

**INQUIRY INTO 2018 REVIEW OF THE WORKERS  
COMPENSATION SCHEME**

**Organisation:** State Insurance Regulatory Authority

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# Submission to the Legislative Council Standing Committee on Law and Justice: second review of the Workers Compensation and Motor Accidents Schemes

State Insurance Regulatory Authority

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# Contents

- 1. Context.....3
- 2. Introduction..... 4
- 3. SIRA Background & Overview ..... 4
- 4. Previous Scheme Reviews and progress on recommendations ..... 6
  - 4.1 Workers Compensation Scheme..... 6
  - 4.2 Motor Accidents Scheme ..... 9
- 5. Update on CTP Scheme.....10
- 6. Update on Workers Compensation Dispute Resolution.....14
- 7. Conclusion ..... 15

# 1. Context

The *State Insurance and Care Governance Act 2015* (SICG Act) designates the Legislative Council's Standing Committee on Law and Justice as the committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:

- (a) Workers' Compensation Scheme
- (b) Workers' Compensation (Dust Diseases) Scheme
- (c) Motor Accidents Scheme
- (d) Motor Accidents (Lifetime Care and Support) Scheme.

In exercising this function, the Committee must report to the House at least once every two years in relation to each Scheme. It is not authorised to investigate particular compensation claims.

The Committee has advised that it has resolved that the 2018 review of the Compulsory Third Party (CTP) insurance scheme will focus on the following aspects of the new scheme:

- whether it is achieving the NSW Government's stated objectives of:
  - increasing the proportion of benefits provided to the most seriously injured road users
  - reducing the time it takes to resolve a claim
  - reducing opportunities for claims fraud and exaggeration; and
  - reducing the cost of green slip premiums
- whether there has been a reduction in claims frequency since 1 December 2017 and if so, the projected impact on premiums
- the impact of the new profit normalisation and risk equalisation mechanisms in controlling insurer profits
- the effectiveness of the new CTP Assist and Dispute Resolution Services for statutory benefits claims
- the impact of the new minor injury definition, including on reducing fraudulent and exaggerated claims
- the impact of the changes on minor physical and psychological injuries
- the return to work and recovery outcomes of the new statutory benefits scheme; and
- the impact of the new reporting obligations on insurers which require them to report all new claims in real time to SIRA.

The Committee has also advised that it has resolved that the 2018 review of the Workers Compensation Scheme will focus on:

- the feasibility of a consolidated personal injury tribunal for CTP and workers compensation dispute resolution, as per recommendation 16 of the committee's first review of the Workers Compensation Scheme, including where such a tribunal should be located and what legislative changes are required; and
- recommending a preferred model to the NSW Government.

## 2. Introduction

The State Insurance Regulatory Authority (SIRA) welcomes the opportunity to make a submission to the Committee's second reviews of the Workers Compensation and Motor Accidents Schemes since the commencement of the SICG Act.

SIRA understands the Committee will be conducting these two reviews concurrently. In that context, this submission is a combined SIRA submission to both reviews.

## 3. SIRA Background & Overview

SIRA was established on 1 September 2015 through the *State Insurance and Care Governance Act 2015*. SIRA aims to ensure people who suffer injury or loss are supported, and insurance is affordable, well managed and sustainable.

SIRA is a statutory body constituted under section 17 of the *State Insurance and Care Governance Act 2015*. It is governed by an independent Board.

SIRA is an agency within the Finance Services and Innovation cluster. Its staff are employed by the the NSW Department of Finance, Services and Innovation (DFSI).

SIRA regulates workers compensation insurance and related activities, motor accidents CTP insurance and home building compensation insurance in NSW. It also provides some independent dispute resolution services.

SIRA approves premium, licensing and policy frameworks for insurers, effectively supervises insurers, and monitors the financial solvency and performance of the three abovementioned compulsory insurance schemes.

SIRA has a strong role to play in funding, promoting and informing injury prevention in relation to the schemes it regulates. SIRA also has specific functions within the Lifetime Care and Support Scheme and the Dust Diseases Scheme.

SIRA advances the wellbeing and confidence of the people and businesses of NSW through sustainable insurance and support systems, so they can actively engage in the economy and society.

There are certain risks in our community - like motor vehicle accident injuries, injuries at work, and home building company insolvencies - that if left unmanaged will erode wellbeing and confidence. As a result, NSW has compulsory insurance and support systems that address these risks.

As a regulator, SIRA's purpose is to ensure that these insurance and support systems are easy to deal with and deliver protection, entitlements and good outcomes, at an affordable price, in a sustainable way.

SIRA's customers include:

- motor vehicle owners and road users
- those injured in motor vehicle accidents or while working
- the families of those injured or who have lost their lives in motor vehicle accidents or while working
- compulsory third party (CTP) motor accident insurance policy holders
- workers and employees
- employers; and
- builders and homeowners participating in the home building compensation scheme.

## 4. Previous Scheme Reviews and progress on recommendations

In 2016, the Law and Justice Committee conducted its first reviews of the Workers Compensation Scheme and the Motor Accidents (CTP) Scheme. The section below provides a high-level progress update on recommendations directed to SIRA.

### 4.1 Workers Compensation Scheme

The Committee's report on its first review of the Workers Compensation Scheme included 26 recommendations for SIRA, icare and the Government. The Government provided its response to the Committee's report in September 2017, in which it noted its support, or support in principle, for all recommendations, and outlined its commitment to implementation of the recommendations.

Of the 26 recommendations, recommendations 2, 3, 5, 9, 10, 11, 15 and 18 were directed to SIRA.

An update on action against each of these recommendations is set out below.

*Rec. 2 – That SIRA and icare collect clearer data regarding the circumstances in which an injured worker returns to work and maintain statistics in relation to that worker for at least 12 months following their return to work, and that the return to work data specifically identify workers who have returned to work for insignificant periods or have had their benefits terminated for a reason other than return to work.*

SIRA is working on collecting clearer and more comprehensive data on return to work. For example, SIRA's *Workers compensation system annual performance report* now describes and analyses return to work using three methodologies:

- Work status measure – this methodology uses the work status of a worker at a point in time (4, 13, 26 weeks). It is reported by insurers to SIRA and includes information on whether or not a worker has returned to work in either suitable duties or pre-injury duties, or has not returned to work and ceased payments for other reasons such as retirement.
- Cessation of benefits measure – this methodology uses cessation of benefits at a point in time (4, 13, 26 weeks). It was used as the primary RTW measure in the past, including the 2014/15 Workers Compensation System Performance Report. This measure is not sensitive to those who have ceased benefits for reasons other than returning to work. SIRA has undertaken an assessment of the validity of this measure and is working to replace this measure with more informative data from the work status measure in future.

- Safe Work Australia and independent return to work survey benchmarks sourced from the independent Safe Work Australia 2016 RTW survey (Australia and New Zealand).

SIRA is actively participating in work to improve measurement of return to work at a National level under the auspices of Safe Work Australia. This includes contributing to enhancement of the independent Return to Work Survey and development of a National Return to Work Strategy including National data reporting and benchmarks.

SIRA has also begun publishing a monthly dashboard on its website that includes return to work rates across the NSW workers compensation system.

*Rec. 3 That SIRA develop a guideline for use by scheme agents which outlines how rehabilitation services should be utilised during the case management process.*

*Rec. 5 That SIRA issue a guidance note explaining how the new Guidelines for claiming workers compensation operate with respect to s 60(2A) of the Workers Compensation Act 1987*

*Rec. 9 That SIRA amend the Guidelines for claiming workers compensation so that injured workers are provided with any supporting documents relevant to a work capacity decision in real time or at pre-determined stages throughout the life of a claim, rather than only as attachments to a work capacity notice*

*Rec. 18 That SIRA amend the Guidelines for claiming workers compensation concerning s 38 of the Workers Compensation Act 1987 to set out an objective test for insurers to adhere to when determining the requirements for continuation of weekly payments after the second entitlement.*

SIRA is reviewing its range of guidelines and developing a comprehensive claims administration manual (CAM). A discussion paper was published in March 2018 and comments on the paper closed 25 May 2018. The CAM will address several aspects of the Law and Justice Committee's recommendations from its 2016 review, including:

- clarifying SIRA's expectations for worker access to their own personal and health information (Rec.9);
- requiring insurers to provide certain health and vocation reports to workers at pre-determined stages throughout the life of a claim. In addition, SIRA undertook a post implementation review of the *Guidelines for Claiming Workers Compensation* and publish the findings in December 2017. SIRA will enhance guidance that provides workers with information relevant to a work capacity decision, prior to them receiving a notice (Rec.9);
- clarifying the application of s38 and s38A of the *Workers Compensation Act 1987*, in relation to worker entitlements to weekly payments of compensation (Rec.18);



- providing guidance explaining how the new Guidelines for claiming workers compensation operate with respect to s 60(2A) of the *Workers Compensation Act 1987* (Rec.5); and
- providing additional guidance as to the use of rehabilitation services by insurers (Rec.3).

*Rec. 10 That SIRA expedite its stakeholder consultation process regarding the calculation of pre-injury average weekly earnings and develop a regulation on this issue as a matter of priority.*

SIRA has been advised that the Government will develop and introduce a legislative amendment to simplify the determination and application of Pre-Injury Average Weekly Earnings (PIAWE).

*Rec. 11 That SIRA issue a guidance note explaining the appropriate operation of s 44BC of the Workers Compensation Act 1987.*

The NSW Government has announced plans to reform the dispute resolution system. These reforms will change how work capacity decision reviews are conducted and will likely change the operation of s44BC of the 1987 Act. Following this SIRA will provide appropriate guidance to insurers and other participants (potentially in the Claims Administration Manual discussed above).

*Rec. 15 That the NSW Government introduce a single notice for both work capacity decisions and liability decisions made by insurers.*

SIRA has been advised that the Government will develop and introduce a legislative amendment to simplify insurer notification of their decisions to claimants by introducing a single notice.

In addition, in relation to recommendation 1 (*that icare provide more detailed information about how premiums are calculated*), SIRA has updated the *Market Practice and Premiums Guidelines* to promote transparency by insurers. The revised guidelines require each licensed insurer to have a premium calculator available online for their policy holders, as well as strict timeframes for insurers to provide premium and claims information to employers. There is a calculator available on the icare website.

The Committee has previously also made recommendations in relation to availability of data about the workers compensation system. SIRA has published data on the workers compensation system at <https://www.sira.nsw.gov.au/corporate-information/workers-compensation-reports>.

## 4.2 Motor Accidents Scheme

The Committee's report on its first review of the Compulsory Third Party (CTP) Insurance Scheme included eight recommendations for the Government and SIRA. The Government provided its response to the Committee's report in February 2017.

Out of the eight recommendations, four (recommendations 3, 4, 5 and 8) have been addressed by the Government through the introduction of the 2017 CTP reforms, which have resulted in the *Motor Accident Injuries Act 2017* (the MAI Act 2017).

An update on action against the remaining recommendations (1, 2, 6 & 7) is set out below.

*Rec. 1 That the State Insurance Regulatory Authority include the data solely for CTP scheme efficiency and the data for combined CTP and Lifetime Care and Support scheme efficiency in its annual report.*

As advised in the Government's response, it would not be appropriate to simply average the two figures to calculate a combined efficiency measure.

*Rec. 2 That the State Insurance Regulatory Authority finalise the new forms for requesting allied health services and case manager or rehabilitation provider services, as soon as practicable.*

SIRA has finalised the revised forms and guidance material for use by allied health professionals providing treatment services to CTP claimants. These are now available for use and being accepted by insurers and are available on SIRA's website.

*Rec. 6 That the NSW Government consider how journey claims are treated under any CTP scheme.*

The CTP Scheme continues to cover injuries caused by motor vehicles. People injured in a motor vehicle accident travelling to or from work will be covered by the CTP scheme. The new scheme has been expanded to provide benefits for up to six months regardless of fault.

*Rec. 7 That the State Insurance Regulatory Authority consult with the Motorcycle Council of NSW to consider consolidating the current five classifications of motorcycles in NSW into the following two classes- Learner Approved Motorcycle Scheme (LAMS) and non-LAMS.*

SIRA has been consulting with motorcycle representative groups and has provided data as requested and is awaiting options from these groups as to potential classifications.

## 5. Update on CTP Scheme

The objects of the MAI Act 2017 are:

- (a) to encourage early and appropriate treatment and care to achieve optimum recovery of persons from injuries sustained in motor accidents and to maximise their return to work or other activities,
- (b) to provide early and ongoing financial support for persons injured in motor accidents,
- (c) to continue to make third-party bodily insurance compulsory for all owners of motor vehicles registered in New South Wales,
- (d) to keep premiums for third-party policies affordable by ensuring that profits achieved by insurers do not exceed the amount that is sufficient to underwrite the relevant risk and by limiting benefits payable for minor injuries,
- (e) to promote competition and innovation in the setting of premiums for third-party policies, and to provide the Authority with a role to ensure the sustainability and affordability of the compulsory third-party insurance scheme and fair market practices,
- (f) to deter fraud in connection with compulsory third-party insurance,
- (g) to encourage the early resolution of motor accident claims and the quick, cost effective and just resolution of disputes, and
- (h) to ensure the collection and use of data to facilitate the effective management of the compulsory third-party insurance scheme.

The new CTP scheme has only been operating for a period of months and has not yet reached a stage of implementation where claim, premium, profit or other key trends could be expected to be reliably ascertained.

SIRA is actively monitoring the performance of the scheme and intervening as regulator as required. SIRA receives comprehensive data from insurers in close to real-time, including claim notifications. SIRA is also sharing key data with a number of stakeholders while conforming with SIRA's statutory obligations to protect privacy and confidentiality.

SIRA notes that there will be a number of further opportunities for review as the new CTP scheme is implemented. Section 11.13 of the MAI Act 2017 requires a statutory review of the scheme to be conducted as soon as practicable after three years from commencement of the MAI Act 2017. The statutory review is in addition to the reviews by the Legislative Council Standing Committee on Law and Justice at least once every two years as required by the *State Insurance and Care Governance Act 2015*.

Insights from the SIRA's early analysis aligning to the reform objectives are outlined below.

### **Reduced Premiums**

A key objective of the new CTP scheme is to reduce the cost of Green Slip premiums. In December 2017, the state-wide average was reduced by more than \$120 to an average of \$528 at the date of commencement of the reforms. The average premium is currently \$525.

The SIRA Board has established a CTP Premium Committee, as allowed for by the legislation, to advise the SIRA Board on premium setting Guidelines and other matters that impact premium.

### **Insurer profits**

The MAI Act 2017 provides SIRA with powers to contain insurer profits and equalise risk. SIRA employs two mechanisms to assist with the control of profits, the Risk Equalisation Mechanism (REM) and Transitional Excess Profit and Loss Mechanism.

The Risk Equalisation Mechanism (REM) is used to share the financial risk for passenger vehicles (e.g. sedans). The REM removes the likelihood of an insurer attracting too many high or low risk customers, by sharing the financial risks across all insurers. As a result, profits and losses from either end of the risk spectrum are more equally shared across insurers.

The Transitional Excess Profit and Loss Mechanism (TEPL) is used to recover insurers profits that exceed a certain threshold. Any excess profit recovered by SIRA can then be used to reduce future Green Slip costs.

### **Fraud Taskforce and Strikeforce Ravens**

The new scheme design reduces opportunities for claims fraud and exaggeration.

The new Scheme provides defined benefits for soft tissue and minor psychological injuries for up to six months and removes access to the common law system in these cases. This reduces the incentive and opportunity for fraudulent and exaggerated claims.

As well SIRA has been working closely with NSW Police to investigate and respond to alleged fraudulent behaviour in the CTP scheme. To date, detectives from Strike Force Ravens have arrested 18 offenders and laid over 160 charges totalling over \$13.5 million.

In addition, the MAI Act 2017 increased SIRA's investigative and prosecution powers. The Act includes increased penalties for fraudulent behaviour, including unmeritorious and exaggerated claims by service providers.

## Online Claim Submission

The SIRA online claim submission allows injured people to submit an electronic CTP claim, online, through the Service NSW website. It automatically matches the insurer of the vehicle at fault and sends the claim to that insurer. This innovation aligns with the Government's strategy to allow easy and fast access for injured people to begin their claims process.

## Minor Injury Review

SIRA has a robust framework in place to monitor implementation of the 2017 CTP scheme. This includes the engagement of two independent research institutions to conduct a file review. The independent file review will examine the first 1,000 claims with a focus on claims that are deemed 'minor' injury claims. This independent file review will follow claims for a two-year data collection period. It is envisaged that this framework will provide insights into:

- the injury management process in the 2017 CTP scheme
- the application of the minor injury threshold; and
- opportunities for data collection to improve ongoing scheme monitoring.

## Green Slip Check

The new Green Slip Check has been available for five months, saving motorists time when shopping around for the best deal on a Green Slip.

It is a fast, user-friendly, comparison tool that will also help SIRA improve services for motorists. Better data collection with the new tool also supports SIRA's regulatory role and encourages competition among insurers.

Number of people who entered vehicle information in the Green Slip Check (2018)	
January	254,988
February	250,325
March	338,833

The tool has been well received by NSW citizens with 95.5% of users rating the tool with a "thumbs up" (as at 30 May 2018).

## CTP Assist

CTP Assist is SIRA's multi-channel support service, providing personalised claims support, advice and information for injured people and other participants in the CTP scheme such as doctors and health professionals. SIRA's consultants routinely phone injured people three weeks, 10 weeks and 23 weeks after they have lodged a claim, to make sure they are getting the support they need. The same consultant calls each time to maintain a consistent connection with each claimant.

<b>For the three months to 31 March 2018, the CTP Assist team handled the following contacts with injured people in both schemes:</b>	
Injured people were helped by phone and digital channel.	13,285
Injured people were connected with an insurer.	795
Calls were made to ensure injured people were getting the treatment and support they needed.	8,797

### **CTP Refunds**

As at 1 May 2018, \$62.5 million has been refunded to 1.1 million of the 4.2 million NSW vehicle owners eligible for a refund. This figure is expected to rise following the community information media campaign which is continuing to have coverage throughout NSW

### **Legally represented claims for minor severity injuries**

Analysis undertaken prior to the 2017 reforms found that the frequency for legally represented claims in relation to minor severity claims increased by 206 per cent between financial year 2007/08 and 2015/16, and 25 per cent between 2014/15 and 2015/16.

As a result of actions by SIRA including, Strikeforce Ravens and legal cost regulation changes, the frequency for legally represented claims for minor severity claims has decreased by 3.4 per cent between 2015/16 and 2016/17, reversing the previous trend.

### **Scheme performance**

SIRA is monitoring end to end performance closely to ensure that the Government's objectives are achieved and the scheme continues to be fair and affordable.

SIRA publishes key data on the CTP Scheme at <https://www.sira.nsw.gov.au/corporate-information>.

### **Motor Accidents dispute resolution**

SIRA provides alternative to court dispute resolution services to injured claimants and insurers across a number of personal injury compensation schemes including the NSW CTP Scheme.

Under the MAI Act 2017 and the *Motor Accidents Act 1999* (1999 Act), SIRA hosts independent dispute resolution decision-makers. The decision-makers are statutorily independent in that they are not subject to control and direction by the Principal Claims Assessor, the Authority or any Public Service employee with regard to any of the decisions that affect the interests of the parties to the merit review, medical assessment or claims assessment concerned.

A key role under the MAI Act 2017 and the 1999 Act, is the Principal Claims Assessor (PCA). The PCA is an independent decision-maker, appointed by the NSW Minister for

Finance, Services and Property. The PCA exercises statutory powers under the *MAI Act 2017* and the *1999 Act* including leading, mentoring, developing and advising panels of independent Claims Assessors appointed by SIRA. The PCA may exercise all the functions of Claims Assessors under those Acts.

The PCA is subject to the general control and direction of the Chief Executive of SIRA, but is an independent decision-maker who, like all Claims Assessors and dispute resolution decision makers, is not subject to control or direction by the Chief Executive, SIRA, or by any public service employee with regard to any decisions that affect the interests of the parties to an assessment.

The MAI Act 2017 required SIRA to establish a new Dispute Resolution Service (DRS) for the resolution of all disputes arising in CTP claims under the MAI Act 2017. The new dispute resolution model provides for disputes to be resolved independently, flexibly, fairly, cost effectively and quickly. This new service commenced on 1 December 2017.

SIRA has recruited panels of independent decision-makers to determine disputes in the new CTP scheme and has also launched an online portal for CTP claimants who seek to lodge disputes using one simple online process for any dispute type. Disputes can also be lodged on paper, in person, by phone, post, email DX or delivery.

As noted, the new CTP scheme is in its early months and, to date, there have been less than 20 disputes lodged. Some of these initial disputes have already been resolved and it is expected the first decisions made by DRS decision-makers determining disputes will be issued by June 2018.

## 6. Update on Workers Compensation Dispute Resolution

In March 2017, the Standing Committee on Law and Justice made a number of recommendations to improve workers compensation dispute resolution. In its September 2017 response to the Committee's report, the NSW Government committed to reviewing workers compensation dispute resolution and the Department of Finance Services and Innovation (DFSI) Central Policy Office (CPO) recently undertook the review on behalf of the Minister for Finance, Services and Property, the Hon Victor Dominello MP.

DFSI CPO issued a discussion paper in December 2017 and conducted information sessions with interested stakeholders in January 2018. Consultation closed on 16 February 2018 with 38 responses received.

On 4 May 2018, following completion of the review and analysis of the feedback received, Minister Dominello, announced plans to reform the workers compensation dispute resolution system to improve the experience of injured workers by bolstering

support services, simplifying claim process and removing duplication. The planned reforms include;

- allowing the Workers Compensation Commission (WCC) to undertake all dispute resolution, including Work Capacity Decision Reviews, once an internal review is completed by an insurer, removing these functions from SIRA and the Workers Compensation Independent Review Office (WIRO);
- directing all enquiries and complaints from injured workers to WIRO for resolution following initial contact with their insurer;
- directing all enquires and complaints from employers and other system participants to SIRA for resolution; and confirming that
- WIRO will continue to administer the Independent Legal Aid and Review Service (ILARS), providing legal support to injured workers under a revised delegation from SIRA.

The planned reforms will require legislative amendments to make the Workers Compensation Commission the only workers compensation dispute resolution body. To that end a Bill is expected to be introduced to Parliament by Minister Dominello in coming months.

These proposed reforms would remove SIRA's direct role in workers compensation dispute resolution.

SIRA is working with the WIRO and the WCC to undertake implementation planning to ensure that, pending legislation being passed by the Parliament, the reforms can be implemented with minimal disruption to injured workers, employers and agencies supporting the system. The proposed changes would be expected to be in place by early 2019, pending passage of legislation and appropriate consultation and updating of regulations and guidelines.

Further information including Minister Dominello's media release and fact sheet is available at the DFSI Consultation Outcomes page at [http://www.financeconsultations.nsw.gov.au/consultations/workers-compensation-dispute-resolution-process/\\_nocache](http://www.financeconsultations.nsw.gov.au/consultations/workers-compensation-dispute-resolution-process/_nocache)

The SIRA website will be updated as planning and implementation tasks progress at <https://www.sira.nsw.gov.au/>

Stakeholders are encouraged to register their interest in receiving regular updates by emailing [disputereforms@sira.nsw.gov.au](mailto:disputereforms@sira.nsw.gov.au).

## 7. Conclusion

SIRA would be pleased to provide further information as required by the Committee