

STANDING COMMITTEE ON LAW AND JUSTICE

FIRST REVIEW OF THE DUST DISEASES AND LIFETIME CARE AND SUPPORT SCHEMES

PRE-HEARING QUESTIONS ON NOTICE- SIRA

Direction to insurer to make an application

1. In its submission, Suncorp noted that SIRA has capacity under the *Motor Accidents (Lifetime Care and Support) Act 2006* to direct an insurer to make an application on behalf of a claimant, without the consent of the claimant¹. In what circumstances would SIRA make a direction such as this and how regularly does this occur?

Response

Section 8 (3) of the Act provides that SIRA may direct the licensed CTP insurer for a person's CTP claim to make an application for the person to become a participant in the Lifetime Care and Support (LTCS) Scheme, and the insurer must comply with such a direction.

SIRA may be prompted to direct an insurer to make a LTCS Scheme application without the claimant's authorisation if it were concerned that the claimant's best interests were at risk. This provision also supports the intention that the cost of injured people who may be entitled to be a participant in the LTCS Scheme being funded from the Medical Care and Injury Service Levy (MCIS) Levy rather than the CTP insurer, which is not able to collect premium for this purpose.

To date, SIRA has not directed a CTP insurer to make an application to the LTCS Scheme on behalf of a claimant.

SIRA is not aware of any instances when the former Motor Accidents Authority issued such a direction.

Disputes

2. Please explain the role of SIRA's Dispute Resolution Service in respect of disputes arising under the Lifetime Care and Support scheme.

Response

For disputes under lifetime care and support legislation, SIRA's Dispute Resolution Service has direct interactions with the Lifetime Care and Support (LTCS) Scheme under arrangements as follows:

For disputes about whether an accident is a "motor accident injury":

1. An initial decision is made by LTCS Authority (LTCSA) personnel;
2. If disputed, the LTC Act 2006 requires that the matter be referred to the Principal Claims Assessor of CARS (the Motor Accidents Claims Assessment and Resolution Service) to convene a panel of three CARS Claims Assessors to assess the dispute and make a binding determination on the issue.

For disputes about "treatment and care needs":

1. An initial decision is made by LTCSA personnel;
2. If disputed, the matter is referred to a Disputes Assessor in LTCSA;

¹ Submission, Suncorp, p 5.

3. If still disputed, the Guidelines and administrative processes provide that the matter may be referred to the Proper Officer of MAS (the Motor Accidents Medical Assessment Service) to determine if the relevant legislative gateway tests are met, and if so, a Review Panel of three LTCSA Dispute Assessors is convened to determine the dispute. This process is overseen by the MAS Proper Officer.

For disputes about “medical eligibility” to the scheme:

1. An initial decision is made by LTCSA personnel;
2. If disputed, the matter is referred to an Assessment Panel of three Disputes Assessors in LTCSA;
3. If still disputed, the Guidelines and administrative processes provide that the matter may be referred to the Proper Officer of MAS to determine if the relevant legislative gateway tests are met, and if so, a Review Panel of three LTCSA Dispute Assessors is convened to determine the dispute. This process is overseen by the MAS Proper Officer.

3. Please provide information on the incidence and outcomes of any such disputes referred to SIRA’s Dispute Resolution Services.

Response

There have only been two “motor accident injury” applications to date. The first was withdrawn by the applicant, and the second is currently being considered by the CARS Claims Assessor Panel.

There are about 10 medical treatment and care or eligibility applications referred to the Proper Officer of MAS each year. Of the last 10 such applications finalised, four were in respect of medical eligibility to the scheme, and six were in respect of treatment and care disputes.

Of the four eligibility disputes, three were dismissed by the Proper Officer as not meeting the criteria in the Guidelines. The one which was accepted and referred to a Medical Review Panel resulted in the same outcome as the original decision, being that they were not eligible to be a participant in the Scheme.

Of the six treatment and care applications, five were dismissed by the Proper Officer as not meeting the criteria in the Guidelines. The one that was accepted and referred to a Medical Review Panel resulted in the same outcome as the original decision, being that the treatment was not causally related to the motor accident.

4. On average, what is the time frame for resolving Lifetime Care and Support disputes once they are referred to SIRA for review?

Response

There have only been two “motor accident injury” applications to date. The first was withdrawn by the applicant, and the second is not yet finalised. As a result no estimation of timeframes is possible.

For medical treatment and care or eligibility disputes the timeframes are approximately 18 calendar days for matters that are dismissed by the Proper Officer of MAS (as they did not satisfy the legislative gateway threshold tests for a review), and the full review process took on average about 150 calendar days for those matters accepted and referred to a Review Panel for determination.

Medical Care and Injury Service Levy (MCIS)

5. SIRA and icare both have a role in reviewing and determining the MCIS levy. Can you describe the review process and expand on the role that SIRA has in setting its component of the levy?

Response

The MCIS Levy collects revenue that is used to fund both the Motor Accidents Operational Fund (MAF) and Lifetime Care and Support Authority Fund (LTCSF). SIRA sets the MCIS Levy in order to ensure sufficient provision for both funds. The SIRA Board may review and adjust the levy as required.

The MCIS Levy is currently calculated as a percentage of the underlying CTP insurer's premium. In relation to the MAF, the levy is a fixed percentage (currently 9.25%), whereas for the LTCSF the percentage varies for each class of vehicle and geographic region, to adjust for the different underlying premium relativities between schemes, but allowing also for the impact on the overall insurance premium paid by the vehicle owner.

In reviewing the levy, SIRA commissions an actuarial analysis of the levy to take into account the expenditure needs of both Funds, the current balance in each Fund, the underlying relativities in each scheme, the forecast number of vehicles in the NSW fleet, and the anticipated future CTP insurer average premium. icare communicates the LTCSF funding needs to SIRA, supported by relevant actuarial analysis, which is taken into account when setting the levy.

Insurers collect and remit the levy to the relevant Fund. As required by law, each component of the MCIS levy is paid into a separate statutory fund and may only be used for specific purposes. SIRA commissions an annual audit of MCIS levy collection revenue and refunds by insurers, to ensure the levy is collected in full.

The *Motor Accidents Premiums Determination Guidelines* provide further information on premium setting and levies and are available from SIRA's website.

6. The Motorcycle Council of NSW raised concerns in its submission that funding of the Lifetime Care and Support scheme is inequitable as certain scheme participants have not contributed to the Lifetime Care and Support scheme levy (i.e. pedestrians, unlicensed/unregistered riders, cyclists) and in addition, motorcyclists pay a higher levy than motor vehicle owners. The Motorcycle Council recommended the Lifetime Care and Support scheme levy be funded equally across the motoring community². What is SIRA's response to this recommendation?

Response

While ultimately any changes to the LTCS funding model or coverage are a matter for the Government, SIRA notes that some motorist segments such as motorcycle riders and pillion passengers are disproportionately represented in the lifetime care scheme. The 2016 report by Ernst & Young, *Review of Green Slip Premium Setting for Motorcycles 2000-2014*, which is posted on the SIRA website, highlights the issues in representation and cross subsidy of motorcyclists by other road users.

Also, it should be noted that cyclists and pedestrians are only able to make a claim on the CTP or lifetime care schemes when they have been injured in an accident caused by a motor vehicle.

John Walsh study

7. The SIRA Annual Report 2015-16 noted that it provided support, in conjunction with icare, to the John Walsh Centre for Rehabilitation Research within the University of Sydney. Please explain SIRA's role in this.

Response

SIRA provides research grants to organisations, including the John Walsh Centre, to

² Submission, Suncorp, p 5.

undertake commissioned research into injury management issues and motor accident rehabilitation.

The John Walsh Centre for Rehabilitation Research within the University of Sydney was established in 2014 as a collaborative (partnership) initiative with the then Motor Accidents Authority (MAA) and the Lifetime Care and Support (LTCS) Authority. At the time, a total of \$5 million was committed over five years to support the Centre's work. Following Government legislative and structural reforms in 2015, funding for the Centre now comes from SIRA and icare.

The John Walsh Centre is part of a National Health and Medical Research Council (NHMRC) Centre for Research Excellence in collaboration with Monash University, University of Queensland and Griffith University. The interdisciplinary Centre of academic excellence in injury-related disability, rehabilitation and the impact of compensation on recovery, has led a broad range of clinical trials and studies across identified priority areas of injury and rehabilitation.

The John Walsh Centre is currently conducting the largest Australian study of people injured in motor vehicle crashes to better understand how well people recover.

Workers' Compensation Dust Diseases Fund

8. The SIRA Annual Report 2015-16 noted that SIRA approved the 2016-17 employer contributions to the Workers' Compensation Dust Diseases Fund. What is the process undertaken by SIRA to determine these contributions?

Response

To determine the employer contributions to the Fund, SIRA writes annually to the Dust Diseases Authority (DDA) in icare to formally request a certified estimate of expenditure out of the Fund for the following year commencing on 1st July. icare then provides SIRA with a certificate setting out the amount to be expended by the fund.

The actuarial report for the Workers Compensation (Dust Diseases) Scheme is typically provided, and SIRA uses this report to assess the proposed rates for each industry.

SIRA may also undertake additional analysis if required.

The SIRA Board considers and approves the annual employer contributions to the Fund. In May 2016, the Board approved the 2016/17 employer contributions to the Fund proposed by icare.

9. Please explain SIRA's role in determining how the levy is to be split amongst insurers and across industries?

Response

SIRA has regulatory responsibility for determining how the levy is to be split amongst insurers and across industries. To this end, SIRA writes annually to the Dust Diseases Authority (DDA) in icare to formally request a certified estimate of expenditure. The DDA then provides SIRA with a certificate setting out the amount to be expended by the fund.

The actuarial report for the Workers Compensation (Dust Diseases) Scheme is typically provided, and SIRA uses this report to assess the proposed rates for each industry.

SIRA may also undertake additional analysis if required.

SIRA uses estimates of wages by industry, as well as advice from the Dust Diseases Authority in relation to changes in claims experience by industry, to determine how much each insurer is required to contribute.