

Our reference: BN-00898-2023

The Hon Christopher Rath MLC
Chair, Standing Committee on Law and Justice
Parliament of NSW

Dear Mr Rath,

RE: Recovery of statutory benefits from third parties

We are writing to the Committee regarding statements made by the State Insurance Regulatory Authority (SIRA) at the Law & Justice Review of the Compulsory Third Party Insurance Scheme on 18 November 2022. We have identified that statements made by SIRA in reference to the recovery of statutory benefits from third parties are potentially capable of being misunderstood and we would like to take this opportunity to provide clarification.

The Hon. Anthony D'Adam asked a question about SIRA's capacity to recoup costs from third parties that may have contributed to a single-vehicle accident. For example, "potholes and road maintenance ... contributing in some circumstances to single-vehicle accidents involving motorcycles." In response, SIRA made the following statements:

- there is a mechanism for an insurer to seek recovery from a third party that has contributed to an accident,
- SIRA has a mechanism to ensure that insurers seek recovery of costs, so it is not borne by the CTP scheme where others should bear the costs, and
- expectations for recovery of costs are set out in the SIRA Motor Accident Guidelines (the **Guidelines**).

We wish to clarify that SIRA's comments should be understood as broader statements in relation to the recovery of costs from all parties that play a role in the accident.

There is no express right or power in the *Motor Accidents Injuries Act 2017* (the **Act**) for an insurer to recover payment of statutory benefits through contributions to the accident by third parties. However, the Act does recognise the entitlement of insurers to seek third party contributions in limited circumstances:

- recovery for the payment of statutory benefits from a "relevant insurer" (section 3.2)
- recovery of contributions in relation to liability for damages from a third party (section 5.6).

Similarly, SIRA's reference to the Guidelines should also be read as a general expression of the function of the Guidelines in supporting the administration of the CTP scheme through the establishment of clear processes and procedures, scheme objectives, and compliance requirements.

We hope that this clarification assists in alleviating any misunderstanding that may have resulted from SIRA's statements.

If you have any queries, please do not hesitate to contact Dr Petrina Casey.

Sincerely,

Dr Petrina Casey
Executive Director
Motor Accident Insurance Regulation

1 March 2023