

**INQUIRY INTO 2020 REVIEW OF THE COMPULSORY
THIRD PARTY INSURANCE SCHEME**

Organisation: Insurance Council of Australia

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The Hon Wes Fang MLC
Chair, Legislative Council Standing Committee on Law and Justice
Parliament House
Macquarie St
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Dear Mr Fang

2020 Review of the Compulsory Third Party insurance scheme

The Insurance Council of Australia (ICA), on behalf of the NSW licensed CTP insurers, is pleased to provide a submission to the 2020 Review of the NSW Compulsory Third Party (CTP) insurance scheme (the Scheme).

As the NSW Legislative Council Standing Committee on Law and Justice (the Committee) is aware, four ICA members, Allianz, Suncorp (GIO, AAMI), QBE and IAG (NRMA Insurance) currently underwrite and provide claims management for the Scheme. A further ICA member, Youi Insurance, has recently been granted a licence to provide NSW CTP insurance from 1 December 2020.

The NSW CTP scheme has been operating under the *Motor Accident Injuries Act 2017* (the MAI Act) since 1 December 2017.

As detailed in the ICA's 2018 submission to the Committee, the MAI Act introduced a number of significant reforms. These reforms included the introduction of no-fault statutory benefits for the first 26 weeks to ensure that all people injured on the road receive early treatment and financial support regardless of fault. The scheme changes have also ensured that a greater proportion of benefits are directed to the more seriously injured and that, overall, a higher proportion of the premium collected is paid in benefits. Under the MAI Act Scheme, there has also been a reduction in premiums.

To date, the reforms to the scheme have produced positive outcomes for customers of the Scheme, consistent with the NSW Government's objectives for reform. Nonetheless, the Scheme, having been in place for less than three years, remains in its infancy. Given the long tail nature of the Scheme, it will be several more years before the impact of the 2017 reforms can be fully evaluated.

The ICA wish to highlight to the Committee the following aspects of the Scheme:

- Positive outcomes of the 2017 reforms
- Minor injury definition
- Internal reviews undertaken by insurers
- Joint medico-legal assessments and the barriers currently preventing their uptake and effectiveness.

Positive outcomes delivered through MAI Act reforms

The Scheme, following the reforms introduced in the MAI Act, has delivered several key benefits for NSW motorists and injured people including lower CTP premiums, early access to treatment and care and financial support when it is needed.

Reduced premiums

Following the Scheme's inception in December 2017, the average vehicle CTP premium reduced from \$661 to \$534.¹ Smaller premium reductions have continued over the past three years, with the average vehicle CTP premium being \$485 as at October 2020.² These subsequent reductions are due to a range of factors including the anticipated lower cost of not-at-fault claims involving minor injuries following the 2017 reforms and fewer at-fault claims than expected. The initial reduction following the Scheme's inception, combined with the smaller continued premium reductions, represents an overall reduction in CTP premium of just over 25% and a significant saving for NSW motorists.

Early access to treatment and care

The ICA considers the Scheme is also meeting its stated objective of supporting early and appropriate treatment and care for people injured in motor vehicle accidents. It is well recognised that early access to treatment can optimise recovery. Current data published by SIRA has highlighted that 74% of injured people are accessing pre-claim support.³ That is, treatment and care statutory payments prior to lodging their full claim. This enables injured people to self-manage their care and to access treatment and care quickly and easily.

Timely financial support

A further benefit that the Scheme is delivering is the provision of early financial support for injured people. The introduction of weekly payments for loss of income reduces financial pressures and concerns for injured people and allows them to focus on their recovery. SIRA's recent *CTP Insurer Claims Experience and Customer Feedback Comparison* report (September 2020) identifies that half of injured people entitled to income support were

¹ SIRA NSW Motor Accidents CTP Scheme Performance Report 2018, p. 11,

https://www.sira.nsw.gov.au/_data/assets/pdf_file/0009/815193/CTP-Scheme-Performance-Report-2018.pdf

² SIRA 2017 CTP Scheme Open Data <https://www.sira.nsw.gov.au/CTP-open-data>

³ SIRA CTP Insurer Claims Experience and Customer Feedback Comparison 30 September 2020, p. 55, Chart 3.

https://www.sira.nsw.gov.au/_data/assets/pdf_file/0009/926937/CTP-insurer-claims-and-experience-and-customer-feedback-comparision-report-Sept-2020.pdf

receiving benefit payments within one month of lodging their claim, with the vast majority receiving income support payments within 13 weeks.⁴ This contrasts with the previous Motor Accidents Compensation Scheme, where most payments for income loss were made to injured people upon resolution of their claim, generally between three and five years after their accident.

In addition to the benefits for motorists and injured people described above, there is now greater transparency within the Scheme. This transparency is supported through several different mechanisms including SIRA's enhanced Green Slip Check website, which allows NSW motorists to compare Green Slip prices across all insurers.

SIRA also publishes insurer customer service metrics on a quarterly basis, promoting accountability within the statutory benefits scheme and providing information to NSW motorists regarding each insurer's performance.

Internal review

One of the objects of the Scheme under the MAI Act is to *encourage the early resolution of motor accident claims and the quick, cost effective and just resolution of disputes*⁵. In support of this object, an injured person may seek an internal review of an insurer's decision, independent of the original decision maker. The internal review process was introduced by the MAI Act and was not a feature of the scheme administered under the *Motor Accidents Compensation Act 1999*.

The ICA observes that the internal review process has enabled many disputes arising in the new scheme to be resolved without the need for escalation to SIRA's Dispute Resolution Service (DRS). Internal review can provide faster outcomes for injured people and reduce the cost and effort associated with referrals to DRS borne by injured people, insurers and the Scheme more broadly.

Decision-making

SIRA's quarterly *CTP Insurer Claims Experience and Customer Feedback Comparison* report outlines insurer performance against a number of measures relating to internal review.

For the period 1 October 2019 to 30 September 2020, 76% of all insurer decisions were upheld at internal review, 22% of decisions overturned in favour of the injured person, with a small number (2%) overturned in favour of the insurer.⁶

In the period from 1 December 2017 to 30 September 2020, of the claims that proceeded to DRS, insurer decisions were upheld in 58% of disputes determined at DRS.⁷ 41% of determinations overturned insurer decisions with 1% of disputes opened in error, invalid or dismissed.

⁴ Ibid. p.6

⁵ Section 1.3 (2)(g) *Motor Accident Injuries Act (2017)* NSW

⁶ SIRA CTP Insurer Claims Experience and Customer Feedback Comparison 30 September 2020, p. 8, Chart 6.

⁷ Ibid. p. 11, Chart 9.

Recognising there is always room for improvement, the ICA considers these results signify quality decision making on the part of insurers and certainty of fair and efficient outcomes for injured people where the insurer has erred in its decision-making, or the decision has changed as a result of new information which was not available to the original decision-maker.

Where an insurer has erred in its decision making, the internal review process provides an opportunity for the insurer to improve the quality of its claims management, decision making and communication with injured people, as well as ensuring the correct outcome for the injured person.

Timeliness

SIRA's most recent *CTP Insurer Claims Experience and Customer Feedback Comparison* report (September 2020) outlines measures for timeliness of internal reviews. Based on the information provided in this report, for the period 1 October 2019 – 30 September 2020, insurers completed 72% of internal reviews within prescribed timeframes.⁸

It is acknowledged that, the recent performance of some insurers in relation to timeliness in completing internal reviews, has fallen short of expectations. However, these insurers have devoted significant effort and resources to improve their internal review timeliness. The ICA is confident of improved and sustained performance by all insurers going forward.

Future state

The ICA strongly supports continuation of the internal review process as it provides injured people with a simple, fast and effective mechanism to resolve disputes.

The ICA and our members believe the current internal review process is well designed and, notwithstanding the need for timeliness improvement, the internal review process is, overall, working well.

The internal review process provides a number of important customer benefits. Internal reviews:

- Provide a simple and quick dispute resolution system.
- Allow for faster resolution of disputes (usually 14-21 days) without the need to proceed through an adversarial system and without the need to access legal representation.
- Allow for direct communication between the claimant and the internal review officer throughout the internal review process. This gives claimants the opportunity to voice their concerns and clarify issues during the process. It also allows for transparency, helping claimants to understand why a particular decision has been made.
- Involve a less formal process than external review or litigation, and easier for a customer to navigate and access.
- Involve the use of a new decision maker who undertakes a review and makes a 'fresh' decision.

⁸ Ibid. p. 9, Chart 9.

- Can help avoid disputes unnecessarily proceeding down the external dispute resolution process (DRS).
- Allow for continuous improvement in decision making by insurers.
- Are cost effective as it does not add additional external legal fees within the Scheme.

It should also be noted that if a claimant is unhappy with the outcome of internal review they have the option of referring the matter for further review at SIRA's Dispute Resolution Service.

The benefits of a robust internal review process are recognised in the financial services sector as being a fundamental tenet of dispute resolution. This has been highlighted in the recently published ASIC Regulatory Guide 271 *Internal dispute resolution*.

We note SIRA is undertaking a consultation on Legal Support for Injured People in the NSW CTP Scheme.⁹ The consultation will consider the feasibility of expanding the Independent Legal Assistance and Review Service (ILARS), that currently operates within the NSW workers compensation scheme, to the CTP scheme.

Given the benefits already provided through the internal review process, the ICA and insurers do not believe the expansion of the ILARS into the Scheme is necessary and are unclear of what additional benefit this would provide to claimants. It would increase legal fees, paid for through higher CTP policy levies, and could introduce a more complex, adversarial and drawn out process. There is also a risk that the reintroduction of more legal costs into the scheme could increase the cost of premiums.

Minor Injury Definition

One of the more significant reforms to the Scheme in 2017 was the introduction of a minor injury definition designed to help achieve the Scheme objective that a greater proportion of benefits be directed to those who are more seriously injured. It also facilitates early focussed support for those with minor injuries so they can recover quickly and return to health and work.

The ICA and our NSW CTP members agree that the minor injury definition and process has, to date, generally been working well in the short time it has been in place, with those with injuries classified as minor under the definition typically accessing early treatment and early resolution of these claims being achieved.

However, as outlined in the ICA's 2019 submission to SIRA's review of the minor injury definition,¹⁰ applying the minor injury test to claims involving psychological injuries has occasionally presented challenges within the Scheme. This is primarily due to the greater complexity and difficulty diagnosing these injuries, and the requirement that insurers make decisions on these injuries within 3 months.

⁹ <https://www.sira.nsw.gov.au/consultations/review-of-legal-support-for-injured-people-in-the-nsw-ctp-scheme>

¹⁰ The ICA submission is available at: <https://www.sira.nsw.gov.au/consultations/sira-review-of-the-minor-injury-definition/consultation-submissions>

Given the challenges associated with psychological injuries, the ICA supports further review being undertaken to identify opportunities to better manage psychological injuries within the existing Scheme framework.

Joint Medico-Legal assessments

The ICA and insurers agree that the use of joint medico-legal assessments has the potential to benefit the Scheme by helping to manage claims more expediently, reducing medical disputation and providing a better experience for customers by removing the need for them to attend multiple medical assessments.

Unfortunately, the process is not currently operating as intended and is not delivering these benefits.

Our members have identified the following as the key factors impacting the successful implementation and effective use of joint medico-legal assessments:

- The difficulty identifying an Authorised Health Practitioner (AHP) which all parties (the customer, their lawyer and the insurer) agree should undertake the assessment.
- The high demand for a limited number of skilled medical practitioners to undertake assessments. An agreement may be reached on the AHP to undertake a joint medico-legal assessment. However, high demand of a particular AHPs can lead to delays of several months before they have availability to complete an assessment.
- The existing regulated AHP fee structure which is often not commensurate with the work undertaken by an AHP for complex assessments. This is leading to skilled medical practitioners discontinuing their inclusion on the AHP list.
- Where a joint medico-legal assessment is agreed to, customers may often subsequently proceed to obtain with their own separate medico-legal assessment, notwithstanding the joint medico-legal assessment.
- The inclusion of medical practitioners on the AHP list that may have limited recent experience in assessing injured people within the CTP scheme. This can result in failure to apply relevant guidelines in assessments and widely divergent views on Whole Person Impairment between AHPs. This can lead to protracted medical disputes, poor customer experiences and perceptions that the process is unfair, which is in turn, associated with poor health outcomes.

To enable the joint medico-legal assessment process to operate as intended and deliver benefits to Scheme participants, particularly for injured people, the ICA and its members suggest the following actions:

- A review of the AHP list and fee structure, with a view to increasing the number of AHPs on the list.
- A review of the quality assurance framework used by SIRA with a view to enhancing the framework to ensure all AHPs have the appropriate training, experience, and maintain appropriate standards of assessment and reporting. A robust quality

assurance approach will facilitate greater consistency and confidence in the process and discourage parties from obtaining further separate independent assessments following a joint medico-legal assessment.

The ICA appreciates the opportunity to contribute to the Committee's review of the Scheme.

Yours sincerely

Andrew Hall
Executive Director and CEO