

Having put on the claim, we can then ask for a discretionary exemption and if we can get a discretionary exemption I can litigate in the District Court and they forgot to pull the hardship provisions out of the District Court legislation, so if I could get there I could have got them a payment.

Thankfully, this week, Allianz has come to the party to provide them with something, but we remain reliant on the good grace and favour of Allianz, rather than having any recourse of anyone we can go to and make a demand in circumstances where we have a very badly drafted provision that says that those who are overseas can only get quarterly payments in arrear once they have proven that their condition is permanently stabilised and that they cannot return to work, which may take years for some people.

The CHAIR: I see that is in the submission so we have that. Thank you for your submissions today—

Ms WELSH: Could I just say one thing in relation to the issue of data collection? I will be very quick.

The CHAIR: Yes.

Ms WELSH: Real-time data collection is important from the insurer's perspective and the regulator's perspective because they can identify if there is something that may amount to fraudulent activity going on, whether it is a blip in claims in a particular area or that sort of thing. It is important also from the insurer's perspective in terms of the data that Mr Stone is going to come back to you on with regard to reporting individual insurer behaviour. That is one of the advantages of the real-time data. I do not think any of us have any interest in whether the insurers have to report once, twice or three times daily, but the quality of the data is important.

The Hon. TREVOR KHAN: To justify my concern, I am not arguing that it should be weekly, but it seems to me that three times a day is an extraordinary impost unless it can be demonstrated that it does actually achieve an outcome. I have to say that our experience with SIRA and the opaqueness of process leave me with the feeling that SIRA requires a lot but nobody knows what happens to the data from there. I think that if SIRA is going to require an expensive process there should be a positive outcome.

Ms WELSH: That is the point I was going to pick up on because in the data-collection process thus far, of the total 6,000 claims as of the 31 July, there was no occupation nominated for 48 per cent of the claims and 19 per cent were non-earners. Around 70 to 75 per cent of people who are making claims are either non-earners or do not know what their occupation is. It is about the quality of the data. It does not matter if they are collecting all of this raw data—it has to translate into actual figures that can be used to assess whether there is enough money in the scheme to have a better minor injury test of whether the money is getting to the right people, etc. That is all I wanted to say.

The Hon. TREVOR KHAN: I invite you to take on notice the question of what criteria you think would be useful in terms of published data.

Mr STONE: I was intrigued to learn that insurers only have 24 hours to correct the data after an identified breach. I would love it if there was any imposition on any insurer to do anything in relation to a claimant within 24 hours, in terms of paying a medical bill, approving something or even responding to correspondence. It is a timeframe that SIRA has imposed on the insurer for SIRA, but it is seven days, 10 days, 14 days or two months for the timeframes in the world that we operate in.

The Hon. TREVOR KHAN: I can remember as a lawyer in the old days before we had email that if we got a response back within a few days we were doing wonderfully. Now, if you have not responded by 5 o'clock in the afternoon there is suddenly a hysterical email coming back to you. Everyone's timeframes are being compressed, but whether it is a productive compression of timeframes is another thing.

Mr DAVID SHOEBRIDGE: And of course every dollar that the insurers have to spend on potentially aimless and pointless data crunching is money that is not available to go back to claimants and is money that is sucked up into the premium.

Mr STONE: I am not sure that if they could save it on the data they would suddenly walk out into the street and find some injured people to pay more to, but that is a different question.

Mr DAVID SHOEBRIDGE: In any event, it is unproductive expenditure.

Mr STONE: That may be. I encourage you to ask about it, but I encourage you to spend a little more time asking about the other side of the equation—namely, what are the insurers doing in terms of their service quality directed to claimants and what is SIRA doing to supervise that.

The Hon. DANIEL MOOKHEY: With regard to the appearance of evidence in claims, disputes and assessments that has been derived by surveillance undertaken by an insurer, are you able to give us any views as

LEGISLATIVE COUNCIL
STANDING COMMITTEE ON LAW & JUSTICE REVIEW OF THE NEW SOUTH
WALES MOTOR ACCIDENT SCHEME 2018

Data collection under the Motor Accident Injuries Act 2017

Section 10.22 of the MAI Act defines “data” as meaning any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or process (whether by an individual or by a computer or other automated means).

One of the objects of the Act is to ensure the collection and use of data to facilitate the effective management of the Compulsory Third-Party Insurance Scheme (Section 1.3(2)(h)).

Under Section 10.23 SIRA has the power to collect use and disclose data relating to any of the following:

- a. Third-party policies,
- b. Claims for statutory benefits or damages,
- c. The functions, activities and performance of Insurers, and
- d. The provision of health, legal and other services to injured persons.

The use of the word “may” in 10.23(2) suggests that SIRA has a discretion as to whether or not it decides to collect any particular data. The exercise of that discretion which is conferred under Section 10.23(2) must be undertaken consistently with the objects of the Act in accordance with Section 1.3(5):

“1.3 (5) In the exercise of a discretion conferred by a provision of this Act or the regulations, the person exercising the discretion must do so in the way that would best promote the objects of this Act or of the provision concerned.”

The scope of the power to collect data by SIRA is set out in Section 10.24 and the obligation on an Insurer to comply with a request for any type of data is limited only by the restriction that a Court is satisfied that it is not within the power of the particular Insurer to comply with the requirement. Section 10.24(4).

It is in that context that the New South Wales Bar Association submits that the following data should be collected by SIRA from each of the licenced CTP Insurers.

Items 1 to 13 in the attached document are presently collected on a monthly basis and that information is shared with the New South Wales Bar Association.

Item 14 being the amount estimated for common law claims per month/year to date since 1 December 2017 is an additional item intended to assist in an understanding of the estimated cost of common law claims based on the estimates made by Insurers for each particular claim where common law potential has been identified. The Insurers are extremely experienced in calculating the estimated cost of common law claims and those estimates would be necessary for prudential purposes and should be available. The collection of such data will provide a clear indication of the true costs of the Scheme well before there is agreement as to the date of maturity of the Scheme and the expiration of the present 3 year honeymoon period. If, as it is anticipated this Scheme is presently significantly overfunded New South Wales motorists and motor accident victims should not be compelled to wait 3, 4 or 5 years for that to be ascertained.

Data in relation to the average premium calculation of \$528

The insurers are required to file with SIRA full set of the insurance premiums it proposes to charge for third-party policies that are taken to have been issued by it together with such additional information, including actuarial reports as SIRA may reasonably require on a quarterly basis. The best way of ascertaining the development of this new Scheme is by comparing the Scheme actuaries costing assumptions for the purpose of that premium calculation with the data in relation to each of those assumptions. The table which is provided is a reproduction of the Claims Assumptions which are contained in Schedule 1E of the Motor Accident Guidelines which are applicable for the purpose of the transition period of the Act.

It is submitted that as a matter of public interest this data should be made available.

**NEW SOUTH WALES BAR ASSOCIATION ANSWER TO QUESTION ON NOTICE
MOTOR ACCIDENT INJURY ACT 2017**

DATA COLLECTION

The following data is presently published:

1. Number of claims per month/year to date since 1 December 2017.
2. Minor injury determinations per month/year to date since 1 December 2017.
3. Treatment expenses per month/year to date since 1 December 2017.
4. Weekly benefits per month/year to date since 1 December 2017.
5. Domestic assistance per month/year to date since 1 December 2017.
6. Insurer investigation costs per month/year to date since 1 December 2017.
7. Insurer medico legal costs per month/year to date since 1 December 2017.
8. Insurer legal costs per month/year to date since 1 December 2017.
9. Damages per month/year to date since 1 December 2017.
10. Claimant costs (excluding legal) per month/year to date since 1 December 2017.
11. Claimant legal costs per month/year to date since 1 December 2017.
12. Legal representation – as a percentage of claims, per month and year to date since 1 December 2017.
13. Self representation – as a percentage of claims per month and year to date.
14. Amount estimated for common law claims per month/year to date since 1 December 2017.

DATA COLLECTION (continued)

ASSUMPTION DESCRIPTION	SCHEME ACTUARY COSTING ASSUMPTION	JULY 2018	DECEMBER 2018
Claims frequency: at-fault (AF) minor injury claims	0.063%		
Claims frequency: not at-fault (NAF) minor injury claims	0.040%		
Claims frequency: NAF claims WPI >10%	0.027%		
Claims frequency: NAF claims WPI <10%	0.108%		
Total claims frequency	0.238%		
Average claims size (ACS): AF claims (1/12/17 dollars)	\$16,900		
ACS – NAF minor injury claims (1/12/17 dollars)	\$12,700		
ACS: NAF claims WPI >10%	494,000		
ACS: NAF claims WPI <10%	80,000		
Total ACS all claims (1/12/17 dollars)	\$99,000		
Total ACS (inflated/discounted)	110,000		
Weighted average duration of payments (1/12/17 dollars)	2.97		
Claims inflation: wage inflation (overall weighted average)	3.0%		
Claims inflation: superimposed inflation (overall weighted average)	2.5%		

ASSUMPTION DESCRIPTION	SCHEME ACTUARY COSTING ASSUMPTION	JULY 2018	DECEMBER 2018
Risk premium: inflated and discounted risk premium for underwriting year beginning 1 December 2017	\$262		
Claims handling expense (5 of risk premium)	7.5% (\$19.6)		
Net reinsurance expense	\$1.2		
Policy and acquisition expense	\$43.6		
Profit margin (% of premium excl. GST and levies)	8.0% (\$28.4)		
GST (10%)	\$35.4		
Insurer premium (incl. GST)	\$390		
MAF levy	\$46.5		
LTCS levy	\$80.6		
MAITC levy	\$10.5		
Total premium payable (incl. GST and levies)	\$528		