

## Standing Committee on Law & Justice

### Pre-hearing questions

- 1. It is noted on page 38 of your submission that consultation on draft legislation is underway in relation to the definition of minor injuries. What feedback or suggestions have arisen during consultation on this aspect of the draft legislation? What impact does SIRA consider the current draft legislation may have on the ongoing inclusion of genuine non-minor injuries within the definition of minor injuries? Does SIRA consider the current proposal adequate to address the recommendations of the Statutory Review and concerns of stakeholders?**

SIRA's submission notes on page 38 that changes to the minor injury definition are not included in the current legislative package.

The focus of the current consultation related to the proposed amendments in the *Motor Accident Injuries Amendment Bill 2022* which will extend statutory benefits currently available for weekly payments as well as treatment and care currently for people with 'minor injuries' from 26 weeks to 52 weeks.

The Statutory Review noted that 98 per cent of workers with 'minor injuries' tend to return to work by 52 weeks, making this proposed timeframe a suitable one.

Recommendation 34 of the Statutory Review suggested the Minister consider the making of an amendment to the regulations to remove 'adjustment disorder' from the definition of 'minor injury'. The rationale was that the definition of minor injury must only include conditions that are expected, with appropriate treatment and care, to resolve within six months after the motor accident concerned. As the Bill proposes enhanced benefits to up to 52 weeks, the vast majority of injured people will be able to access appropriate supports.

Recommendation 46 of the Statutory Review proposed an amendment to section 1.6 of the Act (Meaning of 'minor injury') to provide that a psychological or psychiatric injury resulting from the death or catastrophic injury of a family member is not a 'minor injury' for the purposes of the Act. The rationale provided was that the Scheme should minimise unnecessary stress on grieving family members. SIRA support initiatives that will minimise unnecessary stress on grieving family members and note that the Bill proposes changing the terminology of 'minor injury' to 'threshold injury'.

SIRA will continue to monitor the operation of the minor injury threshold.

- 2. Please provide an update on the feasibility of expanding the Independent Legal Assistance and review Scheme (ILARS). Following the review report by Taylor Fry, and noting the information of page 6 of your submission, does SIRA have a preferred model for the provision of legal and other support? Does SIRA support expanding ILARS in principle?**

Refer to SIRAs supplementary submission on expanding ILARS into the CTP Scheme. SIRA does not support the expansion of the current ILARS model to the CTP Scheme.

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SIRA will consult on appropriate end to end supports, including legal supports for people injured in the CTP Scheme in early 2023.

### 3. Please provide a report on the outstanding work required to commence CTP Care on 1 December 2022.

All outstanding work is near completion. SIRA has requested LCSA provide an assurance of their readiness for CTP Care to commence from 1 December 2022.

- The *Motor Accident Guidelines: CTP Care* version 1.0 has been published and will take effect from 25 November 2022. LCSA and insurers will have their operations ready to ensure compliance with the new guidelines by the effective date. Work was well underway prior to the publication of the Guidelines.
- Through monthly steering group meetings, SIRA has supported LCSA with readiness for claims data ingestion. LCSA reports that it is on track to complete all activities and commence data submissions to SIRA from 21 November 2022.
- SIRA is reviewing insurer letter templates and other collateral relating to notification requirements to injured people (required to be sent two weeks prior to the date of transfer) regarding their transfer to LCSA.
- CTP Assist will also proactively contact all injured people who are transitioning three weeks prior to the transition of their claim to ensure they understand their entitlements and support them through their transition to CTP Care. This will be supported by fact sheets and updated website content that SIRA is currently finalising.

### 4. Is there any further update on icare's intention to re-introduce a deficit repair levy from January 2023?

icare has confirmed with SIRA their target collection amounts for the period 15 January 2023 to 14 January 2024. Both the Lifetime Care and Support (LTCS) and Motor Accident Injuries Treatment and Care Benefits (MAITCB) funds have a sustainability margin component (formerly named deficit repair levy):

- **LTCS Fund** - icare has introduced a **sustainability margin levy of \$50 million, or an average of \$8 per vehicle**, to bring the insurance ratio up to their target operating range of above 140 per cent by June 2032 within a 10-year period, as per their LTCS Fund capital management plan.
- **MAITCB Fund**, icare has determined that a **sustainability margin of \$34 million or an average of \$5.44 per vehicle** continues to be required to ensure the financial sustainability of the MAITCB Fund. This is estimated to bring the insurance ratio up to above 100 per cent by June 2027.

The outcome of these increases is that the LTCS levy is now on average \$100.04 per policy, and MAITCB levy is on average \$22.5 per policy. This total of \$122.61 in

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levies for funds administered by icare is over 25 per cent of the average CTP premium.

The current legislative framework does not provide SIRA with powers to regulate the LTCS and MAITCB levies.

**5. The Independent Review Office recommends legislative changes to clarify its power to deal with complaints arising from CTP Care and LTCS. Has SIRA given consideration to or assessed the issues regarding the limits to the Independent Review Office's powers and remit? If so, what benefits or challenges were identified regarding the concerns of the Independent Review Office and their proposal?**

SIRA has considered the jurisdiction of the Independent Review Officer (IRO) to deal with complaints with respect to the Lifetime Care and Support Authority (LCSA) when performing its functions as the 'relevant insurer' under the *Motor Accident Injuries Act 2017* (MAI Act).

The provisions of Schedule 5 to the *Personal Injury Commission Act 2020* (PIC Act) do not currently extend the IRO's function of dealing with complaints about insurers to dealing with complaints about the LCSA when it is performing its functions under the MAI Act (the term 'insurer' in clause 1 of Schedule 5 means a 'licensed insurer' under the motor accidents legislation).

To establish the IROs authority to handle such complaints, SIRA has delegated to the IRO, pursuant to section 26 of the *State Insurance and Care Governance Act 2015*, the function of investigating and responding to complaints about claims handling practices of the LCSA related to its functions provided for in section 10.1(d) of the MAI Act. The instrument of delegation was executed by SIRA's Chief Executive on 14 June 2022.

This change has also been confirmed in SIRA's recently published *Motor Accident Guidelines: CTP Care* version 1.0, Part 4 which clarifies that an injured person may complain to the IRO about any act or omission of an insurer that affects their entitlements, rights or obligations under the MAI Act, and that any complaint about the LCSA in respect of its functions related to the payment of treatment and care expenses under the MAI Act may also be directed to the IRO.

SIRA has not considered the complaints handling function for The Lifetime Care and Support Scheme as is administered by the LCSA under the *Motor Accidents (Lifetime Care and Support) Act 2006*. The NSW Ombudsman receives formal complaints in relation to The Lifetime Care and Support Scheme. This Act falls within the responsibility of the Minister for Finance.

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#### **6. What measures are being implemented to improve the current CTP Assist Milestone program outbound contact success rate of 25 percent? What performance measures are CTP Assist aiming to achieve for the program?**

SIRA recently started sending introductory emails to all claimants ahead of contacting them by phone. The email explains the CTP Assist service, how it can help navigate the claims journey and that a team member will be contacting the claimant. Initial results are promising, and we have seen an increase in inbound calls referring to the emails, as well as positive results in outbound calls.

Predictive modelling is also being explored to better target our assistance services to injured person that most likely need support, this will be complemented by provision of information via other channels to those who are predicted to be able to successfully complete the claims process without support.

While we aim to increase our outbound success rate to 30 per cent, having a more targeted approach will help us improve the impact of CTP Assist more broadly, regardless of contact method.

Our performance measures include NPS (aiming to maintain above 50), service level (aiming to answer 85 per cent of inbound calls within 60 seconds) and call abandonment rate (aiming to be less than 5 per cent for inbound calls).

#### **7. What measures are being considered to address the declining dispute finalisation timeframes, and resolve disputes unfinalised after 52 weeks of application?**

This is a matter for the Personal Injury Commission. The lower finalisation rates for those beyond 52 weeks are primarily for medical assessment disputes, where there has been challenges because of the pandemic. The Personal Injury Commission News Edition 39, 4 November 2022 describes how this challenge is being addressed and in particular, that a large number of medical assessments are being scheduled each month. Once the backlog is cleared, finalisation times will decrease.

SIRA has also engaged with the CTP insurers to ensure communication regarding assessment appointments is clearly and regularly communicated to injured people as there is significant non-attendance rate for medical appointments.

#### **8. What are the key areas of focus for the statutory review of the Personal Injury Commission Act 2020? Is SIRA examining the efficiency of operations as part of the review?**

The key area of focus for the Statutory Review of the *Personal Injury Commission Act 2020* is to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives as

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required by section 68(1) of the PIC Act. This does not extend to an examination of the efficiency of operations.

The terms of reference for the Review has been published on SIRAs website. Public consultation commenced in August 2022, with written submissions received. Meetings with stakeholders to canvas the issues and themes from the written submissions will commence shortly. A report on the outcome of the Review is to be tabled in each House of Parliament within 12 months from commencement of the Review.

#### **9. What work has SIRA undertaken to improve decision times of insurers and improve the content of notices to claimants? Has SIRA considered formal Standards of Practice as supported by the Independent Review Office?**

The *Motor Accident Injuries Act 2017* outlines the timeframes, and the Motor Accident Guidelines and CTP Care Guidelines outline the standards required of insurers in relation to the content of notices being provided to claimants.

The CTP Care Guidelines published in October 2022, included new standards for insurers to provide notice to injured persons prior to an insurer making their claim inactive to ensure transparency and fairness.

The Motor Accident Guidelines were most recently subject to consultation during August 2022 with a new version due to come into effect shortly. The review included updates to the notice provisions for decisions about: statutory benefit liability and treatment and care to increase the transparency and clarity for injured persons on the decision being made.

The review considered the Workers Compensation Standards of Practice and SIRA is including further provisions in the Guidelines in relation to death claims and psychological injuries.

SIRA acknowledges the IRO's feedback in relation to the notice requirements and will review the suggestions raised in the next review of the Guidelines, including whether standards of practice similar to those in the workers compensation scheme would be beneficial.

SIRA supervises insurers against their obligations in relation to decision timeframes and the content of notices as defined by the *Motor Accident Injuries Act 2017* and the Guidelines.

The Insurer Claims and Conduct Activity Program (ICCAP) completed in August 2022 reviewed the timeliness of decisions and notice content in relation to treatment and care decisions and related internal reviews. This activity identified issues with insurer compliance to the timeframes and notice requirements and all insurers currently have open remediation plans to remediate those issues. Insurers are reporting to SIRA monthly in relation to the progress of their plans. A follow-up review scheduled for February 2023 will ensure systemic compliance to the requirements.

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Insurer internal review decision timeliness is publicly available in the *SIRA Customer Insurer Claims Experience and Customer Feedback Comparison* report. As an industry, the data demonstrates that the insurers are over 98 per cent compliant with the internal review timeframes. SIRA is currently further enhancing its suite of metrics to monitor the timeliness of decisions and is conducting quarterly performance discussions with insurers on timeliness of the first and second liability decisions. The results of these metrics will be made public in 2023.

SIRA will review notices in relation to inactive claims, weekly payments, internal reviews and transition to CTP Care in ICCAP activities commencing in 2023.

#### **10. The Australasian College of Road Safety advocate for improved alignment of the Safe Systems approach to road safety and the determination of CTP premiums. What work has SIRA undertaken to consider these proposals?**

Through its partnership with Transport for NSW's Centre for Road Safety SIRA has committed a total of \$3 million to fund projects that will improve road safety and contribute to the objectives of the NSW 2026 Road Safety Plan, which adopts the Safe Systems approach.

Regarding premium determination, SIRA establishes parameters for insurers to set premiums through the Motor Accidents Guidelines. The parameters promote competition and innovation, and make sure premiums are both sustainable for the scheme and affordable for customers.

The Guidelines allow insurers to factor in safer behaviours in setting premiums – such as the use of safer motorcycle equipment and clothing or telematics. SIRA encourages insurers to implement such measures, which in-turn support the principles of the Safe Systems approach.

Fortunately, a CTP claim is a low frequency event which can mean that it is often difficult to quantify a direct relationship with safety programs including the Safe Systems approach to road safety in the determination of CTP premiums.

SIRA can advise that most CTP insurers utilise the National Vehicle Identification Code (NVIC) to determine the safety features of each vehicle. However, by comparison, the age of the youngest driver is a much more significant risk factor for CTP, so it would have a more material impact on Green Slip prices.

#### **11. What work is SIRA undertaking to address inflationary factors for CTP premiums for motorcyclists, as raised by Motorcycle Council of NSW.**

SIRA monitors and considers the inflationary factors impacting all motorists, and also the offsetting effect of investment returns. For example, SIRA conducts annual reviews of the premium parameters set out in the [Motor Accidents Guidelines](#) as guidance for insurers' CTP premiums. This includes the review of risk relativities across various vehicle classes, including motorcycles, which CTP insurers must adopt.

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Motorcycle CTP premiums are being subsidised by all other NSW vehicle owners. Motorcycles are currently receiving an average subsidy of approximately \$75 each and this subsidy is funded by a contribution of \$4 on average per vehicle from all other vehicle classes in the scheme. From 15 January 2023, motorcycles will be subsidised by an average of \$104 per policy. This cost is spread across all other vehicle classes, who are providing an average subsidy of \$5 per policy.

#### **12. While noting recent developments, the submission from the NSW Taxi Council contends that inequity continues between taxi and ride-share operators. It made a number of recommendations in this regard. What work is SIRA undertaking to address the continued concerns raised by the NSW Taxi Council?**

The introduction of distance-based premiums for the Point to Point (P2P) industry in April 2018 has delivered a significant reduction in CTP premiums for the NSW Taxi industry. As at 30 June 2022, the average premium for all NSW taxis is \$3,450, around 53 per cent (\$3,889) cheaper compared to \$7,339 in the previous CTP scheme (before 2017).

SIRA fulfilled a ministerial direction from the then Minister for Customer Service in 2018 reducing the Fund Levy for taxis to the same level as Class 1 passenger vehicles, which is an estimated \$500 saving each year.

Taxis pay higher CTP premiums on average than other P2P vehicles. This is because taxis' risk profile continues to be higher than passenger vehicles. SIRA data from 2018 to 2021, shows that a T-plate taxi is 9 times more likely to have a claim raised against it compared to a Class 1 metro passenger vehicle, compared to a Class 1 metro passenger vehicle used for rideshare which is only 2 times more likely to have a claim raised against it.

Taxis have exclusive rights for rank and hail passenger services, providing a captive market for taxis. Taxi fares are regulated by Taxi Fares Order for non-booked passenger services, which stipulates the maximum rate a taxi may charge for rank and hail work. This does not prevent taxi providers from charging and collecting a CTP insurance component, as is the practice by the hire care industry. Via this pricing model, the hire vehicle sector currently collects over \$30m annually, just for the P2P component of their premiums.

SIRA encourages the taxi industry to review their pricing structures including 'passenger pays CTP insurance' model, that has been effectively used by hire vehicles.

SIRA is currently drafting Taxi and Hire Vehicles Guidelines related to premium determination and payment for taxis and hire vehicles. A non-prescriptive premium setting framework is proposed allowing insurers the flexibility to tailor premiums in line with different needs and risk levels within the P2P industry. This would be facilitated through tailored agreements reflecting the risk a policy holder's vehicle brings to the scheme.

SIRA is progressing changes to the draft Guidelines following refreshed stakeholder, industry and legal feedback, following the passage of the *Motor*

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*Accidents and Workers Compensation Legislation Amendment Bill 2022* in June 2022, and anticipate these will be finalised by the end of 2022.

The draft Guidelines are open for insurers and policyholders to agree on approaches to rating factors other than distance, such as number of trips and safe driving data as a means of determining CTP premiums. SIRA will maintain oversight to ensure premiums are fair and affordable.

The draft Guidelines also stipulate the minimum premium for a taxi is equivalent to a Class 1 premium as a starting point for their pricing. The challenge for taxis is to implement the required technology and adapt to collecting the balance of a taxi premium from the riding passengers on a per trip basis, in a similar way as the hire vehicles' current practice.

In summary SIRA has developed the framework for taxis to participate in a 'passenger pays CTP insurance' model. However, the decision to participate is up to the taxi industry. SIRA will continue to work with the NSW Taxi Association and Country Taxi Association to finalise the Guidelines and implement the new framework.