

SIRA's answers to questions taken on notice at the Law and Justice Committee's 2020 Review of the Compulsory Third Party Insurance and Lifetime Care and Support schemes (CTP and LTCS) hearing – 26 May 2021

Question

The Hon. DANIEL MOOKHEY: Eight hours rest, eight hours work and eight hours play, I say. Well done on that. Can I just talk you through some market conditions? We have a new entrant in the market; correct?

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: That is Youi.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: And they entered when?

Ms DONNELLY: November last year.

The Hon. DANIEL MOOKHEY: Do you maintain data on market share by the—what are we up to now, five or six providers?

Ms DONNELLY: Dr Casey might have that. We certainly do track market share; I just cannot remember. I will let her look for that and we might come back so we are not wasting your time.

The Hon. DANIEL MOOKHEY: Sure. Are any further applications pending?

Ms DONNELLY: I am usually a little circumspect about that. There are some other parties that we have been providing information to.

The Hon. DANIEL MOOKHEY: Ahead of a potential application for a licence?

Ms DONNELLY: Yes. I know that we have been providing information.

The Hon. DANIEL MOOKHEY: How many?

Ms DONNELLY: I will take that on notice.

Question

The Hon. DANIEL MOOKHEY: I respect the confidentiality, so whatever you need to take on notice for confidentiality reasons is of course accepted. When did those discussions commence?

Ms DONNELLY: I will take that on notice.

Question

The Hon. DANIEL MOOKHEY: Okay, great. But that process is still ongoing insofar as there are persons who are talking to you about a potential entry?

Ms DONNELLY: I will take that on notice.

Answer:

SIRA is unable to provide further details due to confidentiality requirements.

Question

Ms DONNELLY: Dr Casey has the answer to your earlier question.

Dr CASEY: The market shares by premium.

The Hon. DANIEL MOOKHEY: Sorry, premium collected?

Dr CASEY: By premium collected, yes. Allianz is 19.5 per cent, NRMA is 31 per cent and QBE is 24.6 per cent. AAMI and GIO—or Suncorp as you know the brands, but they are split up—AAMI is 8.2 per cent, GIO is 16.6 per cent and Youi is 0.1 per cent.

The Hon. DANIEL MOOKHEY: AAMI and GIO are brands of Suncorp?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: You have that by premium covered?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: Do you have the data by claims?

Dr CASEY: Yes, I do.

The Hon. DANIEL MOOKHEY: Will you go through that too?

Dr CASEY: Allianz is 18.5 per cent, NRMA is 31.9 per cent, QBE is 22.8 per cent, AAMI is 8.4 per cent, GIO is 18.4 per cent and Youi—I think they have four claims. I do not have a percentage.

The CHAIR: Negligible.

Dr CASEY: Negligible.

The Hon. DANIEL MOOKHEY: That is claims received?

Dr CASEY: Yes.

The Hon. DANIEL MOOKHEY: Do you have payments by insurer?

Ms DONNELLY: We might need to take that on notice.

Dr CASEY: I will take that on notice. We would have it but I do not have it with me.

Answer:

Table 1: Payments by insurer

Insurer	All payments from 1 Dec 17 to 31 Mar 21
AAMI	\$65,136,667
Allianz	\$147,201,614
GIO	\$153,204,265
NRMA	\$250,019,949
QBE	\$233,496,936
Total	\$849,059,431

Question

The Hon. DANIEL MOOKHEY: So the 2018 and the 2019—

Ms DONNELLY: Of course, there are different levels of development.

The Hon. DANIEL MOOKHEY: Before we go too far, Ms Donnelly, just so that we are abundantly clear, "accident year" means what precisely? Is that the calendar year? Is it the premium application process? What are we talking about when we talk about the accident year?

Ms DONNELLY: It is roughly calendar year. For the first year we also have the month of December, so I might need to take it on notice because I think we probably have a 13-month year to confuse you. It is roughly based on that calendar year.

Answer:

Under the 2017 scheme the accident year denotes the calendar year in which the vehicle accident, giving rise to the CTP claim, occurred. The exception is for the first year of the scheme which is a 13-month period: 1 December 2017 to 31 December 2018.

Question

The Hon. DANIEL MOOKHEY: Sure. The 10 per cent figure—forgive my ignorance, but was that put into legislation or is that a SIRA policy?

Ms DONNELLY: From recollection, I think it may be in part of the legislation but it is also in SIRA's guidelines.

The Hon. DANIEL MOOKHEY: As I understood the legislation, we provided the power for you to decide, not necessarily to decide for you. That is my recollection.

Ms DONNELLY: Okay.

The Hon. DANIEL MOOKHEY: Am I wrong?

Ms DONNELLY: I would like to check because there are two provisions in the legislation: the transitional excess profit and loss and also the excess profit and loss post the transitional period.

The Hon. DANIEL MOOKHEY: Yes, there are. Therefore, why did you settle on 10 per cent?

Ms DONNELLY: It was a decision of the board based on independent actuarial advice. I may be able to give you a more detailed explanation of the decision, which was made a few years ago.

The Hon. DANIEL MOOKHEY: Yes, are we in a position to provide more detail on that? Because I think that you made the point in your submission that some of this has to do with return on capital—what you deem to be reasonable. I think it is on page—it is in your scheme performance report. I am positive you have a section on the TEPL mechanism. Forgive me if I do not have it immediately to hand. Either way, can you take that on notice?

Ms DONNELLY: I am happy to take it on notice and give you some more of the rationale.

Answer:

The relevant thresholds were set by the SIRA Board in early 2018. The SIRA Board determined that an 8 percent profit margin was sufficient for insurers to make an adequate Return on Capital. Because there is significant uncertainty related to premium setting in a new scheme the SIRA Board considered setting an acceptable range in profit margins for individual insurers. The range of -5 percent to +2 percent around the targeted 8 percent profit margin was determined to be reasonable. This set the maximum at 10 percent and the minimum at 3 percent as per the Premium Determination Guidelines.

The following reports as published SIRA's website are also relevant to the Board considerations:

- Independent review of insurer profit: see <https://www.sira.nsw.gov.au/resources-library/law-and-policy-or-corporate/publications/Report-of-the-Independent-Review-of-Insurer-Profit-151015.pdf>
- SIRA Board report on reforming insurer profit: see <https://www.sira.nsw.gov.au/resources-library/law-and-policy-or-corporate/publications/Reforming-insurer-profit-in-the-CTP-Green-Slip-Scheme-Broad-Report.pdf>

Question

Ms DONNELLY: Let me just clarify: If we could show you that they are filing to bring the price down; is that what you are after?

The Hon. DANIEL MOOKHEY: Specifically about the no-faults issue. That is what I am particularly interested in. I accept that there are multiple factors that go into premium calculations, but it is pretty large. The no-fault one is a pretty significant component of it; the amount that is asked for and the amount that is paid out. To be fair, when that reform was introduced—for good reasons—for this Committee, amongst others, this was a foreseen problem. I just want to know whether or not the insurers' market behaviour in that respect is adjusting.

Ms DONNELLY: I can—

The Hon. DANIEL MOOKHEY: Maybe on notice you might have information?

Ms DONNELLY: I can, but I can tell you that the guidance that we have given includes built into it an analysis of the expected at-fault claims. They are accepted on a no-fault basis, if you like, but they are the driver or the rider of the at-fault vehicle, and that has been adjusted down. The insurers are required to comply with that. I think that might answer your question.

Answer

This question was answered at the hearing and available on page 37 of the transcript.

Question

The Hon. DANIEL MOOKHEY: Thank you. It probably does. In respect to some of the factors that preceded the introduction of these reforms, we learnt in the last inquiry that of every dollar collected in premiums approximately 47c—at the time—was being paid out in claims.

Ms DONNELLY: That is right, yes.

The Hon. DANIEL MOOKHEY: I think we also identified—this is really from memory—that 22c were in super profits at the time. That is, insurer profit.

Ms DONNELLY: I think that is testimony from another stakeholder and may be their calculation.

The Hon. DANIEL MOOKHEY: But equally, it was agreed that roughly 16c of that were legal costs at the time?

Ms DONNELLY: I cannot recall the figures.

The Hon. DANIEL MOOKHEY: Okay, sure. Either way, 47c was being paid out in claims?

Ms DONNELLY: I do remember that figure, yes.

The Hon. DANIEL MOOKHEY: How much is now being paid out?

Ms DONNELLY: Some 59c.

The Hon. DANIEL MOOKHEY: We are at 59c. What are our projections for the next few years?

Ms DONNELLY: I might have to take that on notice.

Answer:

The current estimate as at 15 January 2021 is 59c. It will be revised annually as the scheme experience is assessed and included in the updated premium guidance provided to insurers.

Question

The Hon. ANTHONY D'ADAM: There is a range of questions that seem reasonable in the ALA submission posed to SIRA.

Ms DONNELLY: There are a lot of questions in the ALA submission.

The Hon. SCOTT FARLOW: Pages of them.

The Hon. ANTHONY D'ADAM: I wonder whether you would be prepared to take those on notice and provide answers where possible?

Ms DONNELLY: All of them?

The Hon. ANTHONY D'ADAM: Yes, all of them.

The CHAIR: Are you putting all of them on notice?

Ms DONNELLY: All of the questions—

The Hon. ANTHONY D'ADAM: In the ALA submission.

Ms DONNELLY: I am going to apologise to my team. There are a lot of them and I am very conscious of the fact that I have two weeks to go and we have three weeks to respond. But obviously we want to help the Committee, so, yes.

Answer:

Where possible, SIRA has provided answers to the 64 questions in the submission to the 2020 Review of the Compulsory Third Party Insurance Scheme. The responses are attached as **Tab A**.

Tab A

SIRA's responses to the 64 questions asked in the Australian Lawyers Alliance (ALA) submission to the 2020 Review of the Compulsory Third Party Insurance Scheme

Question 1

At the time the scheme was launched and Year 1 premium set, what were the actual, unadjusted, actuarially projected claim numbers for Year 1 of the scheme covering:

(i) The projected number of at fault claimants who would only receive statutory benefits for 6 months.

(ii) The projected number of statutory benefits recipients who would be cut off at 6 months due to their having a minor injury.

(iii) The projected number of statutory benefits recipients who were not at fault and had more than a minor injury and who would continue receiving statutory benefits past 6 months.

(iv) The projected number of damages claims anticipated to arise from Year 1 accidents?

Answer:

Table 2: First Year of the scheme – note 'Honeymoon state'

			Claim Numbers - Defined Benefits					
			Estimate in 2017		Schedule 1E			
Fault status	Injury type	WPI	Honeymoon State	Mature State	Dec-17	Jan-19	Jan-20	Jan-21
At-fault			3,500	6,000	3,500	2,000	2,198	2,060
Not at fault	Minor injury		2,250	3,000	1,750	5,250	5,250	5,008
	Non-minor	WPI<=10%	6,000	6,500	5,180	3,180	3,426	2,232
		WPI>10%	1,500	1,500	1,500	1,500	1,596	1,488
		ENs			500	500	500	481
		Non SBs			820	820	830	859
Total (Statutory Benefit Only)					11,930	11,930	12,470	10,789
Total (all claims)			13,250	17,000	13,250	13,250	13,800	12,128

Note:

- WPI refers to Whole Person Impairment
- Non minor injury with WPI<=10% refers to people not-at-fault with moderate injuries (more than minor injuries but less than 10 percent whole person impairment). They have a 20-month waiting period to lodge a claim for damages.
- Non minor injury with WPI>10% WPI refers to people not-at-fault with more serious injuries (non-minor injuries greater than 10% whole person impairment). No waiting period to lodge a claim for damages.
- EN refers to early notification benefits (where injured people can claim a limited number of treatment or rehabilitation sessions without submitting a claim form).
- Non SBs refers to non-statutory benefits.

- For the first accident year of the 2017 Scheme, the Schedule 1E premium guidance provided to insurers included an allowance for 3,500 at-fault claims and approximately 9,750 not at-fault claims.
- It is standard actuarial practice to ensure assumptions are informed by actual experience and revised in the early years of a new long-tail insurance scheme.
- It is estimated that the scheme will reach a mature state in 7 to 9 years of scheme commencement.
- The initial estimates were related to a mature scheme. They were never used to steer premiums. The honeymoon period was considered in providing premium guidelines and directions to insurers.

Question 2

Does SIRA agree that the EY projections in June 2017 were for approximately 6,000 at fault claims and 11,000 not at fault claims for Year 1? How do those projections match the actual outcomes for Year 1 claims?

Answer:

Refer to the answer to question 1.

Question 3

It is noted that claims for statutory benefits need to be lodged within 3 months of the accident, so the number of claimants within each of the first three categories above should be well settled for year one of the scheme and even relatively well settled for year two of the scheme. What are the actual numbers? [With regards damages claims, there is still another twelve months before the last damages claims from the last month of year one need to be lodged, so it is acknowledged that any data with regards damages is likely to be very incomplete.] SIRA should be able to provide some preliminary analysis of the performance of the new statutory benefits element of the scheme, **with all year one statutory benefits claims having at least one full year of claims history**. Accordingly, SIRA should be able to advise:

(i) Actual at fault statutory benefits claim numbers from year one (the number who received statutory benefits for 6 months and were then cut off because they were deemed at fault). How many of these claimants were there and on average, how much assistance did they receive from the scheme?

(ii) How many at-fault claimants received 6 months (or less) of payments from year 1 accidents?

(iii) How many claimants were cut off at 6 months, on the basis they had only a minor injury?

(iv) How many claimants were there from year one who were determined to have more than a minor injury and to not be at fault and who continued receiving statutory benefits past 6 months?

How do these actual numbers from year one of the scheme compare to actuarial projections or premium filing projections?

Answer:

Refer to the answer to question 1.

(i) For claim numbers see table 3. People with an at fault statutory benefit claim received on average \$16,000-\$18,000 in benefits (as at 31 December 2020).

(ii) For claim numbers see table 3.

Table 3: Actual claims lodged in the first accident year as at 31 March 2021

Claim type	1st accident year (Dec 2017– Dec 2018)
Early notification only	551
At-fault	2,109
Not-at-fault minor	5,811
Not-at-fault non-minor injury	3,848
Other (includes interstate, compensation to relatives, funeral only and workers compensation claims)	940
Total	13,259

(iii) There were 5,811 not at fault minor injury claims in the first accident year. People with a minor injury are entitled to 26 weeks of statutory benefits. Treatment and care benefits can continue if it will improve the person's recovery or capacity to return to work or other activities. Some people may recover and exit the scheme before the 26 weeks.

(iv) Table 4: Number of not-at-fault non-minor claims from accidents occurring from 1 December 2017 to 31 December 2018 (first accident year) as at 31 March 2021.

The number of not at fault non-minor claims from accident year one that have continued to receive benefit payments beyond 26 weeks.	2,680
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Refer to the answer to question 1 for initial estimates.

Question 4

Based on premium filings for year one of the scheme, what was the range (across the five insurers) and average of profit projections for year one?"

Answer:

Insurers filed prospective profit margins at or slightly below the maximum allowed of 8%.

Question 5

On the basis of scheme performance to date, how are profit trends for year one tracking?

Answer:

SIRA is currently undertaking the second Transitional Profit and Loss (TEPL) assessment for the 2018 accident year.

Question 6

What are the profit clawback provisions in place in relation to year one and when does SIRA first expect to have an indication as to whether those provisions may be applicable to year one (if there are excess profits to claw back)?

Answer:

Refer to the answer to question 5. The profit clawback provisions regarding year one are contained in section 3.8 and 3.9 of the [Transitional Excess Profit and Loss Guidelines](#).

Question 7

Section 2.25 of the MAI Act provides for adjustment of premiums and fund levies in case of excessive profits or excessive losses. Have there yet been any reviews of scheme performance in accordance with Section 2.25? If so, what has been the outcome of those reviews? If not, then when does SIRA anticipate the first review pursuant to Section 2.25 occurring? Will these reviews be published?

Answer:

Refer to the answer to question 5

Question 8

Was the \$69 estimate for legal costs in the EY letter of 13 June 2017 backed by a breakdown as between statutory benefits and damages costs?

Further, with the statutory benefits component, was there a breakdown between claimants' legal costs and insurer legal costs?

Answer:

- These figures are for the mature scheme costing not (i.e. not scheme commencement). The \$69 legal costs can be split between \$10 for statutory benefit disputes and \$59 for legal costs from common law claim settlements and do not include 'contracting out' legal costs.
- There was no breakdown between claimants' legal costs and insurer legal costs.

Question 9

Did EY assume that all of the disputes identified on page 8 of the 6 July 2017 PowerPoint would attract a regulated fee? If not, what percentage of disputes were estimated to attract a fee? Where is this assumption set out?

Answer:

No. Page 8 of the 6 July 2017 PowerPoint only shows projected dispute volumes.

Question 10

Was there a component allowed in the statutory benefits portion of the costs estimate for exceptional costs orders? If so, what was the allowance made for exceptional costs orders?

Answer:

No.

Question 11

What was the total allowance for claimants' legal costs of statutory benefits disputes for Year 1 accident DRS disputes?

Answer:

\$10 per policy (or \$54m per underwriting year) for statutory benefits. Refer to published ['Review of dispute projections for 2017 CTP Scheme'](#) on SIRA's website for more information.

Question 12

Of the \$9 million expended on claimant legal expenses to date, what portion of that figure is attributable to statutory benefit disputes from Year 1 accidents?

Answer:

The statutory benefit related disputes cost for accident year 1 is \$2.3m.

Question 13

How many statutory benefits disputes have there been in relation to Year 1 accidents and what is the breakdown across the categories of disputes identified in the EY PowerPoint? How well do the PowerPoint estimates compare to actual Year 1 data?

Answer:

- See response to question 1. The analysis provided an ultimate number of expected disputes for testing that the costings of the mature scheme was sufficient.
- Refer to the finalised [‘Review of dispute projections for 2017 CTP Scheme’](#) for numbers.

Question 14

Having permitted premium collection on the basis of the scheme incurring claimant legal costs for 4,000 minor injury disputes arising from Year 1 accident claims proceeding to DRS and the payment of a regulated fee, how many minor injury disputes have there in fact been from Year 1 accidents? Does the gap represent potential windfall profits to CTP insurers?

Answer:

- Premium collection and the assumptions in Schedule 1 E guidance to insurers were not based on the dispute projections.
- See response to question 1. The analysis provided an ultimate number of expected disputes for testing that the costings of the mature scheme were sufficient. It was not accident year one and did not provide a projection of how and when the disputes would arise over time.

Question 15

What is the explanation from NRMA as to two years of failure to meet statutory requirements in relation to the timely conduct of internal reviews?

Answer:

This is a question for NRMA.

SIRA notes that its regulatory focus in this area has seen NRMA’s compliance increase from 80.6% in February 2020 to 91.3% in January 2021.

Question 16

What is the explanation from Suncorp as to over one year of failure to meet statutory requirements in relation to the timely conduct of internal reviews?

Answer:

This is a question for Suncorp.

SIRA notes that its regulatory focus in this area has seen Suncorp’s compliance increase from 17.6% in February 2020 to 100% in January 2021.

Question 17

What remedial action has been undertaken by NRMA to address their internal review delays?

Answer:

Following the implementation of a remediation plan NRMA’s compliance increase from 80.6% in February 2020 to 91.3% in January 2021.

Question 18

What remedial action has been undertaken by Suncorp to address their internal review delays?

Answer:

Following the implementation of a remediation plan Suncorp’s compliance increase from 17.6% in February 2020 to 100% in January 2021.

<p>Question 19</p> <p>Is NRMA currently conducting more than 90% of internal reviews within the designated timeframe? If not, then why not?</p>
<p>Answer:</p> <p>Yes.</p>
<p>Question 20</p> <p>Is Suncorp currently conducting more than 90% of internal reviews within the designated timeframe? If not, then why not?</p>
<p>Answer:</p> <p>Yes.</p>
<p>Question 21</p> <p>What were the total number of claimants affected by delays in NRMA conducting internal review over the past two years?</p>
<p>Answer:</p> <p>For the 12 months to March 2021: 34 For the 12 months to March 2020: 230.</p>
<p>Question 22</p> <p>What were the total number of claimants affected by delays in Suncorp conducting internal review over the past two years?</p>
<p>Answer:</p> <p>For the 12 months to March 2021: 49 for AAMI and 116 for GIO For the 12 months to March 2020: 191 for AAMI and 487 for GIO</p>
<p>Question 23</p> <p>What steps (if any) has SIRA undertaken to notify greenslip purchasers as to the delays experienced by NRMA and Suncorp in relation to internal review? Does the existence of these delays appear anywhere on the SIRA website, apart from buried within the details of the insurer Claims Experience materials?</p>
<p>Answer:</p> <p>The CTP Green Slip Check homepage links to both the CTP insurer claims experience and customer feedback comparison report and SIRA's Open Data Portal, where this information is available.</p>
<p>Question 24</p> <p>What does SIRA say about the ALA suggestion of incorporating links on the price comparison section of the website (which is heavily utilised by the general public) to the web pages identifying non-compliant insurer behaviour in claims management?</p>
<p>Answer:</p> <p>Refer to the answer to question 23.</p>
<p>Question 25</p> <p>Has SIRA required NRMA to publish any remedial plan in relation to the delays in internal review? If not, then why not?</p>
<p>Answer:</p> <p>SIRA publishes information about insurer internal review delays and SIRA's regulatory responses. Refer to the CTP claims experience and customer feedback comparison reports as well as the Open data Portal.</p>

Question 26

Has SIRA required Suncorp to publish any remedial plan in relation to the delays in internal review? If not, then why not?

Answer:

Refer to the answer to question 25.

Question 27

Has SIRA published any material in relation to the work undertaken by SIRA in addressing the delays by NRMA and Suncorp in internal review? If not, then why not?

Answer:

Refer to the answer to question 25.

Question 28

Why is any/all regulatory work that SIRA has conducted with NRMA and Suncorp in relation to protracted non-compliance with statutory timeframes conducted in secrecy?

Why are all of the SIRA directions to these insurers with regards these delays not made public?

Is part of the reason for the lack of transparency that SIRA is trying to cover up deficiencies in scheme performance?

Why is SIRA refusing to publicly acknowledge the full nature and extent of a serious aspect of scheme performance that has chronically malfunctioned?

Answer:

- SIRA has commenced publishing details of regulatory activity ([link](#))
- SIRA's also publishes the [CTP Claims and Injury Management Assurance Program \(CAP\)](#). The CAP assesses compliance of insurer operations, conduct and claims management activity with statutory requirements.

Question 29

What "regulatory enforcement activities" has SIRA undertaken in relation to the delays by each of NRMA and Suncorp?

Are these "regulatory enforcement activities" being kept secret and if so, why?

Answer:

NRMA has received two letters of censure under the 2017 scheme.

Suncorp has received 10 letters of censure under the 2017 scheme.

Question 30

In terms of the various letters of censure and notices of non-compliance identified on page 15 of the CTP Insurer Claims Experience and Customer Feedback Comparison of 30 June 2020 and 30 September 2020, have any of these been made public? If not, why not?

Answer:

SIRA aims to strike a balance between transparency of action and protecting the integrity of investigations, to avoid jeopardising any enforcement activities that may be underway. SIRA will continue to consider publishing more information on compliance activity on matters where the investigation has been completed.

Question 31

Why aren't letters of censure and notices of non-compliance published on the SIRA website (if need be, de-identifying individual claimants if an individual claim is the source of a non-compliance)?

Answer:

Refer to the answer to question 30.

Question 32

When there are systemic failures (such as those involving NRMA and Suncorp in relation to internal review) why aren't any letters of censure or notices of noncompliance published?

Answer:

Refer to the answer to question 30.

Question 33

Have any "penalty provisions" been pursued or imposed on any CTP insurer in relation to the operation of the MAI Act? What for? What was the outcome? How long did the process take?

Answer:

No.

Question 34

Why do two years of non-compliance with statutory timeframes for internal review by NRMA and two years of non-compliance with statutory timeframes by GIO and AAMI not warrant the imposition of penalty provisions? If penalties have been imposed, what were they?

Answer:

Suncorp: SIRA has issued letters of censure, a regulatory notice, and directed Suncorp to provide two remediation plans. Investigations are ongoing. Regulatory focus in this area has seen Suncorp's compliance increase from 17.6% in February 2020 to 100% in January 2021.

NRMA: SIRA has issued a letter of censure, a regulatory notice, and directed NRMA to provide a formal remediation plan. Investigations are ongoing. Regulatory focus in this area has seen NRMA's compliance increase from 80.6% in February 2020 to 91.3% in January 2021.

Question 35

Does SIRA appreciate that the MAI Act contains multiple punitive financial provisions applied to claimants who fail to meet their obligations under the MAI Act?

Does SIRA acknowledge that there is an imbalance of penalties as between the imposition of what are effectively financial penalties on claimants (through the loss of their rights) as compared to the seeming absence of any meaningful financial penalties imposed upon CTP insurers, despite those insurers engaging in widespread and systemic non-compliance?

Does SIRA appreciate that this imbalance appears chronically unfair and unjust to the legal representatives who have to deal with the punitive penalties imposed upon claimants? Does SIRA have any explanation for this imbalance?

Answer:

SIRA's regulatory activities are focused on areas of highest risk. Firm and fair enforcement action is taken as needed, based on the severity of harm or potential harm, the degree of negligence, and/or the need for deterrence. Refer [SIRA's Compliance and Enforcement Policy](#).

Question 36
Does SIRA agree that joint medico-legal examinations reduce the stress upon claimants and reduce the level of disputation within the scheme?
Answer:
Yes, in line with the evidence reducing the number of medico legal examinations offers a better claims and customer experience to injured people.
Question 37
Assuming the answers to the preceding question is yes, does SIRA agree that the Guidelines under the MAI Act are less likely to encourage joint medico-legal examinations than the provisions still in place under the MAC Act?
Answer:
Joint medical examinations are a feature in the 2017 and 1999 schemes. The aim is to promote collaboration between insurers and legal providers, to minimise disputes, reduce the need for multiple medical examinations, and help resolve claims quickly. SIRA is undertaking a post-implementation review of the Authorised Health Practitioner Framework and will invite feedback from stakeholders. It will canvass the issue of joint medico-legal examinations.
Question 38
Why were the joint medico-legal provisions contained within the MAC Act Regulations/Guidelines not carried forward into the MAI Act Regulations/Guidelines?
Answer:
Refer to the answer to question 37.
Question 39
Why are there no provisions within the Motor Accident Guidelines applicable to the MAI Act compelling insurers to try and engage in joint medico-legal examinations?
Answer:
Refer to the answer to question 37.
Question 40
How many applicants have been denied status as an AHP? What has been the basis for such denials?
Answer:
9% of applications are unsuccessful
Question 41
Have any applicants been denied AHP status on the basis of any quality standard?
Answer:
34% of applications required more than one attempt due to issues identified with the quality of application.
Question 42
Can SIRA identify any actual measurable benefit to the motor accidents scheme flowing from the introduction of the AHP regime? What objective measurement is there as to any such benefits?
Answer:
SIRA is undertaking a post-implementation review of the Authorised Health Practitioner Framework and will invite feedback from stakeholders.
Question 43
Does SIRA acknowledge that there are additional bureaucratic burdens created by the

AHP regime when it comes to the conduct of medical assessments for claimants who are injured in NSW, but live interstate and overseas?

Answer:

SIRA is undertaking a post-implementation review of the [Authorised Health Practitioner Framework](#) and will invite feedback from stakeholders.

Question 44

Does SIRA acknowledge that there is a problem stemming from the use of the present tense and the word “is” in Section 7.52? Does SIRA acknowledge that the section would be more useful if the examiner had to be authorised as at the date of the examination, rather than potentially years later as at the date the report is tendered?

Answer:

In response to feedback received previously, SIRA has amended clause 8.4 of the Motor Accident Guidelines to clarify that: “A health practitioner is not authorised to give evidence in proceedings unless the practitioner is authorised under these Guidelines at the time the evidence is given. For evidence given by written report, this means that the health practitioner must be authorised at the time they examine the claimant and write the report.”

Question 45

Does SIRA acknowledge that the email of Ms. Baird of 2 June 2017 encapsulated the policy basis for regulating that an acute stress disorder and adjustment disorder be deemed minor psychiatric injuries? Was that basis that both diagnoses only applied to psychiatric conditions that would resolve within 6 months?

Answer:

Expert medical advice was used to inform which conditions should be included in the Minor Injury definition.

Question 46

Is the policy intent behind the regulation that a diagnosable psychiatric injury that persists beyond six months should not be diagnosed as an acute stress disorder or an adjustment disorder?

Answer:

Expert medical advice was used to inform which medical conditions and injuries should be included in the Minor Injury definition

Question 47

Were any guidelines issued to address the misdiagnosis risk identified in the email?

Answer:

No.

Question 48

To ensure the proper function of the regulation as intended, does SIRA agree that the regulation requires amendment to limit the deeming of adjustment disorders as minor injury to “acute” adjustment disorders with the exclusion of “persistent/chronic” adjustment disorders?

Answer:

Expert medical advice was used to inform which medical conditions and injuries should be included in the Minor Injury definition. The upcoming statutory review of the *Motor Accident Injuries Act 2017* will provide the Minister with an opportunity to consider the merits of any change.

Question 49

Having regard to submissions from the ALA, what comment does SIRA have with regards the efficacy of the internal review regime?

Specifically, is internal review by insurers in relation to minor injury decisions and liability decisions enhancing the claimant experience or merely adding additional levels of complexity and dispute?

Answer:

Refer to SIRA's evidence at the Law & Justice Committee Hearings - pages 28 to 31 of the transcript.

Question 50

Has SIRA set any benchmarks to measure the efficacy of internal review? If so, then what are those benchmarks and what are the results? If not, then why not?

Answer:

Refer to SIRA's evidence at the Law & Justice Committee Hearings - pages 28 to 31 of the transcript.

Question 51

Has SIRA done any auditing of the quality of insurer internal review decisions? If so, what has been the finding of those audits?

Answer:

Refer to SIRA's evidence at the Law & Justice Committee Hearings - pages 28 to 31 of the transcript. The Review referenced is published on the [SIRA website](#).

Question 52

Does SIRA accept that the "overturn" rate of insurer internal review decisions is not fully captured by DRS decisions as there are additional claims where the insurer reverses the internal review decision after lodgement of a DRS dispute, but prior to a DRS decision?

Answer:

Refer to SIRA's evidence at the Law & Justice Committee Hearings - pages 28 to 31 of the transcript.

Question 53

The data at Chart 9 on page 11 of the CTP Insurer Claims Experience and Customer Feedback Comparison of 30 June 2020 provides a breakdown of the outcome of resolved DRS reviews. However, there is no breakdown as between insurers. Has SIRA conducted any analysis as to the overturn rate of individual insurer internal review decisions in relation to minor injury, treatment and care and liability? Is there any significant difference as between insurers? Has SIRA taken any action in relation to any insurers who have a significantly higher percentage overturn rate of their internal review decisions? If so, what has that action from SIRA involved?

Answer:

Refer to SIRA's evidence at the Law & Justice Committee Hearings - pages 28 to 31 and 42 of the transcript.

Question 54

Does SIRA agree that the Regulations made pursuant to Sections 7.11, 7.19 and 7.41 of the Act are capable of amendment to provide that there need only be one internal review per dispute category per claim?

Answer:

SIRA can confirm that the Regulation, subject to the Minister's approval, can be amended to allow for one internal review only. The statutory review of the *Motor Accident Injuries Act 2017* will provide the Minister with an opportunity to consider the merits of any change.

Question 55

What objection (if any) does SIRA have to so amending the Regulation?

Answer:

Refer to the answer to question 54.

Question 56

How does SIRA understand Section 8.10(4)(a) is to be construed for a claimant under legal incapacity on the basis of age? Is that claimant entitled to recover legal costs as permitted by DRS for the duration of their statutory benefits claim? Or is the exemption from the applicable costs regulations only applicable whilst the legal disability persists?

Answer:

- As per section 8.10(4) of the *Motor Accident Injuries Act 2017*, "the Commission can permit payment of legal costs incurred by a claimant but only if satisfied that:
 - (a) the claimant is under a legal disability, or
 - (b) exceptional circumstances exist that justify payment of legal costs incurred by the claimant."
- It is a matter for the Personal Injury Commission to apply this section of the legislation as appropriate to matters before the Commission.

Question 57

If the claimant is 17 at the time of accident and turns 18 the day before a DRS assessment, then what costs are recoverable? Is that claimant entitled to permitted costs up to age 18 and regulated costs thereafter? What are the policy grounds behind the drafting of the Act?

Answer:

Refer to the answer to question 56.

Question 58

Take the case of a motorcyclist who is run down at an intersection by a truck. Assume the truck driver to be entirely at fault. Assume the cyclist has a foot amputated in the accident. The motorcyclist subsequently returns a BAC reading of 0.051, on the basis of residual blood alcohol from drinking the night before:

- (i) Does SIRA agree that the current operation of Section 3.37 would deny the motorcyclist a lifetime of statutory benefits for treatment, including the very significant cost of prosthetics?
- (ii) Does SIRA acknowledge that the financial penalty on this motorcyclist for returning a low range PCA extends beyond the criminal consequences to a penalty potentially amounting to hundreds of thousands of dollars in compensation rights foregone?
- (iii) How does SIRA justify this policy outcome?

Answer:

- The Supreme Court decision in *QBE Insurance (Australia) Limited v Abberton [2021] NSWSC 588* on 25 May 2021 has provided clarity on the application of section 3.37(3) of the MAI Act. The case involved a claimant who sustained injuries in a single vehicle accident in October 2019 and was subsequently charged with a serious driving offence (low range PCA). The court found that if it is a single-vehicle motor accident, and the

driver was convicted of a serious driving offence related to that motor accident, then the person is not entitled to statutory benefits.

- The case indicates that section 3.37 of the MAI Act operates strictly, to disentitle a person from statutory benefits if they have a motor accident while having committed a serious driving offence.

Question 59

What is the policy imperative behind Section 6.14(1)?

Answer:

- The design of the CTP scheme under the *Motor Accident Injuries Act 2017* is focussed on the optimum recovery of people injured in motor vehicle accidents. This is achieved through fast access to statutory benefits for treatment and care and rehabilitation services, and income support for earners.
- As per the Ministers second reading speech reducing fraud was also an objective of the 20-month waiting period - *'Fraud and exaggeration currently costs New South Wales motorists as much as \$400 million per year and adds about \$75 to the cost of each green slip. Parts 3 and 4 of the bill [minor injury definition, no damages for minor injury and 20 month wait to access damages] will substantially 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 system.'*

Question 60

Does SIRA acknowledge that there have been disputes arising from the frontend loading of WPI disputes by Section 6.14(1)?

Answer:

Refer to the answer to question 59.

Question 61

Is it part of the policy intent of Section 6.14(1) to have claimants with a proper entitlement to modest damages abandon those entitlements by making those claimants wait 20 months to bring the claim?

Answer:

Refer to the answer to question 59.

Question 62

What steps has SIRA taken to educate and advise claimants as to their damages rights? Does SIRA have in place any mechanisms to alert claimants who have returned to work as to their entitlement to recover damages, even if those damages are limited to a top up of the past wage loss and past loss of superannuation benefits? If not, then why not?

Answer:

- SIRA's CTP Assist team make outbound calls at key milestones, including at the 20-month mark to advise injured people they may be eligible to lodge a claim for damages. CTP Assist advises injured people that legal assistance is available.
- SIRA is currently undertaking a review of insurer communication with claimants regarding their eligibility and entitlements to lodge claim for a damages.

Question 63

Has SIRA done any measuring of the “walk away” rate from damages claims? As a simple measure, every claimant who has received a payment of weekly benefits post six months is likely to have a damages claim. A claimant is only entitled to weekly payments post six months if liability rested with the insurer and there was more than a minor injury. The payment of weekly benefits necessarily involves a gap between those weekly benefits and the full entitlement to damages for past loss of earnings. SIRA ought to be able to make a rough measurement of year one claimants who recovered statutory benefits past six months and have not pursued a damages claim. How many claimants are there in this category and what steps has SIRA taken to check that these claimants are aware of their entitlement to damages, at least to the extent of a top up on their past wage loss (and lost superannuation benefits)?

Answer:

Refer to the answer to question 62.

Question 64

What consideration has SIRA given to the comments of Justice Fagan in Singh with regards legislative reform of Part 5? Does SIRA agree with Justice Fagan that Part 5 has no relevant application to statutory benefits claims?

Answer:

SIRA notes that on 9th June 2021, the Motor Accidents and Workers Compensation Legislation Amendment Bill 2021 was introduced to NSW Parliament. Among the amendments contained in the bill are a series of amendments to Part 5 of the *Motor Accident Injuries Act 2017*, giving affect to the comments of Justice Fagan in relation to this matter.

What is a Green Slip?

A Green Slip is a personal injury insurance policy that you must buy before you can register your vehicle in NSW. It insures NSW drivers for the costs of a person's injuries incurred in a motor vehicle accident.

The Green Slip scheme covers the cost of injuries caused by your vehicle to:

- you, if the accident occurred in NSW
- anyone else, anywhere in Australia

If the accident occurred outside NSW, cover for your injuries depends on the law of the place where the accident happened (see Interstate (non-NSW) accidents and CTP Comparison table below).

If a person dies as a result of the accident, close relatives may also be able to claim some funeral expenses or compensation for a relative.

Drivers who are charged with a serious driving offence in relation to the accident will not be able to claim benefits.

What it covers you for

The CTP scheme is focused on early support and recovery and applies to injuries resulting from a motor vehicle accident on or after 1 December 2017.

The Green Slip covers all injured people, regardless of fault (unless you are charged with or convicted of a serious driving offence related to the accident).

You will be able to claim up to 6 months (26 weeks) of:

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

If you are not at fault and your injuries are more serious, you may be able to claim benefits beyond 6 months. Those who have been severely injured may also be eligible for the Lifetime Care & Support Scheme.

What it does not cover

Green Slips do not cover the cost of damaged vehicles or property. This would fall under third party property damage or comprehensive car insurance policies.

Who can claim?

Anyone who is injured in a motor vehicle accident in NSW can apply. This includes at fault and not at fault:

- drivers and passengers
- riders and pillion passengers
- pedestrians
- cyclists

The injury can be physical or psychological.

If your injury is a result of a motor accident that is also a work-related accident, you will also need to make a workers compensation claim against your employer's workers compensation insurer.

You cannot make a claim if you:

- have been charged with or convicted of a serious driving offence in connection with the accident, or
- were the at-fault driver of an uninsured vehicle and you knew the vehicle was uninsured

How to make a claim

To make a claim for personal injury benefits you can apply online using your Service NSW account. You can also apply by completing the 'application for personal injury benefits' form (some hospitals also stock the form) and send or email it to your CTP insurer.

After you notify the insurer, you can contact them to request approval for some early treatment before you lodge your full claim. This may include:

- one GP visit
- two treatment sessions, such as physiotherapy

Who can help?

You, your family or friends can contact CTP Assist to:

- find out if you are eligible to make a claim
- find out who is the right CTP insurer and get in touch with that insurer to make a claim
- get help filling out forms
- ask questions during the claims process

CTP Assist can also connect you to other support services, for example the CTP Legal Advisory Service. You can contact CTP Assist by calling 1300 656 919 or emailing ctpassist@sira.nsw.gov.au.

You can also seek advice from a lawyer if you wish. The Law Society of NSW can assist you to find a lawyer in NSW. They can be contacted on (02) 9926 0333.

Interstate (non-NSW) accidents

If you are injured in an accident while driving or riding a NSW registered vehicle interstate, CTP cover for your injuries depends on the law of the State or Territory where the accident happened.

- If the State or Territory is a **fault-based CTP/ motor accident injury scheme and you were not the driver or rider at-fault** in the accident, you will be eligible for compensation under the State or Territory's CTP scheme
- If the State or Territory is a **fault-based CTP/ motor accident injury scheme and you were the driver or rider at-fault** in the accident, you will not be eligible for compensation. This includes single vehicle accidents involving only your vehicle. Currently Queensland, South Australia and Western Australia have fault-based CTP schemes
- If the State or Territory is a **no-fault CTP/ motor accident injury scheme, you will be eligible for some compensation under the State or Territory's CTP scheme regardless of whether you were at-fault in the accident.** Currently Victoria, Tasmania, the Australian Capital Territory, and the Northern Territory offer varying benefits for at-fault drivers or riders, depending on the circumstances of the accident

In all States and Territories, access to benefits may not be permitted where people are injured by their own serious wrongdoing. For example, serious cases of negligence, criminal activity, intoxication, or self-harm. Benefits may also be reduced if an injured person does, or does not do, something that subsequently contributes to their injuries.

If your injuries are very serious or catastrophic (for example, spinal cord injury, traumatic brain injury, significant amputation, severe burns, permanent blindness), you may be eligible for long-term care benefits in the State or Territory where the accident happened regardless of fault.

Any person travelling interstate may wish to consider taking out other forms of insurance to cover health costs associated with personal injuries, such as private health or travel insurance.

Further information

For further information or assistance in relation to any aspect of a claim, please contact CTP Assist by calling 1300 656 919 or emailing ctpassist@sira.nsw.gov.au.

CTP Comparison Table – What benefits are available if you are injured in an accident while driving or riding a NSW registered vehicle interstate?*

Place of accident (alphabetical)	What benefits are available for those not at-fault in the accident?	Are benefits available if a driver or rider in a NSW registered vehicle is at-fault in an accident?	Are benefits available if a driver or rider in a NSW registered vehicle is involved in a single vehicle accident?	Is the at-fault driver or rider covered for ambulance services?	Contact
Australian Capital Territory	Defined benefits for medical and rehabilitation expenses and loss of income. Quality of life payment and access to common law may be available. Ambulance services are covered.	Yes – defined benefits and ambulance services. Quality of life payment may be available. No access to common law.	Yes – defined benefits and ambulance services. No access to common law.	Yes	Motor Accident Injuries Commission (MAIC) 13 22 81 email: maic@act.gov.au web: https://www.act.gov.au/maic
Northern Territory	Defined benefits for medical and rehabilitation expenses and loss of income. Lump sum payments not available. Ambulance services are covered.	Yes – defined benefits and ambulance services. Lump sum payments not available.	Yes – defined benefits and ambulance services. Lump sum payments not available.	Yes	Motor Accidents Compensation Commission (MACC) 1300 493 506 email: mac@tiofi.com.au web: https://www.ntmacc.com.au/
Queensland	Lump sum payments which vary depending on the type and extent of injuries and particular circumstances. Ambulance services are covered.	No**	No**	No**	Motor Accident Insurance Commission (MAIC) 1800 287 753 email: maic@maic.qld.gov.au web: https://maic.qld.gov.au/
South Australia	Lump sum payments which vary depending on the type and extent of injuries and particular circumstances. Ambulance services are covered.	No**	No**	No**	CTP Insurance Regulator 1300 303 558 email: ctp@sa.gov.au web: https://www.ctp.sa.gov.au/
Tasmania	Defined benefits for medical and rehabilitation expenses and loss of income. Lump sum payments may be available. Ambulance services are covered.	Yes – defined benefits and ambulance services if the accident involved a vehicle registered in Tasmania. Lump sum payments not available.	No**	Yes – if the accident involved a vehicle registered in Tasmania. No** – if the accident did not involve a vehicle registered in Tasmania.	Motor Accidents Insurance Board (MAIB) 1800 006 224 email: info@maib.tas.gov.au web: http://www.maib.tas.gov.au/

		No** – if the accident did not involve a vehicle registered in Tasmania.			
Victoria	Defined benefits for medical and rehabilitation expenses and loss of income. Lump sum payments may be available. Ambulance services are covered.	Yes – defined benefits and ambulance services. Lump sum payments not available.	Yes – defined benefits and ambulance services. Lump sum payments not available.	Yes	Transport Accident Commission (TAC) 1300 654 329 email: info@tac.vic.gov.au web: https://www.tac.vic.gov.au/
Western Australia	Lump sum payments which vary depending on the type and extent of injuries and particular circumstances. Ambulance services are covered.	No**	No**	Yes	Insurance Commission of Western Australia (ICWA) 1800 643 338 web: https://www.icwa.wa.gov.au/

* The above table has been prepared as a brief overview of some of the differences between CTP compensation schemes in Australia and information may have changed. Please contact the individual scheme if you require further information or clarification of details.

** If your injuries are very serious or catastrophic (for example, spinal cord injury, traumatic brain injury, significant amputation, severe burns, permanent blindness), you may be eligible for long-term care benefits in the State or Territory where the accident happened regardless of fault. Please contact the individual scheme for further information.

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance and motor accidents third-party (CTP) insurance in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However, to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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