

11 July 2016

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

Email: lawandjustice@parliament.nsw.gov.au

Dear Sir/Madam

RESPONSES TO QUESTIONS TAKEN ON NOTICE AT 17 JUNE HEARING

Thank you for the opportunity to appear before the Law and Justice Committee on 17 June 2016.

We would like to take this opportunity to correct an error of fact made during the hearing. It was stated that in the past two years the incidence of legally represented small claims had increased by more than 100%. The correct figure is that the number of legally represented claims for minor injuries has increased by 111% between 2008 and 2015 and 24% between June 2014 and June 2015.¹

Please find below our responses to the questions we took on notice.

Q: When it comes to fraud in this area, does it require a police determination? Do you have the ability with CTP claims to investigate them privately? Could you take it on notice to get more facts around fraud and farming and define that?

A: A requirement for a police determination depends on whether the allegation for fraud is a civil allegation or a criminal allegation.

Section 117, subsections (a) to (d), of the *Motor Accident Compensation Act 1999* (MAC Act 1999) define CTP fraud as making a statement knowing that it is false or misleading in a material particular. Under these provisions, a police determination is not required. However, for penalties to be imposed under the MAC Act 1999 or for a criminal allegation of CTP fraud to be made under the *Crimes Act 1900* a police allegation and court determination would be needed.

Insurers have a duty under Section 116 of the MAC Act 1999 to take all such steps as may be reasonable to deter and prevent the making of fraudulent claims.

¹ *On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW*, NSW Government, p 10

In response to increased instances of fraud and exaggeration in the scheme, insurers in consultation with the State Insurance Regulatory Authority (SIRA) have been working to ensure appropriate claims management strategies are in place to tackle the issue of fraud and fulfil the duties required of them under Section 116. Insurers have been required to submit their claims management strategies to SIRA, to demonstrate how they are identifying and responding to unmeritorious and fraudulent claims. Insurers are able to investigate claims privately and may also use external investigators to assist them.

In their publication - *Deterring fraudulent and exaggerated claims in the NSW CTP insurance scheme*, SIRA notes that CTP claims fraud encompass both hard fraud and soft fraud. Hard fraud relates to the complete fabrication of the accident or injury. Soft fraud occurs when an accident genuinely took place but elements of the claim are exaggerated.

It is difficult to provide exact numbers of CTP fraud and exaggeration. The scheme actuary has advised that minor severity, legally represented claims have increased by nearly 40% in the 2015 calendar year. However the number of people recorded as injured has reduced during this period. SIRA have also advised that the number of claimants who are children has risen significantly in Sydney's south west compared to the rest of NSW. This raises the question of potential exaggeration in the scheme.

SIRA also outlines in its publication that cold calling and the use of claims farming practices is growing. It is exploring measures to further address this, having already banned referral fees under the Motor Accident Compensation Regulation 2015.²

As part of the NSW Government CTP Fraud Taskforce, insurers have been working with the NSW Police, Office of Legal Services Commissioner, Health Care Complaints Commissioner and other stakeholders to develop strategies to detect and deter CTP fraud and unmeritorious claims. Where there is evidence to suggest that fraud has been committed within the criminal law provisions, insurers can refer these matters on to the police.

Q: Do you believe the premium guidelines and market practice guidelines are going to be effective? What elements of it do you think will change behaviour so we can retain community rating?

A: The current Market Practice and Business Plan Guidelines require insurers to describe to SIRA the details of their CTP operating arrangements and to explain how they are meeting SIRA's principles to ensure equal access to CTP policies. These principles include processes and business practices to ensure that there is no unfair

² *Deterring fraudulent and exaggerated claims in the NSW CTP insurance scheme*, NSW Government (2016), SIRA website

discrimination against individual customers or group of customers and ensure that CTP policies are readily accessible and available to all customers.

We understand that SIRA is in the process of implementing further changes to the Market Practice and Premium Determination guidelines to improve transparency in Green Slip pricing. We also understand that as part of the premium system review, SIRA will take into consideration the recommendations from the Trevor Matthews report into insurer profits.

SIRA's reviews into these matters are yet to be concluded, and as such, we are unable to comment on the revised guidelines efficacy. Once the new guidelines are in place, our members will fully cooperate with SIRA to ensure that the guidelines are adhered to, and any policy objectives, such as safeguarding community rating, are met.

Q: The college suggested there be a whole of life impairment model but also a second claim right that arises after should the first source of funding be exhausted. They made that point relative to the lump sum aspect of it. In your proposed scheme would you support such a mechanism and would you also support that mechanism being applied to the defined benefits aspect of your scheme? Are you able to furnish the Committee on notice what would be the relevant factors for an insurer to price that?

A: The ICA's proposed model for scheme reform was developed to assist the NSW Government and stakeholders to understand the nature and extent of reforms that may be needed to meet the Government's objectives. The proposed model was developed with an understanding that the amount and duration of benefits available under a reformed scheme, along with thresholds, would ultimately be a decision for Government, as it considers balancing its objectives of affordability whilst ensuring fair and appropriate benefits are available to those who are injured.

As noted in the Trevor Matthews report, the long delay between when claims are reported and when claims are finalised means there is significant inherent uncertainty in the current scheme. The industry's proposed model for scheme reform is intended to limit this uncertainty. It is possible that a mechanism to pursue a second claim once the first has been exhausted could undermine the stability and sustainability of the scheme.

The return on capital required by insurers to participate in the scheme is related to the uncertainty within the scheme. It is possible therefore, that such a measure will mean investors will require higher return on their capital to compensate them for a more uncertain revenue stream.

Taking the above into consideration, we would be concerned that whole of life entitlements could increase uncertainty and would be challenging to cost without increasing CTP premiums. With regards to the factors needed for insurers to price

this, this would largely depend on the eligibility criteria for whole of life benefits and the amount of benefits that could be claimed.

We note that the NSW Government has tasked an expert reference panel to consider a scheme whereby some defined benefit payments could be made for life. The ICA and insurers will be working closely with the panel on this matter to consider the cost implications for the scheme.

Q: Do you know to what extent, when we are paying for green slips, we are not paying for the statutory cover but for the inflated costs that arise out of the first party cover that is already factored into those green slips?

A: We refer to the advice provided to the Committee by SIRA on this matter. SIRA advised that first-party add-ons equate to approximately \$1 to \$2 per CTP policy. The Act does not prevent, and nor do the guidelines, insurers from providing additional first-party at-fault products.

Q: How precise are your members responding to the emergence of ride sharing and how has that been priced and risked; the existence of policies or products of that type and any aspect of risk assessment about how ride sharing align with taxis in terms of identical or different risk factors?

A: Our members have been actively engaged with SIRA's review of CTP insurance for point-to-point transport vehicles. Currently the premium system does not distinguish between vehicles that operate in a ride sharing capacity. In our response to SIRA's review, the ICA called for a premium system that would allow for owners who use their vehicles to provide rideshare services to pay a CTP premium that reflects the associated risk of these services.

The ICA submitted that one of the advantages of separate classification is that the class can remain fully funded as premium remains aligned to risk. Separate classification could also provide useful insights into the claims trends for ride-share vehicles. Similar to taxis, rideshare vehicles may present a higher risk than passenger vehicles, resulting in higher claims frequency and claims cost, however there is currently no data to confirm or disprove this. Over time, data may show that ride-share vehicles tend towards a higher or lower claims frequency than initially anticipated. This would allow the premium to be adjusted accordingly.

Noting the challenge of appropriately pricing vehicles used in both a commercial and private capacity, the ICA has also raised the option of point-to-point transport vehicles having a usage based premium. Under such an arrangement, point-to-point transport vehicles would pay a base CTP premium and then time spent in the point-to-point capacity would be measured and an additional premium charged.

Fundamental to the appropriate pricing of ride share vehicles and point-to-point transport vehicles is the adequate collection of data. In this regard, we have

welcomed the Point to Point Transport (Taxis and Hire Vehicles) Bill 2016 which also recognises that information on vehicle usage and claims is required to assist SIRA and insurers to accurately determine risk profiles and price accordingly. The Bill provides SIRA with powers to collect data from booking services and taxi service providers to help determine the appropriate CTP premium to be charged. The NSW Government has also recently announced that reforms to the premium system will provide for a new variable usage-based component on point-to-point vehicle premiums. These measures should allow for a more risk based approach to setting premiums for point-to-point transport vehicles and should also create a more level playing field between taxis and ride-sharing operators.

If you have any questions or comments, please do not hesitate to contact Vicki Mullen, General Manager, Consumer Relations & Market Development Directorate on
or

Yours sincerely

Robert Whelan
Executive Director and CEO