

**Submission
No 10**

INQUIRY INTO 2018 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: Insurance Council of Australia

Date Received: 20 June 2018

20 June 2018

The Hon Natalie Ward MLC
Chair, Standing Committee on Law and Justice
NSW Legislative Council
Parliament of New South Wales
6 Macquarie Street, Sydney
NSW 2000

By email: law@parliament.nsw.gov.au

Dear Ms Ward

COMPULSORY THIRD PARTY INSURANCE SCHEME 2018 REVIEW

The Insurance Council of Australia¹ (ICA), on behalf of NSW licensed CTP insurers, is pleased to provide a submission to the NSW Legislative Council Standing Committee on Law and Justice (the Committee) review of the NSW Compulsory Third Party (CTP) insurance scheme (the Review).

In March 2016, the NSW Government commenced an extensive review of the NSW CTP scheme operating under the *Motor Accidents Compensation Act 1999* (the 1999 Scheme) with a view to addressing what were seen as growing problems. These included the disproportionate amount of premiums paid to benefits given, the claims process, increasing costs and a significant increase in fraudulent and exaggerated claims which were ultimately reflected in higher premiums.²

In March 2017, the *Motor Accident Injuries Bill 2017* (the MAI Act) containing far-reaching reforms was passed. The MAI Act (the 2017 scheme) commenced on 1 December 2017, applying to people injured in motor accidents from that date.

As a result, there is currently very little claims experience to draw upon in responding to the Committee's Terms of Reference. It is therefore important to remain mindful that drawing any

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$44.9 billion per annum and has total assets of \$118.6 billion. The industry employs approximately 60,000 people and on average pays out about \$132 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

² [State Insurance Regulatory Authority \(SIRA\)](#), *On the road to a better CTP scheme*, March 2016 Catalogue no.SIRA08055.

conclusions about the operation of the 2017 Scheme would be premature and that some care is required when making comparisons between the 1999 and 2017 Schemes as they are not only fundamentally different by design, they are at very different stages of their evolution.

As such, the comments in this submission are based on the limited evidence currently available and the characteristics of the Scheme itself.

Response to Terms of Reference

The Committee has specified various aspects of the Scheme for consideration as part of its Review which are outlined and numbered below for ease of reference:

1. Whether the Scheme as a whole is meeting its stated objectives of:
 - a. increasing the proportion of benefits provided to the most seriously injured road users.
 - b. claim resolution times.
 - c. fraud and exaggeration.
 - d. premium costs.
2. Claim frequency.
3. Insurer profits.
4. CTP Assist and Dispute Resolution Service.
5. Impact of the new minor injury definition on fraud.
6. Impact of the changes on minor physical and psychological injuries.
7. Return to work and recovery outcomes.
8. New reporting obligations on insurers.

For the reasons previously outlined, the ICA's view is that the 2017 Scheme's recent introduction precludes any substantial responses to the terms of reference, in particular items 5 and 6. Our response is tailored accordingly.

Whether the 2017 scheme is achieving the NSW Government's stated objectives of:

- a) increasing the proportion of benefits provided to the most seriously injured road users**

The ICA's expectation is that many features of the 2017 Scheme's design should increase the proportion of benefits provided to the most seriously injured road users. The elements expected to have the most impact are:

- The availability of lifetime treatment and care for more seriously injured people who are not wholly or mostly not-at-fault (NAF).
- The Availability of defined statutory benefits for six months, regardless of fault. This will enable seriously injured people struggling to establish their NAF status to obtain benefits while liability is still under investigation, which may not have been available under the 1999 Scheme. (For example, the ICA expects that rural and regional road users will benefit from this change as they are more likely to experience poor road conditions and

wildlife collisions. These drivers consequently have higher rates of representation in single vehicle accident rates where NAF status is harder to establish).

- An expected reduction of the number of common law claims for minor injuries, with consequent reduction in claim friction related costs and administration expenses.
- Clearer claim pathways and the use of time limits in the 2017 Scheme are likely to reduce costs associated with the handling of less serious injury claims;
- An expected reduction in the number of claims where liability is disputed, with associated reduction in claim friction related costs and administration expenses.

b) reducing the time it takes to resolve a claim;

As industry data and SIRA publications have noted, resolution times under the old Scheme were lengthy with many claimants waiting between 3 and 5 years for their claim to be resolved.³ Claims for minor injuries were taking at least 18 months to be finalised, with legal representation rates for these doubling over 2016-2017.⁴

A number of the features of the 2017 Scheme potentially operate to help reduce claim resolution times.

The MAI Act specifies timeframes for both the making and resolving of minor injury claims as well as claims made by the person at-fault or mostly at-fault in causing the accident. For both types of claims, benefits are available for a period of up to 26 weeks from the date of the accident after which time the claim is taken to have resolved. To date, the minor injury and at-fault claims are the only claims insurers have any experience of resolving.

For all other claim types, namely statutory benefit claims for people NAF who have suffered more than a minor injury and damages claims, it is too early to express a view on the speed at which they resolve under the MAI Act.

Based on their very limited experience to date of resolving minor injury and at-fault statutory benefit claims, insurers have made the following observations:

- Statutory benefit design and claims handling practices developed to deliver benefits result in a closer and more constructive relationship with the injured person, assisting in the overall achievement of return to health goals which should result in claims resolving faster.
- The payment of weekly statutory benefits to earners unable to work their usual hours during their recovery helps to minimise the disruption and distress of the accident, contributing to recovery and resolution of the claim.
- The 'minor injury' threshold is new and making decisions on some claims will necessarily involve disputation to clearly define the boundaries of the minor injury claim group. This

³ SIRA, *On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW*, 2016, Catalogue no. SIRA08127.

⁴ Minister for Finance, Services and Property media release, *Green Slip overhaul a step closer*, 30 March 2017.

may add some delay and complexity to resolving smaller claims at this stage of the new Scheme's development. We expect this situation will improve over time with the establishment of clearer boundaries around what is a minor injury and what is not.

c) reducing opportunities for claims fraud and exaggeration

Fraud and exaggeration was driving up insurance premiums in the 1999 Scheme. Even prior to the introduction of the 2017 Scheme this was being addressed and dealt with by a combination of NSW Police Strike Force Ravens (enabled by a collaboration between Industry, SIRA and NSW Police), revision of the legal costs regime, improved insurer claims handling practices and the benefit design of the 2017 Scheme.

As with all insurance lines, the potential for fraud and exaggeration are always present. Improved data and reporting in the 2017 Scheme will enable SIRA and insurers to identify undesirable behaviours and/or trends early.

We are optimistic at this stage that the 2017 Scheme will reduce opportunities for claims fraud and exaggeration.

d) reducing the cost of green slip premiums

A core objective of the 2017 Scheme was to decrease the cost of CTP insurance for NSW motorists. This objective has been in very large part been realised, with SIRA reporting average premiums falling by 18.8% from March 2017 to March 2018.⁵

Whether there has been a reduction in claims frequency since 1 December 2017 and if so, the projected impact on premiums

There are new and very different rules around making claims in the 2017 Scheme. In the 2017 Scheme, a claim for statutory benefits should be made as soon as possible but within three months of the date of the accident (there is some limited flexibility around this time frame). However, a claim for damages can now be made up to three years after the accident and for people who do not exceed the 10% permanent impairment threshold, making a claim for damages is prevented until at least 20 months after the accident.

A consequence of the timeframes that apply to the different claim types is that it will be many years until claim frequency is understood, reliably measured and trends identified.

As the Committee would be aware, the full extent of a personal injury can take time some time to manifest and recovery/rehabilitation also takes time which results in a necessary delay between the accident and the reliable calculation and payment of the injured person's losses, past and

⁵ SIRA Green Slip scheme quarterly insights; January to March 2018; p. 11

future. It is this characteristic of the Scheme that, in the most part, is responsible for its long-tail nature.

As a result, at this stage, it is too early to meaningfully assess the impact of the 2017 Scheme on claims frequency, and much too early to consider the further projected impact on premiums.

The industry's six months of experience of claims for statutory benefits suggests that frequency is falling within the lower end of the anticipated range. However, the development of these claims over the coming years and the rate of lodgement of damages claims following on from the lodgement of statutory benefit claims will be important to any consideration of a reduction in premiums related to claim frequency.

The impact of the new profit normalisation and risk equalisation mechanisms in controlling insurer profits

The 2017 Scheme's Excess Profit and Loss Adjustment (EPLA) mechanism will prevent insurers from making profits in excess of what is considered reasonable by the community (as represented by SIRA). The ICA notes that the EPLA mechanism operates by preventing excess profit in aggregate rather than at the insurer level: it operates on the industry level. To date, the EPLA mechanism has not been used and remains in the development and refinement stage. As such, consideration of the impact as a control on insurer profits is impossible.

The ICA observes the Risk Equalisation Measure (REM) tool does not serve to equalise profits but rather, *redistributes* profit among insurers. It makes large disparities between insurer profits less likely.

The ICA and SIRA are collaborating on an ongoing basis on the EPLA's development and refinement.

The impact of the new minor injury definition, including on reducing fraudulent and exaggerated claims;

The ICA recognises the considerable effort of all stakeholders in developing the minor injury definition. We also recognise that the term 'minor Injury' does not acknowledge the significant disruption and distress which individuals involved in a motor accident can experience. To this extent, the use of this term is unfortunate as it is perceived by some members of this group as somewhat trivialising of their experience of their motor accident.

Nonetheless, the definition is a critical design feature of the 2017 Scheme and its successful operation. The threshold is fundamental to ensuring that more support is available to be given to those who are seriously injured.

As the minor injury definition is central to the 2017 Scheme, our expectation is that its impact will resonate in the outcomes in a range of areas. This includes costs, disputes, claim frequency,

resolution rates and fraudulent and exaggerated claims. With regard to the latter, as noted above, at this stage it is difficult to gauge the impact of the minor injury definition on fraudulent and exaggerated claims.

However, we should note that SIRA has been working with stakeholders to develop resources to educate and assist the road using community in understanding the definition of a minor injury and the impact that it has on a claim and on working toward recovery.

The return to work and recovery outcomes of the new statutory benefits scheme

We are optimistic about the potential for improved return to work and recovery outcomes, with the caveat that it is too early to make a meaningful assessment.

We consider that a number of scheme features offer significant potential for improved outcomes, for example, earlier and periodic payments of income loss benefits will reduce the disruption and stress associated with injury and time off work. As the issue of liability is not critical to eligibility for benefits in the first six months for the claim, payments can start earlier and investigations on liability can continue in the background without interrupting the flow of benefits. Earlier treatment of injuries may result in a faster and more sustainable return to work, as well as an improved claim experience. The combination of ongoing payments and a faster return to work is also likely to reduce the level of disruption experienced by the individual and their family.

Another change likely to improve work and recovery outcomes is the design of the statutory claim process which requires the injured person and the insurer to remain in close contact to progress the claim and resolve any issues in a timely manner. A closer and more collaborative relationship between the parties will likely lead to more timely access to treatment and rehabilitation, and, we believe, better outcomes overall. In the Government's 2016 CTP reform consultations, medical experts identified a claimant's direct relationship with their own insurer as important because it reduces claimant confusion and claimants feeling aggrieved if the insurer enquires for more details of their injuries.⁶

Section 3.41 of the MAI Act also includes provision for SIRA to provide vocational education and return to work support to injured people with the aim of improving return to work outcomes.

Attachment 1 provides more specific case studies of how the 2017 Scheme can assist in delivering better work and recovery outcomes for claimants.

⁶ John Walsh Centre for Rehabilitation Research, *Options for reforming Green Slip insurance in NSW*, Consultation submission, 24 May 2016, p. 3.

The impact of the new reporting obligations on insurers which require them to report all new claims in real time to SIRA

The capture and reporting of data has been a focal point in the 2017 Scheme implementation process.

Comprehensive, timely and accurate data supports optimal outcomes as it provides for the identification of undesirable trends and timely remediation along with fairer pricing of policies. In addition, greater insurer access to information enables more efficient and accurate claims handling and fraud detection and deterrence. The 2017 Scheme also has the advantage of consistent definitions that apply across the industry which we anticipate will continue to be refined, in collaboration with SIRA.

Whilst there have been many improvements in data collection and reporting, the allocation of resources on the part of insurers has been significant. It remains unclear at this stage whether the benefits created by SIRA's requirement for 'real time' data in a long-tail scheme such as CTP outweigh the expense incurred by insurers in meeting this requirement. Insurers continue to explore the costs and benefits of this approach with SIRA.

More generally, experience so far has demonstrated that, as expected, operational efficiency is lessened as a result of implementation and transition. However, once the technology stabilises and data requirements are clarified, we anticipate that some of the current complications will abate.

As insurers and SIRA adapt, the expectation is that the new reporting obligations and data available should generate more insights into the Scheme's performance and efficiencies. We continue to work closely with SIRA on this scheme component.

Additional comments – *Motor Accident Injuries Act 2017 (NSW)*

The 2017 Scheme reforms are a positive step in terms of meeting the policy objectives of the Scheme.

As with any reform of this scale, there are areas of the MAI Act that require additional legislative clarification and/or guidance for Scheme participants. We note that this to be the case with regard to the interplay between the CTP and workers' compensation schemes.

We look forward to working with Government and SIRA to ensure necessary refinements to the 2017 Scheme are made to promote the Scheme's efficient operation and to maximise the benefits of the model for the community.

Conclusion

The ICA appreciates the opportunity to contribute to the Review.

As the 2017 Scheme is in its early stages, it is too early to make any definitive statements about the Scheme's performance or make recommendations for change beyond the need for additional clarification in some areas. However, we consider that the design elements explored in this submission that are key features of 2017 Scheme are likely to see benefits focussed on the most seriously injured, and improve outcomes for all claimants and motorists more broadly.

Should you have any questions or require any further information, please do not hesitate to contact Fiona Cameron, General Manager, Policy, Consumer Outcomes, on _____ or _____ at _____

Yours sincerely

Robert Whelan
Executive Director & CEO

Encl.

Case studiesⁱ

Fast access to benefits

Margaret was seriously injured in December 2017 when her motorcycle collided with a ute.

Her mother did not lodge a claim until January 2018 because a lengthy police investigation had to be conducted. Unfortunately, this produced no details of the other vehicle involved.

Liability could not be established therefore Margaret had to claim against her own insurance policy. Eventually, her status was determined to be 'at fault'.

Under the 2017 Scheme, Margaret was eligible to receive all the medical treatment, rehabilitation and care she needed, along with weekly benefits for 26 weeks. If Margaret's claim was made under the 1999 Scheme, her entitlement would have been limited to \$5,000, being the cap on at-fault benefits.

Further, due to the 2017 Scheme requiring closer insurer involvement and support, Margaret was accepted into the Lifetime Care and Support Scheme in March 2018.

The 2017 Scheme placed her insurer in a position to cover all medical and treatment costs until this date. Rather than representing a large, insurmountable obstacle, liability could be addressed in the background without delaying Margaret's recovery or compounding her financial stress during this difficult period.

Seriously Injured at-fault driver

Brad suffered extensive multiple fractures along with other life-threatening injuries after losing control of his vehicle in wet weather.

The insurer has paid out over \$300,000 including over \$40,000 in lost income payments to help Brad with his recovery.

Support of this kind would not have been available to Brad under the 1999 Scheme as a driver at-fault could only recover in total \$5000 in payments for medical expenses and lost income.

ⁱ Pseudonyms have been used.