

**Submission
No 2**

INQUIRY INTO 2018 REVIEW OF THE LIFETIME CARE AND SUPPORT 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 Lifetime Care and Support Scheme

State Insurance Regulatory Authority

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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.

2. Introduction

The State Insurance Regulatory Authority (SIRA) welcomes the opportunity to make a submission to the Committee's second review of the Lifetime Care and Support Scheme (LTCSS) since the commencement of the SICG Act.

3. SIRA Background & Overview

SIRA was established on 1 September 2015 through the SICG Act. 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 and NSW Government agency constituted under section 17 of the SICG Act. 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 administers legislation and regulations and holds insurers accountable for compliance with conduct, claims management, premium, prudential and other legislative and licence condition requirements. SIRA also administers specific

regulatory obligations of employers, vehicle owners, and service providers in the statutory schemes.

SIRA also funds, promotes and informs injury prevention in relation to the schemes it regulates. SIRA also has specific functions within the LTCSS and the Dust Diseases Scheme.

4. SIRA's role in the Lifetime Care and Support Scheme

About the Lifetime Care and Support Scheme

The LTCSS was established under the *Motor Accidents (Lifetime Care and Support) Act 2006* to pay for and coordinate long-term treatment, rehabilitation and care for people who have been injured in a motor accident in NSW, regardless of who was at fault. The LTCSS is operated by the Lifetime Care and Support Authority (LTCSA), which is managed by icare.

The LTCSS is funded through levies on Green Slip premiums collected by CTP insurers and paid into a statutory fund administered by the LTCSA.

SIRA's regulatory functions in the Scheme

Directions to CTP insurers

Section 8 (3) of the *Motor Accidents (Lifetime Care and Support) Act 2006* provides that SIRA may direct the licensed CTP insurer for a person's CTP claim to make an application for the person to become a participant in the LTCSS, and the insurer must comply with such a direction.

SIRA may be prompted to direct an insurer to make a LTCSS application without the claimant's authorisation if it were concerned that the claimant's best interests were at risk. This provision also supports the intention that the cost of injured people who may be entitled to be participants in the LTCSS is funded from the Fund Levy rather than the CTP insurer premium. CTP insurers are not able to collect premium for this purpose.

To date, SIRA has not directed a CTP insurer to make an application to the LTCSS on behalf of a claimant.

Dispute resolution

For disputes under lifetime care and support legislation, SIRA's Dispute Resolution Service (DRS) has direct interactions with the LTCSS under an administrative arrangement as follows:

For disputes about whether an accident is a "motor accident injury":

1. An initial decision is made by LTCSA personnel;
2. If disputed, the matter is referred to the Principal Claims Assessor of SIRA to convene a panel of three SIRA Claims Assessment and Resolution Service (CARS) Claims Assessors to make a binding determination on the issue.

For disputes about "treatment and care needs":

1. An initial decision is made by LTCSA personnel;
2. If disputed, the matter is referred to a Disputes Assessor in LTCSA;
3. If still unresolved, the matter is referred to a senior LTCSA person to determine if the relevant legislative gateway tests are met, and if so, a Review Panel of three LTCSA Dispute Assessors is convened to determine the dispute. SIRA provides administrative support for the Panel.

For disputes about "medical eligibility" to the scheme:

1. An initial decision is made by LTCSA personnel;
2. If disputed, the matter is referred to an Assessment Panel of three Disputes Assessors in LTCSA;
3. If still unresolved, the matter is referred to a senior LTCSA person to determine if the relevant legislative gateway tests are met, and if so, a Review Panel of three LTCSA Dispute Assessors is convened to determine the dispute. This process is overseen by the Proper Officer of SIRA and SIRA provides administrative support for the Panel;

There was one "motor accident injury" application in 2017-18. As at 30 June 2018, it was being considered by the CARS Panel, but had not been finalised;

There are on average about 8 medical "treatment and care" or "eligibility" applications referred to SIRA's Dispute Resolution Services per year. However, there was only one matter finalised in 2017-18, and this was in respect of a treatment and care dispute.

One other matter was accepted and referred to a Medical Review Panel. It resulted in the same outcome as the original decision, being that the treatment was causally related to the motor accident but was not reasonable and necessary.

Average timeframes for “motor accident injury” applications to date are 220 days. For medical treatment and care or eligibility disputes the average timeframes are approximately 16 calendar days for matters that are dismissed and about 138 calendar days for those referred to a Review Panel.

5. Previous scheme reviews and progress on recommendations

In 2017, the Standing Committee on Law and Justice conducted its first review of the LTCSS. The Committee’s Final Report included 5 recommendations for iCare and the Government. The recommendations were:

Recommendation 1

That the State Insurance Regulatory Authority annual reports include details on a transfer strategy, which should:

- a) assess claims management by insurers prior to transfer;*
- b) publish all results of mismanagement by insurers; and*
- c) publish the quantum recovered by insurers.*

Recommendation 2

That the Lifetime Care and Support Authority continue to explore and report on the feasibility of providing participants with periodic sums for treatment and care needs, or for the purchase of low cost items, for the purpose of promoting greater self-management of care.

Recommendation 3

That the Lifetime Care and Support Authority work with regional hospitals and cross border hospitals to facilitate a better understanding of the Lifetime Care and Support scheme and its application to those patients who have been catastrophically injured in a motor vehicle accident.

Recommendation 4

That the NSW Government consider providing iCare with legislative power to compel insurers to provide the information it needs to make decisions regarding scheme eligibility and treatment and care needs.

Recommendation 5

That the NSW Government put a legislative limitation on the number of times that a party can seek to dispute a decision by the Lifetime Care and Support Authority to not accept an injured person into the scheme.

The NSW Government provided its response to the Committee's report in February 2018, in which it noted its support, or support in principle, for all 5 recommendations, and outlined its commitment to implementation of those recommendations.

Two of the recommendations required action by SIRA. In relation to Recommendation 1, the NSW Government response was:

Supported in Principle - The State Insurance Regulatory Authority (SIRA) will work with icare to ensure that claimants are transferred smoothly to the Lifetime Care and Support Scheme. The new Motor Accident Injuries Act 2017 gives SIRA strong powers to publish information about licensed insurers, including information about the level of compliance with the Act, as well as Supporting regulations and legislative instruments. SIRA will continue to publish relevant information on the operation and performance of the Scheme"

In relation to Recommendation 4, the NSW Government response was:

Supported in Principle - The Government welcomes any change that supports prompt and accurate eligibility decision-making and reduces delays that could cause distress to injured persons and their families.

The Motor Accident Injuries Act 2017 currently provides SIRA with the ability to make Guidelines in relation to matters which are required by the Act. The Guidelines explain the regulation of CTP insurance premiums and set SIRA's expectations of insurers when fulfilling their obligations.

SIRA has indicated it will include obligations on insurers to provide certain information to icare, including contacting icare prior to potential adverse decisions being made, in the Motor Accidents Guidelines. It will also investigate any other additions to the Guidelines which may be necessary to ensure that delays are reduced so that icare has suitable and timely information required to make effective decisions."

Progress on implementation

Recommendation 1

- In progress
- SIRA is working with icare and ensuring that the insurers will provide a smooth transition for the injured person from an insurer to the LTCSS (managed by icare). The work SIRA is leading with icare includes customer experience mapping, system changes for both icare and SIRA and monitoring, reporting and compliance actions with insurers.
- SIRA will begin publishing information on arrangements to provide a smooth transition for the injured person from an insurer to the LTCSS in its annual reports commencing with the 2017-18 report.

Recommendation 4

- Completed.
- SIRA has published guidelines under the *Motor Accidents Compensation Act 1999* that require the CTP insurer to cooperate with the LTCSA where appropriate to ensure the injured person's treatment, rehabilitation and care are not unduly impacted by providing medical information to the Authority as soon as possible when requested.
- SIRA has also published Guidelines that relate to claimants under the *Motor Accident Injuries Act 2017* who are also Lifetime Care and Support participants. Requirements include obligations for insurers to provide information to icare, including contacting icare prior to potential adverse decisions being made.
- SIRA continues to monitor the effectiveness of these Guidelines and would welcome the Committee's views on any additional provisions.

6. Conclusion

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