

STANDING COMMITTEE ON LAW AND JUSTICE 2018 REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME

STATE INSURANCE REGULATORY AUTHORITY (SIRA) PRE-HEARING QUESTIONS

QUESTION 1

What is the effect of the *Motor Accidents Injuries Act 2017* on the Lifetime Care and Support scheme from SIRA's perspective?

ANSWER:

For Compulsory Third Party (CTP) claimants, eligibility and access to the LTCS Scheme established under the *Motor Accidents (Lifetime Care and Support) Act 2006* is unchanged by the *Motor Accident Injuries Act 2017* (the MAI Act).

For accidents from 1 December 2017, when the MAI Act commenced, until 31 December 2018, 92 severely injured people who have made a claim have been accepted as participants in the LTCS Scheme. Nine other individuals are yet to be assessed or are undergoing assessment for acceptance and two individuals have not been accepted.

However, the MAI Act did establish the Motor Accident Injuries Treatment and Care Benefits Fund (MAITCB Fund) belonging to and vested in the Lifetime Care and Support Authority (LTCSA) managed by Insurance and Care NSW (icare).

The Motor Accidents Injuries Treatment and Care Benefits Fund (MAITCB Fund) which will be referred to as the CTP Care program, provides for people with claims in the CTP scheme under the MAI Act who require treatment and care for more than five years after the accident, but who are not catastrophically injured and are not participants in the LTCS Scheme. The program will provide rehabilitation and injury management support for CTP Care participants on an ongoing basis throughout their life, providing them with greater certainty that they will be supported.

The MAITCB Fund pays for the management and treatment for CTP Care participants and the LTCSA acts as insurer to manage and pay for the injured person's statutory benefits for treatment and care. The MAI Act describes the LTCSA's role as the "relevant insurer" in these circumstances.

The Committee's oversight of the (MAITCB Fund) CTP Care program may fit within the scope of the Committee's Reviews of the CTP Insurance Scheme as it is established under the MAI Act.

At this time, there have been no claims in the (MAITCB Fund) CTP Care program under the MAI Act, and it is not expected that this will occur until 2020 at the earliest. SIRA is closely monitoring whether some of the interim participants in the LTCS scheme may transition to the (MAITCB Fund) CTP Care program.

While the LTCSA may assume responsibility for paying treatment and care benefits earlier than five years if it is satisfied that the injured person is likely to have treatment and care needs beyond five years and is not entitled to participation in the LTCS, this situation has not

yet arisen. If this transfer before five years is required, the LTCSA will enter into an agreement with the CTP insurer to accept responsibility.

Planning for the CTP Care program is led by a steering committee, comprising of representatives from SIRA and icare. The steering committee meets monthly to plan the transition to the LTCSA for those injured people in this category. The work underway includes customer experience research and design, system changes for both icare and SIRA and monitoring and compliance actions with insurers. Within this steering committee, SIRA will implement guidelines, reporting and monitoring frameworks to oversee the transition by insurers and continue to monitor, review and report on those claims in the CTP Care program managed by LTCSA.

As part of this program of work, new clauses may be drafted in the Motor Accident Guidelines (MAGs) in relation to the management and supervision of those injured people who transition into the CTP Care stream and LTCS participants. SIRA reviews the MAGs on a regular basis.

This work is strengthened by the provisions in the MAI Act enabling information sharing between SIRA, licensed insurers and LTCSA, which requires SIRA to maintain a claims register including details of claims and payments made to or on behalf of participants in the LTCS Scheme injured in a motor accident.

QUESTION 2

The Motorcycle Council of NSW has submitted that the Lifetime Care and Support levy should be a lump sum amount, funded equally across the motoring community. What is SIRA's response?

ANSWER:

SIRA has an obligation to ensure that policies, including levies, are priced equitably and remain affordable. Policyholders currently pay an LTCS Fund levy amount which ranges from just under \$1 to over \$700. SIRA reviews the apportionment of the total fund levy pool at least annually in conjunction with independent actuaries, and it is set so that vehicles which are associated with higher risk of injuries and claim costs pay more.

For some policyholders there is an element of cross subsidy already built into this apportionment. This is to ensure that policies remain affordable for all. Motorcycles are one of the groups already subsidised by other motorists, for the LTCS Fund levy alone, motorcycles are subsidised by more than \$100 per policy. This shortfall of levy collection is made up by collecting additional levy from all other NSW motorists.

The LTCS Scheme claim costs for motorcycle classes far outweigh the amount of LTCS Fund levy collected from motorcycle classes.¹ Motorcycles account for approximately 22% of participants in the LTCS Scheme (307 participants out of 1394 since the commencement of LTCS)² but only represent about 4.3% of vehicle registrations in NSW (approximately 240,000 motorcycles out of 5.6 million vehicles).

¹ Ernst & Young, Review of Green Slip Premium Setting for Motorcycles 2000–2014, 19 February 2016, p 29

² Based on figures received from Insurance and Care NSW for the period up to November 2018, and do not include participants who are deceased, lapsed or who were interim but not eligible for lifetime status.

The submission from the Motorcycle Council of NSW asserts that the high proportion of LTCS participants attributed to motorcycles are caused by unlicensed drivers or unregistered motorcycles. Based on data provided by icare, of the approximate 307 participants known to have been either a motorcycle rider or pillion passenger on a motorcycle, quad bike or trail bike as at 30 November 2018, 85% (260) of these are attributed to registered motorcycles.

If the LTCS Fund levy was funded as a lump sum divided equally across the motoring community (i.e. the funding model proposed by Motorcycle Council NSW), it would cause the average LTCS Fund levy paid by motorcyclists to increase on average by over \$10. This difference arises because the LTCS Fund levy contributions from motorcycles under the current funding model represent less than 4% of the total contributions from all vehicle owners despite motorcycles representing 4.3% of CTP-paying vehicles. This is determined as follows:

- The LTCSA determines the amount it requires to fully fund the present and likely future liabilities under the LTCS Scheme for participants injured in motor accidents over a 12-month period. The amount has, in recent times, been \$436 million.³
- The number of registered motor vehicles in NSW is approximately 5.6 million. If the lump sum amount for the LTCS Fund levy were divided equally across the motoring community each policyholder would pay a levy of approximately \$78 (i.e. $\$436,000,000 \div 5,600,000$).

From 15 January 2019, the LTCS Fund levy for motorcycles ranges from \$11.94 to \$136.71 (depending on engine capacity and geographic region). The average levy amount estimated to be paid by motorcyclists is \$66, which is less than the amount under the funding model proposed by Motorcycle Council NSW.

In addition, SIRA is aware of the premium pressures faced by motorcyclists with the extension of benefits under the MAI Act more than offsetting the premium savings from reforming the CTP scheme for motorcycle owners (as motorcyclists will benefit from the extension of benefits to at-fault riders as SIRA expects motorcyclists to utilise the at fault benefit provisions at a higher rate than other vehicle classes). As a result, premiums payable by motorcycles are capped at 1999 Scheme levels, with the shortfalls being subsidised by other vehicle classes as follows:

- Insurer premiums covering CTP benefits – the estimated shortfall is approximately \$45 per motorcycle policy on average. This is funded by a small collection from all other vehicle classes through the Risk Equalisation Mechanism (REM)
- MAF Fund – motorcycle classes are contributing approximately 1.7% of the total amount collected across all vehicle classes with the remainder paid by the other vehicle classes. This represents approximately \$20 less than if motorcycles were paying in proportion to the total number of premium paying vehicles
- MAITCB Fund - motorcycle classes are contributing approximately 3.0% of the total amount collected across all vehicle classes with the remainder paid by the other vehicle classes. This represents approximately \$3 less than if motorcycles were paying in proportion to the total number of premium paying vehicles

³ Insurance and Care NSW, Answers to pre-hearing questions on notice for the Standing Committee on Law and Justice's First Review of the Lifetime Care and Support Scheme (Document tabled 19 May 2017), p 9

SIRA meets each quarter with the Motorcycle Council of NSW and supports the important work they perform on behalf of their members, particularly in rider education and safety and in communicating awareness of the extended benefits of the MAI Act scheme.

SIRA will continue to consult with Motorcycle Council NSW regularly and will provide additional information and discuss the issues raised in their submission at the next meeting which is scheduled for the 8 February 2019.

QUESTION 3

Please provide an update on any educational road safety and injury prevention initiatives undertaken by SIRA, in conjunction with the NSW Centre for Road Safety or other partners.

ANSWER:

SIRA funds the following educational road safety and injury prevention initiatives through partnering with the Centre for Road Safety, the John Walsh Centre for Rehabilitation Research.

1. Partnership with NSW Centre for Road Safety

SIRA currently supports and funds 16 projects with Transport for NSW's Centre for Road Safety (CRS).

SIRA's collaboration with CRS supports the objectives of the NSW Road Safety Strategy 2012-2021. This collaboration ensures a coordinated approach to the development and delivery of road safety policies and programs in NSW.

Current educational and injury prevention initiatives with CRS include safe driving training, safety campaigns, data linkages and telematics research.

Key projects include:

- **Used car safety research project:** led by Monash University in collaboration with SIRA and CRS, this project has provided the public with an extensive used car safety rating list.
- **Young drivers telematics trial:** funded by SIRA and delivered in collaboration with CRS, the NSW Data Analytics Centre and telematics provider Gofar, this trial explores whether (and the extent to which), telematics can improve driving behaviours in a high-risk cohort (i.e. young drivers):
 - with over 700 participants, the trial is the largest telematics trial in the world (it is anticipated that participants will have driven over 2.5 million kilometres by the trial's completion).
 - recorded data enables policy makers and researchers to better understand young driver behaviour, which will inform future road safety initiatives and potentially insurance risk rating.

SIRA is a member of the Road Safety Advisory Council and is an active participant in CRS's stakeholder consultation and working parties for Aboriginal and motorcycle road safety plans.

2. Partnership with icare and John Walsh Centre for Rehabilitation Research

SIRA has a long-standing collaborative arrangement with LTCSA to fund the John Walsh Centre for Rehabilitation Research (JWCRR), University of Sydney. This funding supports six senior researchers in conducting a range of research, clinical, educational and advisory work on motor accident injury prevention and rehabilitation.

JWCRR has published over 40 papers on the development of practical education tools for the rehabilitation and management of patients. The JWCRR research informs policies and programs in the LTCS Scheme and road safety and injury prevention activities in NSW.

SIRA and LTCSA also co-fund an annual JWCRR forum, which brings together local and international researchers, policy-makers, clinicians and industry stakeholders to discuss the latest research on injury prevention and rehabilitation in the motor accidents space. A key focus of the forum is on prevention and the latest evidence on best practice catastrophic injury care and support programs.

The JWCRR is also conducting a minor injury independent file review, which monitors the definition of minor injury and the way it is applied by insurers.

In addition, SIRA has co-funded LTCSA's vocational support program for people with traumatic brain injury (TBI). This program operates in metropolitan and rural rehabilitation sites across NSW, focusing on return to work and training and placement programs for people with mild to moderate and moderate to severe TBI.

3. SIRA's Strategic Outcomes and Applied Research Program

In 2017-18, SIRA continued the Strategic Outcomes and Applied Research program. This program supports strategic and evidence-based improvements in road safety, work injury prevention, recovery from injury, and personal injury compensation scheme design. SIRA collaborates with various academic, clinical, NSW Government, Commonwealth Government and interjurisdictional stakeholders in delivering this program of work.

SIRA currently leads 21 active projects as part of this program. These include:

- linking data collections between Transport for NSW, NSW Health, NSW Police and SIRA on motor accidents, injuries, claims and payments to inform evidence-based policy and research (part of the Transport data linkage)
- developing wellness and recovery principles in the CTP Scheme
- research regarding psychologists' practice in treating CTP claimants with a mild to moderate musculoskeletal injury and a 'secondary psychological injury'.

For more information on the program, see the 2017-2018 SIRA annual report (<https://www.opengov.nsw.gov.au/publications/17720>).

4. Other initiatives

Heads of Motor Accident Injury Scheme (HMAIS) Forum

In addition to the above initiatives, SIRA is the Secretariat for the Heads of Motor Accident Injury Scheme (HMAIS) Forum. This forum is comprised of the heads of CTP Regulators nationally who meet regularly to share information and collaborate on the development of prevention and management initiatives for road safety.

The forum met recently to discuss autonomous vehicles and their impact on road safety and noted their potential to reduce casualties. The forum is a national collaboration with all CTP Regulators on the policy design.

Health Benefits of Good Work

SIRA, along with other organisations across health and industry is a signatory to the Australian Consensus Statement on the Health Benefits of Good Work (HBGW). All signatories agree on facilitating access to HBGW and the fundamental principles about the relationship between health and good work.