pdf.

¹⁰⁹ Taylor Fry, *Peer review of advice provided by Ernst & Young on a review of experience for the NSW CTP Green Slip Scheme*, November 2018, p 4, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0005/435794/2018-Taylor-Fry-Peer-review-letter.pdf.

¹¹⁰ State Insurance Regulatory Authority, *Independent actuarial reports on CTP premium parameters released*, <https://www.sira.nsw.gov.au/news/notice/independent-actuarial-reports-on-ctp-premium-parameters-released>.

¹¹¹ Submission 6, NSW Taxi Council, p 7.

¹¹² Submission 6, NSW Taxi Council, p 3.

This meant that Rideshare Operators did not pay the distance based component of their premium for 4 months until the new scheme kicked in. To add to these inequities, there was no upfront communication about this delay, and as a consequence this was not known to the Taxi industry until the NSW Taxi Council made its enquiries into this matter.¹¹³

- 2.49** Since April 2018, taxi operators can opt into a CTP model that calculates premiums based on distance travelled instead of a one size fits all concept. Previously, a taxi operator paid one rate, regardless of the frequency or distance that they travelled. For example, if a taxi operator in Sydney travelled 75,000 km in a year, under the previous scheme they would have still been required to pay the maximum of \$6,400 as their premium. The new scheme for taxis offers an opt in model which gives the same operator an estimated saving of \$1,600 on their policy.¹¹⁴
- 2.50** Since 1 July 2018, the disparity between rideshare and taxis in terms of the CTP Fund Levy contribution to the Green Slip has also been addressed so that both types of operators pay a class 1 rate.¹¹⁵ This reform has significantly reduced the levy for Sydney taxis from an average of \$580 to \$142 and for country taxis, an average of \$680 to \$110 contribution to the Green Slip.¹¹⁶
- 2.51** The Taxi Council said that it supports a risk-based approach to future models, to take into account risk profiles that include the use of telematics in taxis, driver's record, as well as the time and day of driving to further reduce premiums.¹¹⁷
- 2.52** SIRA stated that it is committed to data collection and analysis 'to update assumptions around expected total distance travelled'.¹¹⁸ SIRA advised the committee that a longer history of information will be required to establish the claims experience of rideshare and taxi operators under the 2017 scheme as this change was only implemented in April 2018.¹¹⁹ SIRA will then analyse the differences in claim frequency between rideshare vehicles, non-rideshare vehicles and taxis.¹²⁰

Motorcyclists

- 2.53** While the taxi industry was generally positive about the reduction in Green Slip costs, the peak body for motorcyclists argued that there was not a fair reduction in the cost of motorcycle premiums.
- 2.54** The Motorcycle Council of NSW submitted that the 2017 reforms did not result in a fair premium for motorcyclists:

The motorcycle community in NSW were shocked and disappointed to discover that reforms to the CTP scheme introduced on 1st December 2017 would not result in a

¹¹³ Submission 6, NSW Taxi Council, pp 7-8.

¹¹⁴ Submission 6, NSW Taxi Council, p 8.

¹¹⁵ Submission 6, NSW Taxi Council, p 8.

¹¹⁶ Submission 6, NSW Taxi Council, p 8.

¹¹⁷ Submission 6, NSW Taxi Council, p 9.

¹¹⁸ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 21.

¹¹⁹ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 21.

¹²⁰ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 21.

reduction in or rebate for motorcycle CTP premiums, in line with reductions offered for other classifications.¹²¹

- 2.55** Mr Brian Wood, Secretary for the Motorcycle Council of NSW, argued that motorcyclists were 'the only group who did not get a reduction in their premiums'. The committee was informed that the Motorcycle Council has met with SIRA to discuss this, but that SIRA are stating 'that on an annual basis there will be an estimated 1,400 additional claims made under the new scheme' by motorcyclists.¹²²
- 2.56** Mr Wood questioned the basis of this figure and argued that motorcyclists are being overcharged:
- When we met with SIRA in June they were unable to provide indication of the number of claims that have been received in the scheme in the commencing six months. They advised that it would take several years for the number of claims to stabilise as road users become aware of their ability to make a claim under the new scheme. We are paying premiums to cover those additional 1,400 claims, yet by their own admission the level of claims will not get to that level for several years. Therefore we are being overcharged.¹²³
- 2.57** The Motorcycle Council requested that SIRA provide it with regular and sufficient data to ensure that 57 cents in the dollar is delivered as a benefit to riders.¹²⁴
- 2.58** SIRA stated that approximately nine times the number of injured motorcyclists are now covered under the 2017 scheme as opposed to the 1999 scheme. This is largely due to single vehicle accidents now being covered, regardless of fault.¹²⁵
- 2.59** SIRA based this on its analysis of Roads and Maritime Services NSW Crashlink data, casualties and claims information from the Victorian scheme and how premiums are affected by the average percentage of riders usually at fault in accidents.¹²⁶
- 2.60** SIRA noted the NSW Crashlink data in 2014 by way of example which indicated there were 1,685 motorcyclists injured where the motorcycle rider was deemed to be 'at fault'. These types of injuries would now be eligible for statutory benefits under the 2017 scheme.¹²⁷
- 2.61** SIRA provided the following graph which shows the number of statutory claims for all vehicle classes by accident month split by the fault status of the claim as at 30 June 2018.¹²⁸ Of the 546 claims assessed as at-fault or mostly at-fault, 134, or 25 per cent, relate to injured motorcyclists where the motorcycle has been deemed the at-fault vehicle. Of the 2,086 claims where fault is not yet determined, 212, or 10 per cent, relate to injured motorcyclists. However, these figures

¹²¹ Submission 7, Motorcycle Council of NSW, p 3.

¹²² Evidence, Mr Brian Wood, Secretary, Motorcycle Council of NSW, 23 August 2018, p 2.

¹²³ Evidence, Mr Wood, 23 August 2018, p 2.

¹²⁴ Submission 7, Motorcycle Council of NSW, p 4.

¹²⁵ State Insurance Regulatory Authority, *2017 CTP scheme Motorcycles Questions and Answers*, September 2018, p 1.

¹²⁶ Answers to questions on notice, State Insurance Regulatory Authority 25 September 2018, p 2.

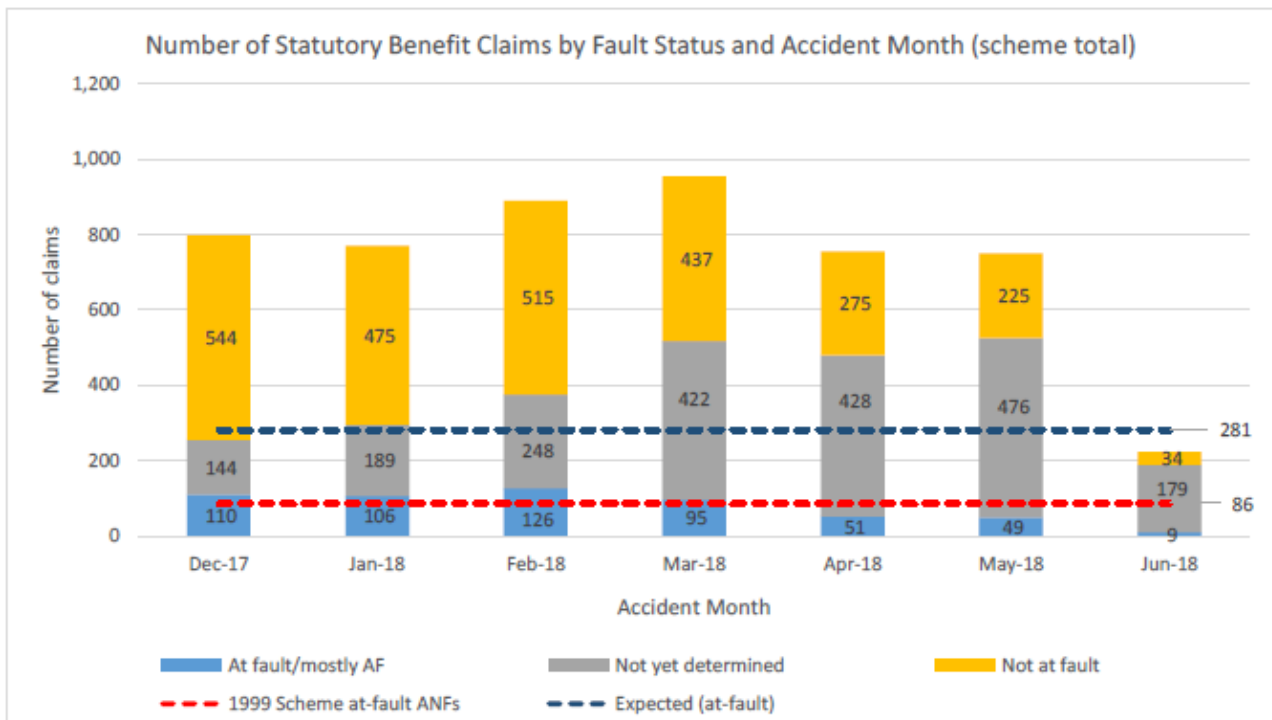
¹²⁷ Answers to questions on notice, State Insurance Regulatory Authority 25 September 2018, p 2.

¹²⁸ Answers to questions on notice, State Insurance Regulatory Authority 25 September 2018, p 2.

relate to insurer assessments as at 30 June 2018, and the categorisation of these claims will continue to develop as more information on the claim becomes available and decisions are made about fault. This development will also include the identification of claimants who were not a motorcyclist, but injured in an accident where a motorcycle was at fault such as pedestrians or other road users.¹²⁹

2.62 During evidence SIRA undertook to continue engaging with the Motorcycle Council 'to exchange data [and] monitor the situation with them'.¹³⁰

Figure 1 Statutory benefit claims by fault status and accident month



Answers to questions on notice, SIRA 25 September 2018, p 3.

CTP Green Slip refunds

2.63 The NSW Government announced that it is providing partial refunds for 2017 Green Slip policies that had a start date prior to the commencement of the new scheme on 1 December 2017. Refunds range between \$10 and \$120, and they are calculated on a pro rata basis and are subject to a \$7.87 administration fee. The amount refunded depends on when the policy was taken out in the 12 months before 1 December 2017. The NSW Government extended the period of time to apply for the refund to 30 June 2019.¹³¹

¹²⁹ Answers to questions on notice, State Insurance Regulatory Authority 25 September 2018, p 3.

¹³⁰ Evidence, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 23 August 2018, p 71.

¹³¹ Service NSW, *Claim a CTP Green Slip refund*, <https://www.service.nsw.gov.au/transaction/claim-ctp-green-slip-refund>.

- 2.64** SIRA noted that as at 1 May 2018, \$62.5 million had been refunded to 1.1 million of the 4.2 million New South Wales vehicle owners eligible for a refund.¹³² During evidence in August 2018, Ms Mary Maini noted that this figure had increased to over \$185 million being repaid to 2.1 million policy holders.¹³³ This further increased in September 2018 when SIRA noted that 75 per cent of refunds had been claimed.¹³⁴ As at January 2019 this figure was 82.22 per cent.
- 2.65** Ms Carmel Donnelly stated that a community information media campaign on the refund ran from March to June 2018 with a budget of just over \$1.9 million, covering advertising through television, billboards and social media. Ms Donnelly noted that since the media campaign there has been 'an increase in the amount refunded and everyone else who has not collected their refund yet will be getting individual letters to remind them of the opportunity to claim their refunds'.¹³⁵
- 2.66** While the initial letter had been sent to road users indicating that the refund could only be applied for online, Ms Maini advised the committee that the letter had since been modified 'to include that anyone can actually go to a service centre, call, or go on the website'.¹³⁶
- 2.67** Mr John Murphy, Chair, Motor Accident Insurance Committee, Insurance Council of Australia, stated that during initial discussions with SIRA, insurers were to mail cheques to all eligible motorists in New South Wales. However, Mr Murphy noted that the Insurance Council of Australia expressed a 'strong view that it would provide a better customer service experience for people to be able to get the money electronically into their account rather than receiving small cheques which they would have to take to the bank'.¹³⁷
- 2.68** He indicated that if people have still not claimed their refund it 'might represent an issue in terms of how effectively it has been communicated' by SIRA.¹³⁸ Mr Murphy noted that refunds can be claimed online or by going into a Service NSW office in person.¹³⁹
- 2.69** Ms Donnelly stated that sending cheques costs more to administer and there is a risk they will be returned to sender and lost. She stated that '[r]esearch would indicate that there is a higher risk of them not being cashed or deposited'.¹⁴⁰ SIRA expanded upon this in answers to questions:

In our analysis of the options, the distribution of cheques was less efficient than an option primarily based on electronic fund transfers as there were significant costs and risks with sending cheques to 4.2 million policy holders. The risks included a greater likelihood that cheques for smaller amounts may not be deposited resulting in fewer

¹³² Submission 4, State Insurance Regulatory Authority, p 13.

¹³³ Evidence, Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, 23 August 2018, p 75.

¹³⁴ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 10.

¹³⁵ Evidence, Ms Donnelly, 23 August 2018, pp 74-75.

¹³⁶ Evidence, Ms Maini, 2 October 2018, p 21.

¹³⁷ Evidence, Mr Murphy, 23 August 2018, pp 46-47.

¹³⁸ Evidence, Mr Murphy, 23 August 2018, pp 46-47.

¹³⁹ Evidence, Mr Murphy, 23 August 2018, pp 46-47.

¹⁴⁰ Evidence, Ms Donnelly, 23 August 2018, p 76.

refunds being returned to policy holders, theft or lost cheques, and high administration costs in distributing the cheques and managing non-presented cheques.¹⁴¹

- 2.70** SIRA indicated that it does not have access to the gender, age or other demographic characteristics of people who have not yet received refunds.¹⁴²

Committee comment

- 2.71** It is too early to comprehensively assess the performance of the new CTP scheme against its objectives, given it has only been in place for approximately a year. The committee acknowledges that the scheme has not yet reached a stage of implementation where claim, premium, profit or other key trends can be effectively assessed.
- 2.72** That aside, there appears to be positive signs that the new scheme is enabling a greater proportion of benefits to be paid to seriously injured road users, and that processes have been put in place to support the faster resolution of claims and disputes.
- 2.73** There has been a substantial reduction in the cost of Green Slip premiums for most road users, noting the concerns raised by the Motorcycle Council of NSW.
- 2.74** SIRA has taken active steps to ensure that New South Wales road users are aware of the CTP Green Slip refund policy. This is evidenced by the fact that as at September 2018, 75 per cent of refunds have been claimed.

Claims frequency

- 2.75** During this review the committee sought to examine whether there has been a reduction in claims frequency since 1 December 2017 and if so, the projected impact on premiums. Relevant to this is the fact that under the new scheme, the earliest any claim for common law damages can be lodged is 1 August 2019.¹⁴³
- 2.76** The Insurance Council of Australia noted that there are new rules around making claims in the 2017 scheme, where a claim for statutory benefits should be made as soon as possible, but within three months of the date of the accident. A common law claim for damages cannot be made until at least 20 months after the accident. The Insurance Council of Australia stated that a consequence of this is that it will be many years until 'claim frequency is understood, reliably measured and trends identified'.¹⁴⁴
- 2.77** The Insurance Council therefore indicated that it is too early to 'meaningfully assess the impact of the 2017 scheme on claims frequency, and much too early to consider the further projected

¹⁴¹ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 10.

¹⁴² Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 17.

¹⁴³ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 4.

¹⁴⁴ Submission 10, Insurance Council of Australia, p 4.

impact on premiums'.¹⁴⁵ However it noted that the first six months suggests that 'frequency is falling within the lower end of the anticipated range'.¹⁴⁶

Insurer profits

- 2.78** One of the areas the committee inquired into in this review was insurer profits given the reform objective to eliminate 'super profits'.¹⁴⁷
- 2.79** SIRA noted that under the new scheme it has powers to contain insurer profits and equalise risk through both the Risk Equalisation Mechanism and Transitional Excess Profit and Loss Mechanism (also known as the Profit Normalisation Mechanism).

Risk Equalisation Mechanism

- 2.80** The Risk Equalisation Mechanism was introduced in 2017 to reduce the cost of premiums. The Risk Equalisation Mechanism is applied to share the financial risk for passenger vehicles across all insurers.¹⁴⁸ SIRA has powers to stop insurers targeting low risks, such as experienced drivers in new vehicles, and avoiding high risks, for example, young drivers in older vehicles. As a result, the profit and loss from either end of the risk spectrum should be more equally shared across insurers.¹⁴⁹
- 2.81** The Risk Equalisation Mechanism is similar to the previous scheme's premium risk adjustment where the regulator could enter into a deed with an insurer or insurers to agree on various arrangements to allocate high risk third-party policies among insurers.¹⁵⁰ Under the new mechanism, SIRA will impose the arrangement as a condition of the insurer's licence and it has powers to require insurers to provide information about third-party policies or claims, and/or to reimburse SIRA for the costs of administering the arrangement.¹⁵¹
- 2.82** Effectively, the Risk Equalisation Mechanism 'redistributes profit among insurers' so that there will not be large disparities between insurer profits.¹⁵² Calculation of the net Risk Equalisation Mechanism amount is made in accordance with the Motor Accident Guidelines.¹⁵³ SIRA noted that the Risk Equalisation Mechanism structure is complex, comprising of 144 'buckets' but indicated it could be simplified as the scheme matures.¹⁵⁴

¹⁴⁵ Submission 10, Insurance Council of Australia, p 5.

¹⁴⁶ Submission 10, Insurance Council of Australia, p 5.

¹⁴⁷ Victor Dominello, Second reading speech: Motor Accidents Injuries Bill 2017, 9 March 2017.

¹⁴⁸ Submission 4, State Insurance Regulatory Authority, p 11.

¹⁴⁹ Submission 4, State Insurance Regulatory Authority, p 11.

¹⁵⁰ *Motor Accident Injuries Act 2017*, s 29.

¹⁵¹ *Motor Accident Injuries Act 2017*, s 2.24.

¹⁵² Submission 10, Insurance Council of Australia, p 5.

¹⁵³ Motor Accident Guidelines s 1.64.

¹⁵⁴ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 19.

- 2.83** SIRA noted that the complexity of the Risk Equalisation Mechanism stems from the range of risk factors applied in setting individual premiums. For example, there are four sub-classes of driver age and five sub-classes of vehicle age.¹⁵⁵
- 2.84** This mostly adds complexity in the Sydney metropolitan area where insurers are not able to directly price based on postcodes, as including this dimension would dramatically increase the risk segments by establishing postcode clusters.¹⁵⁶
- 2.85** SIRA stated that it is open to suggestions on simplifying the mechanism and has established a CTP Premium Committee as a subcommittee of the SIRA Board. This group regularly receives reports on the operation of the Risk Equalisation Mechanism and will review its operation in 2019.¹⁵⁷
- 2.86** Suncorp agreed that the positive impacts of the Risk Equalisation Mechanism are that competition between insurers has increased in certain markets and the incentive for insurers to only capture less risky segments of the market has been reduced. However, it argued that the structure is complex and could be simplified without impacting on the desired outcomes.¹⁵⁸

Profit Normalisation Mechanism

- 2.87** In the new scheme, insurers are limited to filing an acquisition and handling expense to a maximum of \$43.60 per policy (on average across all policies written by an insurer) and a filed profit margin to a maximum of 8 per cent of gross premium before levies and GST.¹⁵⁹ For the current average premium in the industry, this equates to an average of approximately \$28 per policy.¹⁶⁰
- 2.88** The Profit Normalisation Mechanism is used to recover insurers' profits that exceed a certain threshold. Any excess profit recovered by SIRA can then be used to reduce future Green Slip costs.¹⁶¹
- 2.89** Suncorp submitted that it is too early to assess the impact of the mechanism, particularly as it is not activated yet and that its effectiveness should be more apparent after three years.¹⁶² However, it was of the view that profit normalisation incentives for innovation are inadequately defined by SIRA.¹⁶³ In particular, Suncorp was concerned about the lack of guidance on whether a vehicle recognition feature on AAMI and GIO websites is acknowledged as an innovation that affects profit normalisation. It therefore recommended that SIRA provide a clearer definition of 'innovation' to insurers so investment is recognised and encouraged.¹⁶⁴

¹⁵⁵ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 19.

¹⁵⁶ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 19.

¹⁵⁷ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 19.

¹⁵⁸ Submission 3, Suncorp, p 3.

¹⁵⁹ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 1.

¹⁶⁰ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 1.

¹⁶¹ Submission 4, State Insurance Regulatory Authority, p 11.

¹⁶² Submission 3, Suncorp Group, p 3..

¹⁶³ Submission 3, Suncorp Group, p 3.

¹⁶⁴ Submission 3, Suncorp Group, p 3.

Committee comment

- 2.90** The 2017 scheme has produced a reduction in Green Slip premiums of approximately \$130 to \$200.
- 2.91** It is too early for the committee to effectively examine insurer profits under the new scheme, but notes that SIRA will continue monitoring and publishing data on insurer profits. The committee may consider this issue in its next review.

Effectiveness of the CTP Assist and Dispute Resolution Service

- 2.92** One particular issue this review wanted to explore was the effectiveness of two services offered by SIRA, CTP Assist and Dispute Resolution Service.
- 2.93** An explanation of CTP Assist and the Dispute Resolution Service is detailed earlier in the chapter along with some key statistics. In brief, CTP Assist provides claims support, advice and information both over the phone and online for injured people and other participants such as allied health professionals.¹⁶⁵ The dispute resolution service facilitates a mutual resolution of disputes between claimants and insurers or arranges an independent and binding decision by an expert assessor. It is 'designed to resolve disputes in an efficient, timely and relatively informal manner'.¹⁶⁶
- 2.94** As noted earlier in the chapter, SIRA indicated that client satisfaction results for CTP Assist is at 67 per cent, which means it is performing much better than the previous scheme figure of 45 per cent.¹⁶⁷ SIRA reported it has received eight complaints about CTP Assist since 1 December 2017.¹⁶⁸
- 2.95** In addition, SIRA noted that as at 31 August 2018, the Dispute Resolution Service received 73 disputes in 2017-2018 (0.7 per cent of all lodgments to the service) and had finalised 13 of these matters.¹⁶⁹ SIRA submitted that given the low number of disputes relating to the 2017 scheme, it is premature to compare the cost of operation to that of the 1999 scheme.¹⁷⁰
- 2.96** The New South Wales legal profession submitted some concerns about how these services impact on claimant's access to legal advice and representation.
- 2.97** The Australian Lawyers Alliance submitted that if legal representation was to be 'stripped back' in the new scheme, then SIRA would have to step up and become 'a much more vigorous and pro-active regulator' of CTP insurers.¹⁷¹

¹⁶⁵ Submission 4, State Insurance Regulatory Authority, p 12.

¹⁶⁶ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12; SIRA, *Motor accident injury disputes*, https://www.sira.nsw.gov.au/disputes-and-complaints/motor-accident-injury-disputes#After_1_December_2017.

¹⁶⁷ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 14.

¹⁶⁸ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 8.

¹⁶⁹ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 4.

¹⁷⁰ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 4.

¹⁷¹ Submission 9, Australian Lawyers Alliance, p 18.

2.98 The Law Society believed that CTP Assist, as it currently operates, is 'ineffective' and 'incapable of providing essential impartial advice and support' to claimants.¹⁷² The Law Society asserted it is 'unacceptable' that claimants do not have access to appropriate legal advice, 'given the complexities of the scheme'.¹⁷³

2.99 The Law Society stated that claimants are now reliant on legal advice provided by insurers and CTP Assist:

the quality of these decisions will continue to be variable, as claimants are required to navigate the system with significantly reduced access to independent legal advice and support and are completely beholden to the advice provided by insurers and the CTP Assist service.¹⁷⁴

2.100 There were also concerns raised about the dispute resolution service. The Law Society were concerned about its lack of independence and whether staff are appropriately qualified:

... the SIRA CTP Dispute Resolution Service lacks appropriate structure, procedures and independence, and that many of the full-time staff making decisions in relation to disputes are not appropriately qualified, trained and experienced in dealing with CTP matters. Further, we note that the head of the DRS is part of the senior executive team at SIRA, the scheme regulator.¹⁷⁵

2.101 Similarly, the Bar Association stated that the lack of independence of the Dispute Resolution Service is problematic:

Any review of the quality of those services can only be undertaken by interviewing individual claimants to ascertain whether or not they were properly advised and/or assisted through the process. Any review of insurance claim files of SIRA files will fail to identify shortcomings in those services, and will render the results of any survey vulnerable to confirmation bias.¹⁷⁶

2.102 The Bar Association considered that protocols or guidelines from the Victorian scheme could be adopted to assist claimants with the new process and inform them of their legal rights under the scheme.¹⁷⁷ These protocols are regulated by Victoria's Transport Accident Commission.¹⁷⁸ The Bar Association noted that these protocols explicitly recognise the role played by a legal advisor in the system, under the guiding principle that 'an individual should not be deprived of his or her legal rights due to ignorance of those rights'.¹⁷⁹

¹⁷² Submission 12, Law Society of New South Wales, p 6.

¹⁷³ Submission 12, Law Society of New South Wales, p 1.

¹⁷⁴ Submission 12, Law Society of New South Wales, p 7.

¹⁷⁵ Submission 12, Law Society of New South Wales, p 2.

¹⁷⁶ Submission 11, New South Wales Bar Association, p 3.

¹⁷⁷ Submission 11, New South Wales Bar Association, p 3.

¹⁷⁸ Victorian Transport Accident Commission, *TAC Protocols*, <http://www.tac.vic.gov.au/providers/for-legal-professionals/tac-protocols>.

¹⁷⁹ Submission 11, New South Wales Bar Association, p 2.

2.103 Ms Elizabeth Welsh, Member of the Common Law Committee at the NSW Bar Association, argued that the legal profession has been sidelined by the current scheme, however this should not be the case:

We have been sidelined by that actuarial process because you cannot really provide legal advice necessarily within the scope of the \$1,500, \$1,600, \$1,700 that might be available, certainly in a more complex dispute. But there is not really any acknowledgement in this scheme that the legal profession has a legitimate role in it. We have been involved in this consultation process so closely all the way through yet we do not appear to have a legitimate place in it. If you look at the Transport Accident Commission's protocol in Victoria, it is acknowledged that the legal profession has a role to play and it should be acknowledged in this State that we have a role to play.¹⁸⁰

2.104 Relevant to this discussion is the role of the Legal Advisory Service operated by SIRA. In addition to CTP Assist and the Dispute Resolution Service, SIRA operates a legal advisory service which is made up of a panel of lawyers who provide independent legal advice to injured people in the new scheme who were injured on, or after 1 December 2017.¹⁸¹

2.105 CTP Assist first confirms eligibility for the Legal Advisory Service and then arranges a phone consultation between the injured person and the lawyer from the service. Advice is provided over the phone and then confirmed in writing. The service is confidential and free of charge.¹⁸²

2.106 The committee was advised, however, that only seven referrals to the Legal Advisory Service have been made as of 31 August 2018.¹⁸³ SIRA acknowledged that take up of this service has been 'very low' and that it has commenced an evaluation to be completed in December 2018.¹⁸⁴

Committee comment

2.107 The committee acknowledges the important role both the CTP Assist and Dispute Resolution Service play in providing injured people with support during the claims process.

2.108 Concerns have been raised about the independence of the dispute resolution service, and how both these services may impact on a person's access to legal advice and/or representation. There is value in the legal advisory service operated by SIRA, however, the low number of referrals to this service raises questions as to why this service has not been utilised to a greater degree. It is recommended that SIRA publish its evaluation as soon as possible.

¹⁸⁰ Evidence, Ms Elizabeth Welsh, Common Law Committee, New South Wales Bar Association, 23 August 2018, p 65; Victorian Transport Accident Commission, *TAC Protocols*, <http://www.tac.vic.gov.au/providers/for-legal-professionals/tac-protocols>.

¹⁸¹ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 13.

¹⁸² Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 13.

¹⁸³ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 14.

¹⁸⁴ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 13.

Recommendation 1

That the State Insurance Regulatory Authority publish its evaluation of the Legal Advisory Service as soon as possible.

2.109 The committee intends to inquire into the effectiveness of these services in its next review.

New definition of 'minor injury'

2.110 The committee sought to examine the impact of changes to the definition of 'minor injury' under the *Motor Accident Injuries Act 2017*, particularly on fraudulent and exaggerated claims and the treatment of minor physical and psychological injuries.

2.111 As a result of the 2017 legislative changes, the 'minor injury' definition was amended to be as follows:

- (1) a minor injury is any one or more of the following:
 - (a) a soft tissue injury,
 - (b) a minor psychological or psychiatric injury.
- (2) A soft tissue injury is (subject to this section) an injury to tissue that connects, supports or surrounds other structures or organs of the body (such as muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissues, fat, blood vessels and synovial membranes), but not an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci or cartilage.
- (3) A minor psychological or psychiatric injury is (subject to this section) a psychological or psychiatric injury that is not a recognised psychiatric illness.¹⁸⁵

2.112 The Act also notes that there is discretion for future regulations to include or exclude a specified injury as a soft tissue injury or a minor psychological or psychiatric injury and that the Motor Accident Guidelines may also make provision for assessment of an injury as a minor injury.¹⁸⁶

2.113 People with a minor injury may obtain benefits to support their recovery for up to six months after the crash, including weekly income support payments, medical and treatment expenses and domestic and personal care services.¹⁸⁷

2.114 Damages are not available to an injured person if the person's only injuries resulting from the motor accident are minor injuries.¹⁸⁸

¹⁸⁵ *Motor Accident Injuries Act 2017*, s 1.6.

¹⁸⁶ *Motor Accident Injuries Act 2017*, s 1.6.

¹⁸⁷ State Insurance Regulatory Authority, *Understanding minor injury*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/understanding-minor-injury>.

¹⁸⁸ *Motor Accident Injuries Act 2017*, s 4.4.

- 2.115** Conversely, an injury is not minor when it does not meet the criteria for soft tissue or minor psychological or psychiatric injury. This requires a person to have a degree of permanent impairment greater than 10 per cent, known as the impairment threshold.¹⁸⁹
- 2.116** Examples of non-minor physical injuries include fractures; nerve injuries; complete or partial rupture of a tendon, cartilage, meniscus or ligament; or damage to the spinal nerve root that meets the criteria for radiculopathy. Examples of non-minor psychological or psychiatric injuries include a diagnosed psychological or psychiatric illness such as depression or post-traumatic stress disorder.¹⁹⁰
- 2.117** Insurers decide whether an injury is 'minor' in accordance with the legislation after taking into consideration many factors, including the assessment by the treating doctor or health professional. If a person has multiple injuries, the insurer will separately classify each crash-related injury. If all injuries are minor, the claim is a minor injury claim.¹⁹¹
- 2.118** SIRA has commissioned a file review of the first 1,000 claims since the new scheme commenced, with a focus on minor injury claims. This review is being conducted by two independent research institutions for a two year data collection period. SIRA expects the review will provide insights into the injury management process, application of the minor injury threshold and data collection to improve ongoing monitoring of the scheme.¹⁹²
- 2.119** SIRA has been working with stakeholders to develop resources to 'educate and assist the road using community in understanding the definition of a minor injury', including the impact that it has on a claim and on working toward recovery.¹⁹³
- 2.120** The Insurance Council of Australia stated that the new threshold for minor injury has wide ramifications, including 'costs, disputes, claim frequency, resolution rates and fraudulent and exaggerated claims'.¹⁹⁴
- 2.121** Ms Estelle Pearson, Actuary at the Insurance Council of Australia advised that a reduction of 4,000 minor injury claims is expected in 2018.¹⁹⁵ This forecast accords with the rationale of the scheme reform to focus on benefits to the most seriously injured, to reduce fraud and exaggeration and to provide savings to motorists in Green Slip premiums.
- 2.122** The Insurance Council stated that as the minor injury threshold is new, making decisions on some claims will involve disputation to clearly define the boundaries of the minor injury claim group. This may add some delay and complexity to resolving smaller claims at this stage. The

¹⁸⁹ *Motor Accident Injuries Act 2017*, s 1.7.

¹⁹⁰ State Insurance Regulatory Authority, *Understanding minor injury*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/understanding-minor-injury>.

¹⁹¹ State Insurance Regulatory Authority, *Understanding minor injury*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/understanding-minor-injury>.

¹⁹² Submission 4, State Insurance Regulatory Authority, p 12.

¹⁹³ Submission 10, Insurance Council of Australia, p 6.

¹⁹⁴ Submission 10, Insurance Council of Australia, pp 5-6.

¹⁹⁵ Evidence, Ms Estelle Pearson, Actuary, Insurance Council of Australia, 23 August 2018, p 41.

Insurance Council expected this situation to improve with the establishment of clearer boundaries around what is a minor injury and what is not.¹⁹⁶

2.123 Mr Matt Kayrooz, Head of Accident and Trauma, Suncorp, suggested that the current definition of minor injury is 'still a little bit grey'.¹⁹⁷

2.124 Some stakeholders also considered that while an injury is defined as 'minor', it may not be minor in effect. For example, the Insurance Council of Australia explained that the use of word 'minor' may be seen as trivialising a person's experience in an accident:

...the term 'minor injury' does not acknowledge the significant disruption and distress which individuals involved in a motor accident can experience. To this extent, the use of this term is unfortunate as it is perceived by some members of this group as somewhat trivialising of their experience of their motor accident.¹⁹⁸

2.125 Industrial Officer, Ms Natasha Flores told the committee that Unions NSW is concerned about classifying injuries as 'minor' in instances where claimants may not be able to return to work for many months. She expressed concerns about injured people not receiving the necessary support to assist them in returning to work:

Where a claimant is unable to return to work due to injury for a significant period of times such as the 26 weeks, as suggested by the Law Society; we would argue this is not a minor injury. We do have concerns about people's delay in returning to work and the lack of support in getting people the help they need to adequately get better and return to work.¹⁹⁹

2.126 The Australian Lawyers Alliance submitted it is concerned about cases in which injured workers will be classified as having a 'minor injury' and yet have 'persistent physical symptoms causing a restriction in work capacity'.²⁰⁰

2.127 The Australian Lawyers Alliance also noted that it is technically possible for someone to have a 'minor injury' and at the same time, have 15 per cent impairment, as a number of minor injuries may add up to a greater percentage of impairment.²⁰¹ This means that a person with injuries 'to the cervical, thoracic and lumbar spine' have a combined impairment threshold of 15 per cent, however are still considered to have a minor injury. The Australian Lawyers Alliance described this as 'anomalous and absurd'.²⁰²

2.128 The New South Wales Bar Association questioned whether the restriction of common law rights to motor accident victims with soft tissue injuries to their neck and back is 'fair or appropriate'.²⁰³ The Bar Association argued that people with genuine injuries should be compensated regardless

¹⁹⁶ Submission 10, Insurance Council of Australia, pp 3- 4.

¹⁹⁷ Evidence, Mr Kayrooz, 23 August 2018, p 50.

¹⁹⁸ Submission 10, Insurance Council of Australia, p 5.

¹⁹⁹ Evidence, Ms Natasha Flores, Industrial Officer, Work Health and Safety and Workers Compensation, Unions NSW, 23 August 2018, p 12.

²⁰⁰ Submission 9, Australian Lawyers Alliance, p 15.

²⁰¹ Submission 9, Australian Lawyers Alliance, pp 15-16.

²⁰² Submission 9, Australian Lawyers Alliance, p 16.

²⁰³ Submission 11, New South Wales Bar Association, p 2.

of whether it is soft tissue injuries to the neck and back.²⁰⁴ The Bar Association also viewed that the current test may be too stringent and the scheme could afford a more generous test, for example, less than or equal to 5 per cent impairment in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*.²⁰⁵

- 2.129** The Law Society of New South Wales asserted that the new minor injury definition has resulted in 'a significantly harsher treatment of claimants' and argued it may have resulted in 'some claimants not receiving benefits they are entitled to under the scheme'.²⁰⁶ Further, the Law Society was concerned that the increased focus by insurers and by SIRA on combating fraud has shifted attention away from a balanced and fair analysis of the features of each claim'.²⁰⁷
- 2.130** Representatives of the legal profession told the committee that legal representation is needed to ensure claimants are informed about and can enforce their rights. Ms Elizabeth Welsh, Common Law Committee member, New South Wales Bar Association, asserted that insurers are reinforcing to claimants that they have soft tissue injuries 'every time they ring'.²⁰⁸
- 2.131** Suncorp had concerns about the effectiveness of the minor injury test as a mechanism to limit fraud and claims exaggeration, contain scheme costs and increase the proportion of funds directed to those injured who need it most.²⁰⁹ It noted that the durability of the minor injury threshold is yet to be tested, 'which has the potential to significantly increase claims costs, fraud and subsequently put upward pressure on premiums'.²¹⁰
- 2.132** Suncorp informed the committee that SIRA amended its guidelines on 30 April 2018 to require that insurers provide copies of correspondence to the legal representatives of claimants receiving statutory benefits. It argued that while it is appropriate that claimants with serious injuries have legal representation, it is 'concerned about enabling a further increase in the proportion of legally-represented claims from low-impact collisions with no visible injuries (which are potential indicators of unmeritorious claims)'.²¹¹
- 2.133** Suncorp indicated that May 2018 had the highest proportion of represented statutory claims at 27 per cent, up from 25 per cent and 20 per cent in April and February 2018 respectively.²¹² It stated that this 'high and increasing proportion of legally represented claimants receiving statutory benefits raises concerns that plaintiff law firms are "gearing up" to test the boundaries of the minor injury test (for both physical and psychological injuries)'.²¹³
- 2.134** Mr Kayrooz argued that the higher than expected number of legally represented claimants is a 'sign' that there may be a 'weak point' in the system in terms of the test for minor injury.²¹⁴

²⁰⁴ Submission 11, New South Wales Bar Association, p 2.

²⁰⁵ Submission 11, New South Wales Bar Association, p 2.

²⁰⁶ Submission 12, Law Society of New South Wales, p 7.

²⁰⁷ Submission 12, Law Society of New South Wales, p 11.

²⁰⁸ Evidence, Ms Welsh, 23 August 2018, p 61.

²⁰⁹ Submission 3, Suncorp Group, p 2.

²¹⁰ Submission 3, Suncorp Group, p 4.

²¹¹ Submission 3, Suncorp Group, p 3.

²¹² Submission 3, Suncorp Group, p 2.

²¹³ Submission 3, Suncorp Group, p 3.

²¹⁴ Evidence, Mr Kayrooz, 23 August 2018, p 51.

- 2.135** SIRA advised that as at 30 June 2018, of the 5,137 reported statutory benefit claims in the 2017 scheme, 1,051 have been coded by insurers as involving a lawyer. This represents an estimated current legal representation rate of 20 per cent.²¹⁵
- 2.136** However, as injured people progress through the 2017 scheme and when damages claims can be pursued, SIRA expects disputes to arise between insurers and injured persons leading to greater legal involvement. Ultimately, it expects legal representation for the 2017 scheme to develop to about 50 to 60 per cent as claims develop and reach finalisation.²¹⁶

Committee comment

- 2.137** The committee notes that there are differing views regarding the impact of changes to the definition of minor injury in the new scheme. SIRA has commissioned a file review of the first 1,000 claims with a focus on minor injury claims, which will provide insight into the application of the minor injury threshold. The committee is interested in the outcome of this review and recommends that SIRA provide a copy to the committee once it has been finalised.

Recommendation 2

That the State Insurance Regulatory Authority provide the Standing Committee on Law and Justice with the file review of the first 1,000 claims of the new CTP Green Slip Scheme once it is finalised.

- 2.138** The committee notes SIRA has been working with stakeholders to develop resources to educate and assist road users to understand the definition of a minor injury. Given the importance of the definition of minor injury to the new scheme, the committee recommends that SIRA expedite its work on development of these resources and make them widely available for the benefit of the public.

Recommendation 3

That the State Insurance Regulatory Authority expedite its work on the development and distribution of educational resources on the definition of minor injury for the benefit of injured road users in New South Wales.

- 2.139** The committee encourages SIRA to continue monitoring the scheme for increases in the proportion of legally represented claims for minor injuries.

Return to work and recovery outcomes

- 2.140** In light of the anticipated benefits of the new CTP scheme, the committee sought to examine return to work and recovery outcomes of the new statutory benefits scheme.

²¹⁵ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

²¹⁶ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 12.

- 2.141** The Insurance Council of Australia was optimistic about the potential for improved return to work and recovery outcomes under the new scheme 'with the caveat that it is too early to make a meaningful assessment'.²¹⁷ It considered that a number of scheme features offer potential for improved outcomes, for example, 'earlier and periodic payments of income loss benefits will reduce the disruption and stress associated with injury and time off work'.²¹⁸ The Insurance Council also noted that the new Act includes provision for SIRA to provide vocational education and return to work support to injured people with the aim of improving return to work outcomes.²¹⁹
- 2.142** The Law Society submitted that it is very important that scheme statistics 'should not automatically be interpreted to indicate that the termination of weekly benefits at 26 weeks necessarily equates to a successful return to work'. The Law Society stated that this issue has resulted in difficulties in assessing the accuracy of return to work statistics for the workers compensation scheme, and should not be replicated with the statistics for the current CTP scheme.²²⁰
- 2.143** The committee also received evidence from other stakeholders about how recovery outcomes for injured people could be improved. The Australian Physiotherapy Association NSW recommended that the committee support the introduction of physiotherapists issuing certificates of capacity within the NSW CTP scheme for low risk, high volume claims, as it will, in part, improve return to work and recovery outcomes.²²¹
- 2.144** The regulator also highlighted how it is examining and supporting recovery and return to work health outcomes for those injured in motor vehicle accidents. In particular, SIRA noted that it has engaged Sydney University's John Walsh Centre for Rehabilitation Research to conduct the 'Evaluation of the 2017 CTP Legislative Changes in NSW – health outcomes after motor vehicle crash injury', to compare recovery and return to work outcomes for people in the 1999 and 2017 CTP schemes as well as those who do not have a CTP claim. People were recruited to this study from public hospitals commencing September-October 2018 and will be followed up 6, 12 and 24 months after injury.²²²
- 2.145** Pilots have also been developed for three targeted vocational rehabilitation support programs, arranged by the insurer and funded by SIRA. They include financial incentives for employers and funding for claimants to overcome barriers to recovery at work.
- **Transition to Work** helps pay for immediate or short-term costs that might prevent an injured person starting work with a new employer
 - **JobCover Placement** provides up to \$27,400 in incentives for employers to employ an injured person

²¹⁷ Submission 10, Insurance Council of Australia, p 6.

²¹⁸ Submission 10, Insurance Council of Australia, p 6.

²¹⁹ Submission 10, Insurance Council of Australia, p 6.

²²⁰ Submission 12, The Law Society of New South Wales, p 9.

²²¹ Submission 5, Australian Physiotherapy Association NSW, p 3.

²²² SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 11.

- **Recover at Work Assist** provides financial incentives to an employer to help an injured person stay at their current job while they recover.²²³

Views of medical practitioners

- 2.146** The committee heard evidence from medical practitioners about the importance of placing the health and wellbeing of injured people first in the design of a compensation scheme.
- 2.147** Professor Ian Harris, Orthopedic Surgeon, South Western Sydney Clinical School, University of New South Wales stated that his research indicates that some of the biggest barriers to the recovery of injured people 'include legal involvement, pursuing common law and blame'. He advised that this is because there is this a 'constant requirement to prove the degree of your disability or illness, and the illness focus' and it is particularly a problem in patients who do not 'necessarily have an identifiable pathological injury'.²²⁴
- 2.148** Professor Harris stated that being involved in a compensation system, regardless of the system's particulars, has very negative aspects and that people who are treated outside of the compensation system do better.²²⁵ He noted that studies indicate that regardless of other factors such as the severity of the injury and age, the most significant factor that affects recovery is whether a person has been treated under a compensation system or not.²²⁶
- 2.149** Professor Harris also provided evidence about the importance of having clear pathways for people to pursue if they are injured. He noted the impact of complexity and 'uncertainty in the system', reflecting on the regret people express two or three years after they have been through the system: 'Often many of them say after two or three years, "If I had known this is what would have been involved in the process, I would never have gone down this path. I would have gone back to work and I would be a lot happier"'.²²⁷
- 2.150** In Professor Harris' view, key to a person's recovery is having a system that does not involve issues of fault or uncertainty as to whether a common law claim can be pursued. He pointed to the New Zealand system as an example, where 'everybody is covered and this is what you are covered for – no questions asked'.²²⁸
- 2.151** Professor Harris and Professor Glozier also gave evidence about some of the complexities associated with the system in terms of coverage for psychological treatment. Professor Glozier highlighted how some of his patients have said that when they are refused treatment under one

²²³ SIRA, *NSW Motor Accidents CTP Scheme: Motor Accident Injuries Act 2017, Interim Scheme Performance Report, 1 December 2017 – 30 June 2018*, October 2018, p 12.

²²⁴ Evidence, Professor Ian Harris, Orthopedic Surgeon, South Western Sydney Clinical School, University of New South Wales, 23 August 2018, pp 19-20.

²²⁵ Evidence, Professor Harris, 23 August 2018, p 20.

²²⁶ Evidence, Professor Harris, 23 August 2018, p 23.

²²⁷ Evidence, Professor Harris, 23 August 2018, p 20.

²²⁸ Evidence, Professor Harris, 23 August 2018, p 20.

system, being the insurance scheme, they are often then unable to access treatment under another scheme, for example, under the Medicare system.²²⁹

- 2.152** In discussing the difficulties of diagnosing and treating patients under a compensation scheme, Professor Cameron noted the psychological impact of being in a motor vehicle accident and how pain can manifest even when there is no detectable pathology:

... if I am injured in a motor vehicle crash and develop neck pain, the pain is real and is there, but there may be no detectable pathology. Similarly, as a result of that, I may be very concerned about my situation and worried about whether I will recover, and therefore may have psychological symptoms of feeling unwell ... One of the big issues is what is a symptom versus what is an injury, or, from the psychiatric point of view, what is a diagnosis.²³⁰

- 2.153** Professor Cameron advocated for a non-fault-based system, similar to Victoria. From his research it appeared that people perceive Victoria as a 'fairer scheme that appears to be associated with better recovery'.²³¹

- 2.154** In terms of other suggestions put forward as to how the scheme could be improved, Professor Harris argued that compensation for medical care should be removed, given it is already available under Medicare. He felt that providing it in the current scheme can lead to 'overtreatment':

One option ... is to not compensate people for medical care, because people are covered for medical care; they get treated under Medicare, and their coverage for medical care in many cases leads to overtreatment. I see this all the time. ... Back pain is a classic example, or neck pain, after an injury. You may not have an identifiable injury, traumatic injury, resulting from that accident, but anybody who gets an MRI scan of their neck or their back is going to show something—you are going to see a lot of things there—and if you are complaining of pain and you have got something in your scans, and you complain enough, you are going to end up getting operated on. You are more likely to get operated on if you are covered under the compensation system; you will not get operated on if you are not covered under the compensation system because the surgical fee, for instance, in a public hospital to get a spinal fusion, for example, would be a few hundred dollars. Under the compensation schemes surgeons are being paid up to and over \$50,000 for a single procedure. This is why this procedure is largely done on compensated people and it is not done on uncompensated people.²³²

- 2.155** Professor Harris also suggested that access to common law should be limited. He stated 'They are the ones that do the worst. They get a payment, but healthwise they do far worse'.²³³

²²⁹ Evidence, Professor Glozier, Professor of Psychological Medicine, University of Sydney, 23 August 2018, pp 20-21.

²³⁰ Evidence, Professor Ian Cameron, Professor of Rehabilitation Medicine, University of Sydney, 23 August 2018, p 21.

²³¹ Evidence, Professor Cameron, 23 August 2018, p 24.

²³³ Evidence, Professor Harris, 23 August 2018, p 23.

Committee comment

- 2.156** It is too early to make a meaningful assessment of return to work and recovery outcomes under the new scheme. Accordingly, the committee calls on SIRA to ensure that it accurately reports on return to work and recovery outcomes when publishing scheme performance reports.
- 2.157** The committee thanks medical practitioners for highlighting the importance of focusing on the health and wellbeing of injured people. We note that in a compensation scheme it can be difficult to maintain this focus, as the schemes are complex, contain uncertainty and there is an adversarial element, where people are seeking to attribute fault. The committee therefore calls on scheme stakeholders to be mindful that their focus should always be on the recovery of people who have been injured on New South Wales roads.

Reporting obligations

- 2.158** This review also examined the new reporting obligations on insurers which require them to report all new claims in real time to SIRA.
- 2.159** The Insurance Council of Australia advised that a new Universal Claims Database has been established. At the time it was proposed, insurers were told they would be required to supply data to the new database on a real time basis, rather than via periodic batch feeds. This aspect was not supported by insurers who were concerned about the expense of developing a real time database for a long tail scheme. Nonetheless two of the four insurers have implemented automated real time interfaces and the other two insurers are supplying data in batches three times a day.²³⁴
- 2.160** SIRA gave evidence that real-time reporting is done through three 'data dumps' per day and that this reporting obligation facilitates better monitoring of the scheme:
- With the recent increase in more detailed data from insurers, SIRA is designing regular reporting to enable evidence based oversight of provider interactions within the CTP scheme, including identification of spend trends and outliers.²³⁵
- 2.161** Ms Mary Maini, Executive Director of the Motor Accidents Insurance Regulation, SIRA, stated that real-time reporting allows SIRA to examine the quality of data:
- When we set up real-time reporting, we were actually asking for more regular feeds as we are actually reviewing the time and the amount of feeds that are required by insurers. We did that initially to understand how it was working and progressing and to make sure that the quality of data was correct.²³⁶
- 2.162** SIRA noted that the detailed close to real time data received from insurers allows SIRA to intervene more rapidly in non-compliance. However, the focus in early months of the scheme has been on embedding the new data arrangements and detecting clear breaches.²³⁷ SIRA provided an example that through its data monitoring, it has begun an investigation of a medical

²³⁴ Answers to questions on notice, Insurance Council of Australia, 25 September 2018, p 4.

²³⁵ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 11.

²³⁶ Evidence, Ms Maini, 23 August 2018, p 86.

²³⁷ Answers to questions on notice, State Insurance Regulatory Authority, 25 September 2018, p 23.

provider who has allegedly undertaken potentially fraudulent behaviour across both the motor accident and workers compensation schemes.²³⁸

- 2.163** Ms Maini also stated that having 'real time' data ensures that SIRA's information is up-to-date, so if a serious accident occurs, SIRA will be sure to receive the data quickly.²³⁹ Ms Carmel Donnelly, Chief Executive of SIRA, expanded on this and suggested that data dumps increase efficiency for SIRA and injured persons:

I would also say that there are people who now call us if they are experiencing a difficulty and because the data is up to date and correct we do not have to ask them to tell us all about it again. There is a benefit to the injured person in that if they have told someone once they do not have to keep repeating it.²⁴⁰

- 2.164** Ms Donnelly stated that the verification of data by SIRA, such as date of birth, is critical for the correct identification of the claimant.²⁴¹

- 2.165** However, insurers argued that 'real time' data reporting requirements are currently onerous. Suncorp indicated that the requirement to submit data dumps three times a day is an administrative burden and it is 'unclear how submitting data multiple times a day delivers customer benefits or improves performance of the scheme'. Suncorp stated that it supports the collection of comprehensive and timely data, but suggested that a more sensible balance needs to be introduced.²⁴²

- 2.166** Suncorp detailed an example of the administrative impact that the current reporting requirements has on its team:

The timeframes for insurers to correct data errors and exceptions are onerous and administratively demanding. To illustrate, if a claimant has not provided their date of birth, this is reported as an error. The insurer has 24 hours to correct this, diverting claims managers from other tasks, as they urgently seek these details. If, by midafternoon, they don't have the information, a member of Suncorp's Regulatory Submissions team must email SIRA to request a suppression or extension, otherwise a breach will be recorded against Suncorp. The cumulative impact of this administrative requirement is significant.²⁴³

- 2.167** The Insurance Council of Australia also questioned the benefits of 'real time' reporting and noted its expense on insurers:

Whilst there have been many improvements in data collection and reporting, the allocation of resources on the part of insurers has been significant. It remains unclear at this stage whether the benefits created by SIRA's requirement for "real time" data in a long-tail scheme such as CTP outweigh the expense incurred by insurers in meeting

²³⁸ Answers to pre-hearing questions, State Insurance Regulatory Authority, 26 September 2018, p 11.

²³⁹ Evidence, Ms Maini, 23 August 2018, p 86.

²⁴⁰ Evidence, Ms Donnelly, 23 August 2018, p 86.

²⁴¹ Evidence, Ms Donnelly, 23 August 2018, p 86.

²⁴² Submission 3, Suncorp, p 4.

²⁴³ Submission 3, Suncorp, p 4.

this requirement. Insurers continue to explore the costs and benefits of this approach with SIRA.²⁴⁴

- 2.168** The Insurance Council of Australia informed the committee that it was recently advised by SIRA that the database is used as a tool by CTP Assist and/or the Dispute Resolution Scheme to support their interactions with injured motorists. This insight was not previously known to insurers and according to the Council, provides a clearer rationale for more frequent collection of data.²⁴⁵

Publishing comparative data

- 2.169** The Australian Lawyers Alliance encouraged SIRA to publish comprehensive comparative data about insurer performance, as a mechanism for informing the public and stakeholders about the relative performance of insurers and as an incentive for insurers to engage in positive conduct.²⁴⁶
- 2.170** The Australian Lawyers Alliance were disappointed that SIRA only plans to collect and publish comparative data on complaints and urges SIRA to collate and publish a more wide-spread set of comparative data.²⁴⁷
- 2.171** It argued that complaints data is not an effective method of measuring scheme health as there are a significant number of variables that go into the number of complaints lodged.²⁴⁸
- 2.172** The Australian Lawyers Alliance instead listed the following comparative data that SIRA should be collecting and reporting on to effectively analyse the performance of insurers:
- denying liability for statutory benefits claims
 - denying liability for damages claims
 - cutting off statutory benefits claims due to contributory negligence being over 61 per cent
 - denying statutory benefits claims on the basis of the basis of minor injury
 - average dollar amount of payments of statutory benefits in the first six months
 - timeliness in paying treatment expenses
 - statutory benefits claims reversed following a decision by the Dispute Resolution Service
 - minor injury payments continuing after six months
 - claim resolution time.²⁴⁹

²⁴⁴ Submission 10, Insurance Council of Australia, p 7.

²⁴⁵ Answers to questions on notice, Insurance Council of Australia, 25 September 2018, p 4.

²⁴⁶ Answers to questions on notice, Australian Lawyers Alliance, 10 October 2018, p 1.

²⁴⁷ Answers to questions on notice, Australian Lawyers Alliance, 10 October 2018, p 1.

²⁴⁸ Answers to questions on notice, Australian Lawyers Alliance, 10 October 2018, p 2.

²⁴⁹ Answers to questions on notice, Australian Lawyers Alliance, 10 October 2018, pp 5-6.

Committee comment

- 2.173** The committee notes that the current process of SIRA receiving 'real time' data on claims via three 'data dumps' from insurers per day is aimed at ensuring that SIRA's data is correct and up-to-date, to improve efficiency and the identification of issues. However, this requirement appears to have created an administrative burden for insurers.
- 2.174** The committee understands the concerns raised by insurers and recommends that SIRA and scheme insurers work together to develop a more balanced approach in the provision of comprehensive data to SIRA.

Recommendation 4

That the State Insurance Regulatory Authority work with scheme insurers to develop a less onerous approach for insurers to provide comprehensive real time data to the authority.

- 2.175** The committee notes the evidence by the Australian Lawyers Alliance calling for SIRA to publish more comprehensive data comparing insurer performance, rather than merely reporting on the number of complaints each insurer has received. More comprehensive data would help inform the public and act as an incentive for insurers to engage in positive conduct. For these reasons the committee recommends that SIRA, in consultation with the legal profession and insurers, develop comprehensive criteria to measure insurer performance in the CTP insurance scheme and publicly report this comparative data, on an annual basis.

Recommendation 5

That the State Insurance Regulatory Authority, in consultation with the legal profession and insurers, develop comprehensive criteria to measure insurer performance in the CTP insurance scheme and publicly report this comparative data, on an annual basis.

Chapter 3 Other matters raised regarding the CTP insurance scheme

While the previous chapter focused on the performance of the current Compulsory Third Party insurance scheme according to the NSW Government's objectives, this chapter examines a range of other matters that were raised with the committee during the course of the inquiry. This includes claims farming, an extension of the CTP scheme to ensure foreign tourists are covered and surveillance by insurers.

Claims farming

- 3.1** One of the issues the committee explored during the inquiry was claims farming, where a middleman encourages people to make compensation claims and then sells these claims on to a legal firm.
- 3.2** The committee questioned Ms Genevieve Henderson, State Practice Group Leader (MVA NSW) at Slater and Gordon, regarding allegations that the law firm had been engaged in 'claims farming'.²⁵⁰
- 3.3** In response, Slater and Gordon explained that under its previous management it had been conducting marketing pilot programs in 2016-2017 and that current management has chosen to discontinue the programs.²⁵¹
- 3.4** Slater and Gordon informed the committee that it received prospective client enquiries in New South Wales from three partners: Medibank, Health Engine and PreLegal, as follows:
- Medibank: 27 enquiries, resulting in 2 new clients, both were offered legal costs agreements and one matter has so far been settled successfully
 - Health Engine: 69 enquiries, resulting in 11 new clients, all were offered legal costs agreements and three matters have so far been settled successfully
 - PreLegal: 227 client enquiries, resulting in 42 new clients, 42 were offered legal costs agreements and three matters have so far been settled successfully.²⁵²
- 3.5** Slater and Gordon advised that no referral fees were paid in New South Wales and that there are currently no active referral pilot arrangements in the state.²⁵³
- 3.6** All pilots were entered into on the understanding that both Slater and Gordon and the marketing partners would be fully compliant with all legislative requirements. In addition, in the course of undertaking various pilots, Slater and Gordon developed principles which articulated that 'the aim of the pilot was to achieve best practice in the marketing of legal services with a rigorous and multifaceted compliance strategy' that expressly addressed legislative requirements. This included to:

²⁵⁰ Evidence, Ms Ms Genevieve Henderson, State Practice Group Leader (MVA NSW), Slater and Gordon, 23 August 2018, pp 34-38.

²⁵¹ Answers to questions on notice, Slater and Gordon, 25 September 2018, p 1.

²⁵² Answers to questions on notice, Slater and Gordon, 25 September 2018, p 4.

²⁵³ Answers to questions on notice, Slater and Gordon, 25 September 2018, p 4.

- ensure that telephone calls to potential clients were only conducted during standard business hours
- clearly notify the potential client of the partner's name and function at the commencement of the call
- provide Slater and Gordon and/or any potential client, promptly on request, the details of the website, time, date and specifics of the potential client's consent to receiving the marketing call
- notify the potential client of the referral arrangement with Slater and Gordon and seek their consent to disclose their details to Slater and Gordon
- inform each potential client that Slater and Gordon would act for them and that engaging with Slater and Gordon is entirely voluntary
- maintain an ongoing archive of each opt-in consent data record and a recording of each call for at least 12 months.

3.7 The principles required that Slater and Gordon would reinforce to each partner that they cannot engage in any behaviour which could amount to 'undue influence, coercion or duress or be perceived as harassment or nuisance'.²⁵⁴

3.8 Slater and Gordon also appointed an in-house auditor to conduct monthly random auditing of calls to assess and report on compliance, attend to any complaints, if necessary, and provide feedback.²⁵⁵

3.9 Ms Henderson noted that Slater and Gordon has since ceased these partnerships, stating 'Certainly, these referral pathways were not good for our business. They were pilots'.²⁵⁶

3.10 Ms Henderson acknowledged the committee's concerns about these partnerships, and issues associated with claims farming and unmeritorious claims. She disagreed that referral pathways are the problem per se, other than how they affect people's privacy and are 'horribly annoying'. Ms Henderson said the 'real evil within the compensation schemes is if it promotes unmeritorious claims', and she agreed that such practices are illegal. Ms Henderson strongly advocated for regulation in this area, reflecting on the outcome of Project Raven which highlighted multiple failures by insurers, law firms and the regulator.²⁵⁷

Committee comment

3.11 The committee was troubled by media reports about 'claim farming' being undertaken by Slater and Gordon. Among other driving factors, the committee notes that the recent changes to the compulsory third party scheme were not only aimed at improving insurer and claimant behavior, but also the behavior of lawyers.

²⁵⁴ Answers to questions on notice, Slater and Gordon, 25 September 2018, pp 1-2.

²⁵⁵ Answers to questions on notice, Slater and Gordon, 25 September 2018, p 2.

²⁵⁶ Evidence, Ms Henderson, 23 August 2018, p 38.

²⁵⁷ Evidence, Ms Henderson, 23 August 2018, p 39.

- 3.12** The committee believes that these types of referral practices are problematic, and at the very least can increase the risk of unmeritorious claims.
- 3.13** While Slater and Gordon 'piloted' these referral partnerships, the committee notes that the practices have since ceased. In light of this, and what has been learnt from previous experience, the committee encourages the regulator to monitor these types of issues closely in the future.

Foreign tourists

- 3.14** While the new scheme is aimed at delivering greater benefits to the most seriously injured Australian residents on New South Wales roads, the Australian Lawyers Alliance submitted that the CTP scheme is 'grossly discriminatory' against foreign tourists who are injured on New South Wales roads.²⁵⁸
- 3.15** Foreign tourists are unable to recover any medical or treatment expenses once they leave Australia, either as statutory benefits or as damages. Further, they are unable to recover fortnightly payments of statutory benefits until their final return to work prospects are clear.²⁵⁹
- 3.16** The Australian Lawyers Alliance urged the government to 'extend the same fairness to foreign tourists'²⁶⁰ as is provided to New South Wales and Australian residents, specifically:
- that section 3.33 of the Act be revised to provide foreign tourists with the same medical treatment rights as Australian residents
 - that section 3.21 of the Act be revised to allow foreign tourists to collect statutory benefits for lost wages (or hardship payments) without waiting for their medical condition to stabilise.²⁶¹
- 3.17** The Australian Lawyers Alliance anticipated that the cost of covering medical expenses for foreign tourists injured on New South Wales roads would be only a few cents in the total premium.²⁶² Further, other Australian jurisdictions such as Victoria, Queensland and the Australian Capital Territory provide full reimbursement of treatment expenses of foreign tourists who are 'innocent accident victims' on their roads.²⁶³
- 3.18** Mr Terence Stern, Chair of the Injury Compensation Committee, Law Society of New South Wales, agreed that it is unfair for 'very badly injured' foreign tourists to 'have to look after themselves when they go back home'.²⁶⁴

²⁵⁸ Submission 9, Australian Lawyers Alliance, p 9.

²⁵⁹ Submission 9, Australian Lawyers Alliance, p 9.

²⁶⁰ Submission 9, Australian Lawyers Alliance, p 14.

²⁶¹ Submission 9, Australian Lawyers Alliance, p 14.

²⁶² Submission 9, Australian Lawyers Alliance, p 14.

²⁶³ Submission 9, Australian Lawyers Alliance, p 13.

²⁶⁴ Evidence, Mr Terence Stern, Chair of Injury Compensation Committee, Law Society of New South Wales, 23 August 2018, p 66.

Committee comment

- 3.19** In light of the evidence provided by the Australian Lawyers Alliance and Law Society of New South Wales, the committee believes that the NSW Government should investigate the cost of extending the CTP scheme to ensure foreign tourists who are injured on our roads are provided with the same medical benefits overseas as other Australian residents.

Recommendation 6

That the NSW Government investigate the cost of amending the *Motor Accidents Injuries Act 2017* to ensure foreign tourists who are injured on New South Wales roads receive the same medical treatment benefits as Australian residents.

Surveillance by insurers

- 3.20** During the inquiry, the committee explored whether there were any concerns about surveillance practices related to claims.
- 3.21** Mr Andrew Stone, NSW President, Australian Lawyers Alliance noted that under the old Act, surveillance guidelines were added to the Motor Accidents Guidelines which included restrictions in relation to the surveillance of children and that insurers 'were not to pursue surveillance as a matter of course but rather because there was a bona fide suspicion that there was something amiss in the claim'.²⁶⁵ He indicated that it is too early to examine the use of surveillance regarding damages claims in the new scheme, and has not 'heard anything about the use of surveillance in statutory benefits' claims.²⁶⁶
- 3.22** The Insurance Council of Australia explained that its members follow the current guideline on surveillance investigations.²⁶⁷ As noted above, the guideline is protective of the privacy rights of children as well as the claimant's rights not to be subject to inducement or entrapment on social media activities.²⁶⁸
- 3.23** SIRA submitted that the scheme has been effective in minimising complaints associated with surveillance, with 14 instances of surveillance reported since 1 December 2017.²⁶⁹ SIRA stated that its new front-line complaints process has increased its ability to interrogate data by insurers and identify complaints relating to misconduct.²⁷⁰
- 3.24** Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, noted that clauses 4.1 to 4.137 in the Motor Accident Guidelines relate to requirements and expectations around insurers' conduct on surveillance. The guidelines state that surveillance should be undertaken only when there is evidence to indicate that someone is

²⁶⁵ Evidence, Mr Andrew Stone, NSW President, Australian Lawyers Alliance, 23 August 2018, p 68.

²⁶⁶ Evidence, Mr Stone, 23 August 2018, p 68.

²⁶⁷ Answers to questions on notice, Insurance Council of Australia, 25 September 2018, p 4.

²⁶⁸ Motor Accident Guidelines ss 4.140 and 4.141

²⁶⁹ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 22.

²⁷⁰ Answers to questions on notice, State Insurance Regulatory Authority, 14 November 2018, p 23.

exaggerating a claim, or a claim is misleading. The investigator must not interfere with a claimant's activities and cannot engage in any acts of inducement, entrapment or trespass. The insurer must also take reasonable steps to avoid video surveillance and, when sending surveillance material, must inform the party about its confidentiality.²⁷¹

Committee comment

- 3.25** The committee acknowledges that there were only a small number of reported complaints associated with surveillance in the CTP scheme. The committee encourages SIRA to continue monitoring surveillance practices and trends by insurers.

²⁷¹ Evidence, Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, 2 October 2018, p 30.

Appendix 1 Submissions

No.	Author
1	Mr Paul Rees
2	Carers NSW
3	Suncorp Group
4	State Insurance Regulatory Authority
5	Australian Physiotherapy Association NSW
6	NSW Taxi Council
7	Motorcycle Council of NSW Inc
8	Unions NSW
9	Australian Lawyers Alliance
10	Insurance Council of Australia
11	NSW Bar Association
12	The Law Society of New South Wales

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 23 August 2018 Jubilee Room, Parliament House, Sydney	Mr Brian Wood	Secretary, Motorcycle Council of NSW Inc
	Mr Jason Antony	Vice Chairman, Motorcycle Council of NSW Inc
	Mr Martin Rogers	Chief Executive Officer, NSW Taxi Council
	Mr Nick Abraham	Deputy Chief Executive Officer, NSW Taxi Council
	Ms Natasha Flores	Industrial Officer – WH&S and Workers Compensation, Unions NSW
	Professor Ian Cameron	Professor of Rehabilitation Medicine, University of Sydney
	Professor Ian Harris	Orthopaedic Surgeon, SWS Clinical School, University of New South Wales
	Professor Nick Glozier	Professor of Psychological Medicine, University of Sydney
	Ms Genevieve Henderson	State Practice Group Leader (MVA NSW), Slater and Gordon
	Mr John Murphy	Chair – Motor Accident Insurance Committee, Insurance Council of Australia
	Mr James Dunwoody	Chair – NSW CTP Claims Managers Committee
	Ms Estelle Pearson	Actuary and long term advisor to the Insurance Council
	Mr Chris McHugh	Executive Manager, Personal Injury Portfolio & Products, Suncorp
	Mr Matt Kayrooz	Head of Accident and Trauma, Suncorp
	Mr Terrence Stern	Chair – Injury Compensation Committee, Law Society of NSW
	Mr Robert Sheldon SC	Chair of the Association's Common Law Committee, NSW Bar Association
Ms Elizabeth Welsh	Common Law Committee, NSW Bar Association	
Mr Andrew Stone SC	NSW State President, Australian Lawyers Alliance	
Ms Carmel Donnelly	Chief Executive, State Insurance Regulatory Authority	
Ms Mary Maini	Executive Director, Motor Accidents Insurance Regulation,	

Date	Name	Position and Organisation
Tuesday 2 October 2018 Jubilee Room, Parliament House, Sydney	Ms Carmel Donnelly	State Insurance Regulatory Authority
	Ms Mary Maini	Chief Executive, State Insurance Regulatory Authority Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority

Appendix 3 Minutes

Minutes no. 25

1 May 2018

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 2.02 pm

1. Members present

Ms Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 24 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 March 2018 – Letter from Dr Arthur Chesterfield-Evans to Chair, regarding the statutory review of the *State Insurance and Care Governance Act 2015*
- 18 April 2018 – Letter from the Hon Mark Speakman SC MP, Attorney General, to Chair, requesting that the committee inquire into and report on additional matters relating to adoptive relationships as part of the inquiry into special care offences.

Sent:

- 19 February 2018 – Letter from Chair to the Hon Mark Speakman SC MP, Attorney General, forwarding correspondence from Mr Timothy Nicholls, Senior Lawyer, Dowson Turco Lawyers to Chair, regarding changes to the *Relationships Register Act 2010* and the *Relationships Register Regulation 2010* to recognise de facto same-sex relationships registered overseas.

4. Inquiry into the adequacy and scope of special care offences

4.1 Amendment to terms of reference

Resolved, on the motion of Mr Shoebridge: That, as previously agreed via email, the committee adopt the amendment to the terms of reference to include examination of:

- whether the special care offence in section 73 of the Crimes Act 1900 should be expanded to include adoptive parents and adopted children as a special care relationship
- whether the incest offence in section 78A of the Crimes Act 1900 should be expanded to include adoptive relationships.

5. Timeline for next round of scheme reviews

Resolved, on the motion of Ms Voltz: That the committee adopt the following timetable for the next round of scheme reviews:

- workers compensation and Compulsory Third Party insurance schemes:
 - call for submissions 1 May 2018
 - report November 2018
- Dust Diseases and Lifetime Care and Support schemes:

- call for submissions October 2018
- report February 2019.

6. 2018 review of the workers compensation scheme

6.1 Approach to the review

Resolved, on the motion of Mr Clarke: That the 2018 review of the workers compensation scheme focus on:

- the feasibility of a consolidated personal injury tribunal for Compulsory Third Party and workers compensation dispute resolution, as per recommendation 16 of the committee's first review of the workers compensation scheme, including where such a tribunal should be located and what legislative changes are required
- recommending a preferred model to the NSW Government.

6.2 Call for submissions and closing date

Resolved, on the motion of Mr Shoebridge: That the call for submissions be made on 1 May 2018 via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, with a closing date of 17 June 2018.

6.3 Stakeholder list

Resolved, on the motion of Mr Shoebridge: That members have until 5.00 pm on Thursday 3 May 2018 to nominate additional stakeholders to the stakeholder list.

6.4 Hearing dates

Resolved, on the motion of Mr Shoebridge: That the committee set aside one hearing day in July/August, with the date to be determined by the Chair after consultation with members regarding their availability.

7. 2018 review of the Compulsory Third Party insurance scheme

7.1 Approach to the review

Resolved, on the motion of Ms Voltz: That the 2018 review of the Compulsory Third Party insurance scheme focus on the following aspects of the new scheme:

- whether it is achieving the NSW Government's stated objectives of:
 - increasing the proportion of benefits provided to the most seriously injured road users
 - reducing the time it takes to resolve a claim
 - reducing opportunities for claims fraud and exaggeration
 - reducing the cost of green slip premiums
- whether there has been a reduction in claims frequency since 1 December 2017 and if so, the projected impact on premiums
- the impact of the new profit normalisation and risk equalisation mechanisms in controlling insurer profits
- the effectiveness of the new CTP Assist and Dispute Resolution Services for statutory benefits claims
- the impact of the new minor injury definition, including on reducing fraudulent and exaggerated claims
- the impact of the changes on minor physical and psychological injuries
- the return to work and recovery outcomes of the new statutory benefits scheme
- the impact of the new reporting obligations on insurers which require them to report all new claims in real time to SIRA.

7.2 Call for submissions and closing date

Resolved, on the motion of Ms Voltz: That the call for submissions be made on 1 May 2018 via twitter, stakeholder letters and a media release distributed to all media outlets in New South Wales, with a closing date of 17 June 2018.

7.3 Stakeholder list

Resolved, on the motion of Mr Clarke: That members have until 5.00 pm on Thursday 3 May 2018 to nominate additional stakeholders to the stakeholder list.

7.4 Hearing dates

Resolved, on the motion of Mr Khan: That the committee set aside one to two hearing dates in July/August, with the dates to be determined by the Chair after consultation with members regarding their availability.

8. Adjournment

The committee adjourned at 2.17 pm, until Wednesday 27 June 2018, Jubilee Room, Parliament House (public hearing for inquiry into the adequacy and scope of special care offences).

Sharon Ohnesorge

Clerk to the Committee

Minutes no. 29

23 August 2018

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney, 9.02 am

1. Members present

Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos 27 and 28 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Sent

- 15 August 2018 – Letter from Chair to Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, concerning the committee's powers to seek information

Received:

- 10 August 2018 – Email from Mr Dahbo Wheeler, Executive Assistant, Australian Medical Association, to secretariat, advising that they are unable to attend the hearing on 23 August 2018 for the 2018 review of the CTP scheme
- 6 August 2018 – Email from Dr Dwight Dowda, Consultant Occupational Physician, to secretariat, advising that he is unable to attend the hearing on the 23 August 2018 for the 2018 review of the CTP scheme
- 29 June 2018 – Email from Dr Louise Schetzer, Policy & Advocacy Manager, Australian Lawyers Alliance, to secretariat, attaching correspondence from the Australian Lawyers Alliance to the State Insurance Regulatory Authority.

4. 2018 review of the dust diseases and lifetime care and support schemes**4.1 Inquiry timeline**

Resolved, on the motion of Ms Voltz: That the committee adopt the following timeline:

- submission closing date of 4 November 2018
- a hearing be scheduled in early December 2018, subject to the secretariat canvassing member availability.

Resolved, on the motion of Mr Shoebridge: That government witnesses be provided with pre-hearing questions on notice and be requested to provide a general update on the progress of matters since the government response was tabled for the last review.

5. 2018 review of the workers compensation scheme

5.1 Transcript clarifications

Resolved, on the motion of Mr Shoebridge: That the committee include a footnote in the:

- Transcript of 24 July 2018 noting the clarifications received on 31 July 2018 by Mr Alastair McConnachie, NSW Bar Association.

5.2 Answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of answers to questions on notice from:

- National Insurance Brokers Association of Australia, received 7 August 2018
- Bar Association of NSW, received 6 August 2018
- Workers Compensation Independent Review Office, received 30 July 2018.

6. Inquiry into the adequacy and scope of special care offences

6.1 Answers to questions on notice

Resolved, on the motion of Mr Khan: That the committee authorise the publication of answers to questions on notice from:

- Office of the Advocate for Children and Young People, received 26 July 2018
- Office of the Director of Public Prosecutions, received 27 July 2018.

Resolved, on the motion of Mr Shoebridge: That the Office of the Director of Public Prosecutions be requested to provide the reasons they are requesting the attachment to their answers to questions on notice be kept confidential, and to advise whether these concerns can be addressed by redactions to the document, and if so, what the proposed redactions would be.

6.2 Report deliberative

Resolved, on the motion of Mr Khan: That the committee hold the report deliberative on Tuesday 2 October 2018.

7. 2018 review of the compulsory third party insurance scheme

7.1 Submissions

The committee noted that submissions nos. 1-12 were published by the committee clerk under the authorisation of the resolution appointing the committee.

7.2 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Brian Wood, Secretary, Motorcycle Council of NSW Inc
- Mr Jason Antony, Vice Chairman, Motorcycle Council of NSW Inc
- Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council
- Mr Nick Abraham, Deputy Chief Executive Officer, NSW Taxi Council.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Natasha Flores, Industrial Officer – WH&S and Workers Compensation, Unions NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Professor Ian Cameron, Professor of Rehabilitation Medicine, University of Sydney
- Professor Ian Harris, Orthopaedic Surgeon, SWS Clinical School, University of New South Wales
- Professor Nick Glozier, Professor of Psychological Medicine, University of Sydney.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Genevieve Henderson, State Practice Group Leader (MVA NSW), Slater and Gordon.

Ms Henderson tendered the following document:

- Examples of case studies.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John Murphy, Chair – Motor Accident Insurance Committee, Insurance Council of Australia
- Mr James Dunwoody, Chair – NSW CTP Claims Managers Committee
- Ms Estelle Pearson, Actuary and long term advisor to the Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Chris McHugh, Executive Manager, Personal Injury Portfolio & Products, Suncorp
- Mr Matt Kayrooz, Head of Accident and Trauma, Suncorp.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Terrence Stern, Chair – Injury Compensation Committee, Law Society of NSW
- Mr Robert Sheldon SC, Chair of the Association's Common Law Committee, NSW Bar Association
- Ms Elizabeth Welsh, Common Law Committee, NSW Bar Association
- Mr Andrew Stone SC, NSW State President, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority
- Ms Mary Maini, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The hearing concluded at 5.04 pm.

8. Adjournment

The committee adjourned at 5.05 pm.

Tina Higgins
Clerk to the Committee

Minutes no. 33

Tuesday 2 October 2018

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney, 9.20 am

1. Members present

Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 29 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 26 September 2018 – Email from Witness A to secretariat, re-confirming he would like to appear in camera on the 2 October hearing
- 28 August 2018 – Email from Witness A, to secretariat, confirming he would like to appear in camera and via skype
- 22 August 2018 – Email from Peter McCarthy to secretariat, raising concerns about the Compulsory Third Party scheme.

4. Answers to questions on notice

4.1 2018 review of the workers compensation scheme

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from the Shop Distributive and Allied Employees Association, received on 20 August 2018
- answers to questions on notice from icare, received on 20 August 2018, including two attachments
- answers to questions on notice from the Workers Independent Review Office, received on 20 August 2018
- answers to questions on notice from Unions NSW, received 17 August 2018
- answers to questions on notice from the Police Association of NSW, received 17 August 2018
- answers to questions on notice from the Construction, Forestry, Maritime, Mining and Energy Union, received 15 August 2018
- answers to questions on notice from the Australian Lawyers Alliance, received 17 August 2018

- answers to questions on notice from SIRA, received 23 August 2018
- answers to questions on notice from the Insurance Council of Australia, received 23 August 2018.

4.2 2018 review of the Compulsory Third Party scheme

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Slater and Gordon, received on 24 September 2018
- answers to questions on notice from the Insurance Council of Australia, received on 24 September 2018
- answers to questions on notice from Suncorp, received on 24 September 2018 (including supplementary information)
- answers to questions on notice from the NSW Bar Association, received on 19 September 2018
- answers to questions on notice from SIRA, received on 24 September 2018 (including several attachments).

5. 2018 review of the workers compensation scheme

5.1 In camera hearing

The committee previously resolved to take *in camera* evidence from an individual submission author.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Ms Madeleine Foley, Ms Sonya Kim, Ms Angeline Chung and Hansard Reporters.

The following witness was sworn and examined:

- Witness A.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Shoebridge: That the evidence be kept confidential and to not publish the transcript of the *in camera* hearing.

5.2 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair also reminded Ms Carmel Donnelly, SIRA Chief Executive, that she did not need to be sworn, as she had been sworn at an earlier hearing for 2018 review of the workers compensation scheme.

The following witnesses were sworn and examined:

- Dr Rhys Bollen, Executive Director, Dispute Resolution Services, State Insurance Regulatory Authority
- Mr Darren Parker, Acting Executive Director, Workers and Home Building Compensation Regulation, State Insurance Regulatory Authority

Ms Donnelly tendered the following document:

- Insurer performance – Workers compensation

The evidence concluded and the witnesses withdrew.

5.3 Tended documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Insurer performance – Workers compensation, tendered by Ms Donnelly.

5.4 Briefing

The committee noted that SIRA offered to provide informal briefings on the claims administration manual and potentially other matters.

6. 2018 review of the Compulsory Third Party insurance scheme

6.1 Public hearing

Witnesses, the public and media were admitted.

The chair reminded Ms Carmel Donnelly and Ms Mary Maini, SIRA Executive Director, that they did not need to be sworn, as they had been sworn at an earlier hearing for 2018 review of the Compulsory Third party insurance scheme.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.08 pm.

The public and media withdrew.

6.2 Answers to pre-hearing questions

The committee received answers to pre-hearing questions and additional material from the State Insurance Regulatory Authority (SIRA) on 26 September 2018.

The following material was published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions, including attachments
- additional material – CTP Legal Advisory Service fact sheet
- additional material – August scheme at a glance.

Resolved, on the motion of Mr Shoebridge: That the following documents be kept confidential, pending further advice from SIRA on the review by the Department of Finance Services and Innovation Chief Information Security Officer, and further consideration by the committee at the next deliberative:

- Claims Data Coding Manual and Data Validation rules
- Coding Manual Universal Claims Data – UCD Coding Specification.

SIRA provided the template letters from insurers at 5pm on Friday 28 August. These letters will be distributed to members after the hearing.

SIRA has also provided an updated dashboard for June. A copy was distributed to members.

7. Adjournment

The committee adjourned at 1.20 pm.

Madeleine Foley
Committee Clerk

Draft minutes no. 39

Wednesday 6 February 2019
Standing Committee on Law and Justice
Macquarie Room, Parliament House, Sydney at 1.35 pm

1. Members present

Mrs Ward, *Chair*

Ms Voltz, *Deputy Chair*

Mr Clarke

Mr Khan

Mr Mookhey

2. Apologies

Mr Shoebridge

3. Previous minutes

Resolved, on the motion of Mr Clarke: That the draft minutes no. 38 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the dust diseases scheme
- 5 February 2019 – Email and proposed amendments to the Chair's draft report for the 2018 review of the Workers compensation scheme, as provided to the secretariat by Mr Shoebridge.

Sent

- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the dust diseases scheme.

Resolved, on the motion of Mr Clarke: That the committee keep the following items of correspondence confidential:

- 31 January 2019 – Email and document from confidential submission author no. 2 regarding the review of the dust diseases scheme
- 30 January 2019 – Letter from the Director to confidential submission author no. 2 regarding the review of the dust diseases scheme.

Resolved, on the motion of Mr Mookhey: That the secretariat, on behalf of the committee, write to confidential submission author no. 2 concerning their correspondence.

5. Legacy Report

The committee noted that the secretariat is preparing a Legacy Report for the committee to consider and adopt at its next meeting.

6. 2018 review of the workers compensation scheme

6.1 Consideration of Chair's draft report

The chair tabled her draft report, entitled 2018 review of the Workers Compensation Scheme, which having been previously circulated, was taken as being read.

Mr Mookhey moved: That paragraph 1.18 be amended by omitting 'These reforms simplify' and inserting instead 'The government saying that these reforms simplify'.

Question put.

Amendment negatived.

Mr Mookhey moved: That the second sentence in paragraph 1.18 be omitted as follows 'These reforms simplify the dispute resolution process for injured workers and address concerns which have been raised in previous reviews'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 1.19 be amended by omitting 'commends the government for taking steps' and inserting instead 'acknowledges the steps the government has taken'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.20 be amended by omitting 'The committee also commends icare for its new claims model, which – even in its infancy – has already achieved efficiencies' and insert instead 'The committee notes that icare states that its new claims model has already achieved efficiencies'.

Resolved, on the motion of Ms Voltz: That paragraph 2.52 be amended by inserting at the end: 'The committee notes the strong stakeholder support for the work of WIRO and the very broad support for WIRO's role to be expanded to encompass the CTP scheme'.

Mr Mookhey moved: That recommendation 1 be amended by omitting 'consolidate' and insert instead 'consider consolidating'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That recommendation 2 be amended by inserting the following dot point at the end:

- 'leave no worker in a worse legal position'

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That recommendation 4 be amended by omitting all words and inserting instead 'That the NSW Government repeal section 39 of the Workers Compensation Act 1987'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That recommendation 4 as follows be omitted: 'That the NSW Government assist injured workers who have lost, or will lose, their weekly entitlements under section 39 of the Workers Compensation Act 1987 to transition quickly to the disability support pension, where eligible, and investigate other support mechanisms for those ineligible for these payments'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That the following new paragraph be inserted after paragraph 3.26:

'It is clear that the amendments to s 39 have caused widespread and unnecessary hardship and suffering. There is capacity in the scheme to meet the ongoing needs of workers who have been injured and continue to require income and medical support more than five years after their injury and the scheme should provide this.'

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That recommendation 5 be amended by omitting 'give consideration to legislative ambiguities including back-pay' and insert instead 'give consideration to resolving legislative ambiguities including issues of back-pay'.

Resolved, on the motion of Mr Mookhey: That paragraph 3.44 be amended by omitting 'The committee is troubled by SIRA's perceived inaction in response to systemic issues raised by stakeholders' and insert instead 'The committee is troubled by SIRA's inaction in response to some issues raised by stakeholders in the last review'.

Mr Mookhey moved: That paragraph 3.78 be amended by omitting all words and inserting instead 'The committee rejects SIRA's evidence about the reasons for delayed action on practice standards for insurers, including on surveillance'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That paragraph 3.78 be omitted as follows: 'The committee is pleased that the work on the claims administration manual will soon be finalised, and that this will help to enforce practice standards for insurers, not limited to surveillance. We look forward to receiving feedback on the implementation of this manual in the future'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;

- The transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled on 12 February 2019.

7. 2018 review of the CTP insurance scheme

7.1 Consideration of Chair's draft report

The Chair tabled her draft report entitled 2018 review of the Compulsory Third Party insurance scheme, which, having been previously circulated, was taken as being read.

Mr Mookhey moved: That paragraphs 2.72 to 2.74 be omitted.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 2.73 be amended by omitting 'although we note' and inserting instead 'noting the'.

Mr Mookhey moved: That paragraph 2.74 be amended by omitting all words and inserting instead: 'SIRA could have taken more steps to ensure all New South Wales road users received the green slip funds they were entitled to'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That paragraph 2.90 be amended by omitting all words and inserting instead: 'The purported cost of living relief would be maximised by a cashback scheme on the M4'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Mr Mookhey moved: That paragraph 2.90 be amended by omitting 'The 2017 scheme' and inserting instead 'SIRA states that the 2017 scheme'.

Question put and negatived.

Resolved, on the motion of Mr Khan: That paragraph 2.108 be amended by omitting 'operated by SIRA. However, the low number of referrals to this service raises questions as to why it has not been utilised to a greater degree. It is therefore recommended that' and inserting instead: 'operated by SIRA, however, the low number of referrals to this service raises questions as to why this service has not been utilised to a greater degree. It is recommended that'.

Mr Mookhey moved: That paragraph 2.175 and recommendation 5 be amended to insert 'and profit' after 'measure insurer performance'.

Question put.

The committee divided.

Ayes: Mr Mookhey, Ms Voltz.

Noes: Mr Clarke, Mr Khan, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 3.25 be amended to insert 'in the CTP scheme' after 'associated with surveillance'.

Resolved, on the motion of Mr Khan: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- That the report be tabled on 12 February 2019.

8. Next meeting

The committee adjourned at 2.16 pm, until Thursday 21 February 2019 (report deliberative for Lifetime Care and Dust Diseases reviews).

Tina Higgins
Clerk to the Committee

Appendix 4 Dissenting statement

The Hon Daniel Mookhey MLC, Australian Labor Party

The majority's enthusiasm for heralding premium savings to motorists from reforms to the CTP still nascent reminds me of those contestants from *The Price Is Right* who, when told to 'come on down', trip over themselves in a mad rush to the stage, to claim a prize they might not win. It's pitiable.

It's too early to judge premium reductions which might result from the 2017 reforms. Insurance schemes (by definition) carry long tail risks. Insurer profits might remain the biggest cost to the scheme. The new 'no fault' stream of the scheme might cost more. How do I know this? Because SIRA, and many other witnesses, were persuasive enough in their warnings for the Committee to pepper these caveats throughout the report.

I understand why Government members want to herald premium reductions: for a Government that for eight years have added to the cost of living pressures the families of New South Wales face, it's face-saving to say premiums have come down, and are staying down.

It's just not true.

What would be true cost-of-living relief for motorists would be if the Government Members in majority in this Committee agreed with my amendment (and NSW Labor's policy): Bring back the M4 Cashback!

