



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

# 2022 Review of the Compulsory Third Party insurance scheme

Report 82

February 2023



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Standing Committee on Law and Justice

# **2022 Review of the Compulsory Third Party insurance scheme**

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2022 Review of the Compulsory Third Party insurance scheme

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Chair: The Hon. Chris Rath, MLC



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## Terms of reference

3. For the purposes of section 27 of the State Insurance and Care Governance Act 2015, the committee is the designated Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers' compensation and motor accidents legislation:
  - (a) the Workers' Compensation Scheme,
  - (b) the Workers' Compensation (Dust Diseases) Scheme,
  - (c) the Motor Accidents Scheme, and
  - (d) the Motor Accidents (Lifetime Care and Support) Scheme.
4. In exercising the supervisory function outlined in paragraph 3, the committee:
  - (a) does not have authority to investigate a particular compensation claim, and
  - (b) must report to the House in relation to the operation of each of the schemes at least every two years every Parliament.

The terms of reference for the inquiry were referred to the committee by the Legislative Council within the resolution establishing the Subject Standing Committees on 8 May 2019.<sup>1</sup>

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<sup>1</sup> Resolution establishing Subject Standing Committees, *Minutes*, NSW Legislative Council, 8 May 2019, Item no. 125, pp 92-97.

## Committee details

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### Committee members

<b>The Hon Chris Rath MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Lou Amato MLC</b>	Liberal Party	
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>The Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>The Hon Wes Fang MLC</b>	The Nationals	
<b>The Hon Taylor Martin MLC</b>	Liberal Party	
<b>The Hon Rod Roberts MLC</b>	Pauline Hanson's One Nation Party	

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<b>Andrew Ratchford</b>	Council Officer
<b>Tina Higgins</b>	Director Committees



## Chair's foreword

The current Compulsory Third Party (CTP) insurance scheme was established in 2017 and requires all motorists to purchase 'GreenSlip' insurance when registering a vehicle, protecting owners against liability for injury or death of another person.

In 2022, the CTP insurance scheme reached its five-year milestone. During this early phase of the scheme, stakeholders have been almost continuously engaged in a number of initiatives, independent reviews and legislative reforms focused on strengthening the scheme and refining its operation to the benefit of those injured in motor vehicle accidents. As shown by the evidence presented to the committee, complex and considered work is required to balance the objectives of scheme affordability, and the efficient provision of benefits and support to those injured in motor accidents, in order to maximise their recovery.

From the outset, and on behalf of the committee, I commend the significant amount of work undertaken by the State Insurance Regulatory Authority (SIRA) and all stakeholders during the early phase of the scheme and since this committee's last review. This includes stakeholder engagement with the comprehensive 2021 independent statutory review of the *Motor Accident Injuries Act 2017*, and the implementation of its detailed and wide-ranging recommendations relating to the schemes design, objectives, implementation and regulation, as well as the ongoing reviews of the scheme's legal support framework.

Pleasingly, the scheme appears to be meeting its objectives, with premiums more affordable in the reformed scheme, and \$269.7 million in excess insurer profits having been returned to the scheme through the use of the TEPL (transitional excess profits and losses) mechanism.

In this third review of the scheme, stakeholders discussed a broad range of matters relating to the operation of the scheme, scheme performance and affordability, the operation and use of the TEPL mechanism, and the operation of the Personal Injury Commission. Specific concerns were also raised by road user groups regarding road safety, equity in the point to point transport sector, motorcycles, interstate jurisdictional issues and e-scooters.

Significantly in this review, the committee was required to examine the provision of legal supports to claimants and whether the Independent Legal Assistance and Review Service (ILARS), operated by the Independent Review Office and currently available to injured workers, should be extended to support people injured in motor accidents.

Given the extensive work of the statutory review, the committee focused its report on complementary or additional issues raised throughout the inquiry, making three recommendations. The first relates to the publication of profit assessment information when the TEPL mechanism is utilised. The second relates to the statutory review of the *Personal Injury Commission Act 2020* and ensuring that in its operation the timely resolution of disputes is not impeded and that an individual's medical privacy is not undermined. The third recommendation requires SIRA to investigate the benefits of introducing additional 'Safe System' factors in the calculation of CTP premiums, as well as jurisdictional issues relating to interstate accidents and CTP claims.

Additionally, the committee expresses its support for two initiatives discussed during the inquiry. First, the committee supports the consultation process planned by SIRA in 2023, which is intended to assess the impact of legal support and the expansion of ILARS on the scheme's performance and affordability, with a view to introduce reform to the scheme's legal support framework. Second, the committee supports the Independent Review Office's suggestion for greater regulation of the content of decision notices issued by insurers.

Regular review by the committee provides important oversight to the operation and performance of the schemes which support people injured in motor vehicle accidents in New South Wales. Again, on behalf of the committee, I thank all of the stakeholders who contributed to this review for their invaluable insights and ongoing collaboration. We appreciate your continued participation, as well as your commitment to strengthening the scheme's operations and the experiences of claimants within it. I also thank my committee colleagues for their contribution throughout the review, and the secretariat for their professional support.

I commend this report to the Parliament.



Hon Chris Rath MLC  
**Committee Chair**

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## Recommendations

### Recommendation 1

22

That the State Insurance Regulatory Authority ensure sufficient information is publicly available relating to profit assessments and utilisation of the transitional excess profit and loss mechanism, so as to allow stakeholders to understand the drivers of excess profit and whether profits are borne equitably by individual road user groups.

### Recommendation 2

23

That the State Insurance Regulatory Authority investigate, either through the Statutory Review of the *Personal Injury Commission Act 2020* or separately, whether any aspects of the Act or their operation:

- may impede the timely resolution of disputes by the Commission
- undermine an individual's medical privacy during the publication of Medical Review Panel certificates.

### Recommendation 3

23

That the State Insurance Regulatory Authority further investigate the following issues, in consultation with stakeholders, with a view to identifying or implementing potential solutions prior to the next review of this committee:

- the benefits of introducing additional 'Safe System' factors, such as ANCAP ratings, in the calculation of CTP premiums as a measure to support improved road safety
- jurisdictional issues relating to interstate accidents and CTP claims.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 8 May 2019.

The committee received 11 submissions and 4 supplementary submissions.

The committee held one public hearing at Parliament House in Sydney, combining witnesses from this inquiry with witnesses from the *2022 Review of the Lifetime Care and Support scheme*.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript, answers to pre-hearing questions, answers to questions on notice and answers to supplementary questions.

Reports and other documents relating to previous committee reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes are also available on the committee's website.

# Chapter 1 Overview

The Standing Committee on Law and Justice is required to report on the New South Wales Compulsory Third Party (CTP) insurance scheme at least once every two years. This chapter outlines the oversight role the committee has in relation to the scheme. It then provides an overview of the CTP scheme, key developments since the committee's last review in 2020, and a snapshot as to how the scheme is currently performing.

## Oversight role of this committee

- 1.1 Section 27 of the *State Insurance and Care Governance Act 2015* requires the operations of the CTP insurance scheme to be supervised by a committee of the Legislative Council. This oversight role is undertaken by the Standing Committee on Law and Justice, with the committee required to report to the Legislative Council at least once every two years.<sup>2</sup>
- 1.2 The committee is also required to oversight the operations of the New South Wales Lifetime Care and Support (LTCS) Scheme, among other insurance schemes. Due to the connection between the CTP and LTCS Schemes, the committee often undertakes these two oversight review processes concurrently.
- 1.3 This is the committee's third review of the scheme since its establishment by the *Motor Accident Injuries Act 2017*. It is also the first review to follow the Statutory Review of the *Motor Accident Injuries Act 2017* in 2021, with the next statutory review expected in 2026, and then every five years thereafter.<sup>3</sup>
- 1.4 Importantly, in the committee's first review of the scheme in 2018, the long-tailed nature of the scheme was recognised with the committee noting that a comprehensive review of the scheme's performance would not be possible until scheme maturity was achieved. Nevertheless, the committee noted positive signs that the scheme was meeting its intended objectives. Ultimately, six wide-ranging recommendations were made to the NSW Government, all of which were supported either in full or in principle.<sup>4</sup>
- 1.5 The committee's second report was published in July 2021. In that review, stakeholders raised a range of concerns relating to scheme operation. The committee recommended that some of these issues be considered further as part of the statutory review process. The Government supported this recommendation, advising that the independent reviewers had considered the issues listed by the committee.<sup>5</sup>

<sup>2</sup> Resolution establishing Subject Standing Committees, *Minutes*, NSW Legislative Council, 8 May 2019, Item no. 125, pp 92-97.

<sup>3</sup> Section 11.13, *Motor Accident Injuries Act 2017*.

<sup>4</sup> Standing Committee on Law and Justice, report no. 68, entitled, *2018 review of the Compulsory Third Party insurance scheme*, and government response, available online at: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2489#tab-termsofreference>.

<sup>5</sup> Standing Committee on Law and Justice, report no. 77, entitled, *2020 review of the Compulsory Third Party insurance scheme*, and government response, available online at: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2616#tab-reportsandgovernmentresponses>.

- 1.6 In this third review, the committee is specifically required by the *Personal Injury Commission Act 2020* to inquire into and report on whether the Independent Legal Assistance and Review Service (ILARS), a service available to workers compensation claimants, should be extended to claimants for statutory benefits under the *Motor Accident Injuries Act 2017*.<sup>6</sup> ILARS is administered by the Independent Review Office, and provides funding within the Workers Compensation Scheme for regulated legal support for injured workers seeking advice and dispute resolution with insurers.<sup>7</sup> The committee's report will address this issue, among other matters related to the operation of the scheme.

## Overview of the CTP scheme

- 1.7 The CTP insurance scheme is established by the *Motor Accident Injuries Act 2017*. The scheme makes it mandatory for all motorists to pay for CTP insurance when registering a vehicle, known as Green Slip insurance. This insurance covers and protects vehicle owners against liability for injury or death of another person.<sup>8</sup>
- 1.8 The current CTP scheme was introduced in 2017. It was designed to address failings in the original scheme and is expected to operate in a way that meets the objectives set out in the *Motor Accident Injuries Act 2017*.<sup>9</sup> Key scheme objectives relate to:
- early and appropriate treatment, care and support
  - optimum recovery from injury
  - premium affordability
  - profit and benefit limitations
  - early resolution of claims
  - quick, cost effective and just resolution of disputes
  - scheme management.<sup>10</sup>
- 1.9 In operation, CTP insurance provides protection to persons injured in a road accident, with funds raised through premiums used to cover the cost of claims for benefits and damages from injured persons or dependents of persons who died, as well as the administrative and operational costs of the scheme.<sup>11</sup>

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<sup>6</sup> Clause 12, Part 5, Schedule 5, *Personal Injury Commission Act 2020*.

<sup>7</sup> Submission 3a, State Insurance Regulatory Authority, p 5.

<sup>8</sup> Submission 3, State Insurance Regulatory Authority, p 3.

<sup>9</sup> State Insurance Regulatory Authority, *Why reform was needed*, available online at: <https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/why-reform-was-needed>.

<sup>10</sup> *Motor Accident Injuries Act 2017*, section 1.3.

<sup>11</sup> Submission 3, State Insurance Regulatory Authority, p 4.

- 1.10** Claims can be made for ambulance and hospital treatment, loss of earnings, ongoing treatment and care, common law damages, and funeral, legal and other expenses as determined by the *Motor Accident Injuries Act 2017* and regulations.<sup>12</sup>
- 1.11** Eligibility for the benefits and damages claimable under the scheme is contingent on the severity of a person's injury and whether they were at-fault. Other criteria and timeframes also determine what benefits and damages can be claimed, and for how long.<sup>13</sup>
- 1.12** At the time of this review, an injured person with 'minor injuries' is able to claim statutory benefits, regardless of fault, for up to 26 weeks. Claimants with whole person impairments (WPI) may access benefits for longer periods of time and may claim various common law damages. People sustaining severe injuries, such as a brain or spinal cord injury, may be eligible for support under the Lifetime Care and Support (LTCS) Scheme.<sup>14</sup> As mentioned earlier, a review of the LTCS scheme was undertaken concurrently with this review.
- 1.13** The following tables outline the full benefits available under the CTP scheme as available at the time of this review:

**Table 1 CTP benefits (as at September 2022)<sup>15</sup>**

**Table 1a: 2017 Scheme benefits and damages entitlements at a glance – At fault claims**

At fault claims: Benefits/damages type	All
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident
Weekly benefits payments for loss of earnings	Up to 26 weeks
Damages for future economic loss	No
Damages for non-economic loss (e.g. pain and suffering)	No
Treatment and care benefits	Up to 26 weeks
Funeral expenses	Available whether at fault or not at fault
Damages for dependants in compensation to relatives claims	No
Legal and other expenses	Available as prescribed under the MAI Act and Regulations

<sup>12</sup> Submission 3, State Insurance Regulatory Authority, pp 4-5.

<sup>13</sup> Submission 3, State Insurance Regulatory Authority, pp 4-5.

<sup>14</sup> Submission 3, State Insurance Regulatory Authority, pp 4-5.

<sup>15</sup> Submission 3, State Insurance Regulatory Authority, p 5.

**Table 1b: 2017 Scheme benefits and damages entitlements at a glance – Not at fault claims**

Not at fault claims: Benefits/damages type	Minor injuries <sup>1</sup>	Non-minor WPI <sup>2</sup> ≤ 10%	Non-minor WPI > 10%
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident	Available for anyone injured in a motor vehicle accident	Available for anyone injured in a motor vehicle accident
Weekly benefits payments for loss of earnings	Up to 26 weeks	Up to 156 weeks	Up to 260 weeks
Damages for future economic loss	No	Yes (after 20 months)	Yes
Damages for non-economic loss (e.g. pain and suffering)	No	No	Yes
Treatment and care benefits	Up to 26 weeks	CTP Care after 5 years	CTP Care after 5 years
Funeral expenses	Available whether at fault or not at fault	Available whether at fault or not at fault	Available whether at fault or not at fault
Damages for dependants in compensation to relatives claims	No	Yes (WPI threshold not relevant)	Yes (WPI threshold not relevant)
Legal and other expenses	Available as prescribed under the MAI Act and Regulations	Available as prescribed under the MAI Act and Regulations	Available as prescribed under the MAI Act and Regulations

<sup>1</sup> Soft tissue and/or minor psychological or psychiatric injuries

<sup>2</sup> Whole Person Impairment

- 1.14** From 1 April 2023 the statutory benefits available under the scheme are expected to change. This includes extending the timeframes for weekly loss of income payments and treatment and care benefits from 26 weeks to 52 weeks. Minor injuries will be also referred to as 'threshold injuries' in future.<sup>16</sup>
- 1.15** The State Insurance Regulatory Authority (SIRA) is an independent statutory body established to steward and regulate statutory insurance and care schemes in New South Wales. SIRA regulates both the CTP insurance, and Lifetime Care and Support (LTCS) schemes, along with similar schemes such as the Workers Compensation scheme.<sup>17</sup>
- 1.16** Established by the *State Insurance and Care Governance Act 2015*, SIRA 'is a customer-centric, intelligence-led, risk-based regulator whose core purpose is to ensure that NSW insurance schemes protect and support the people who need them, now and in the future'.<sup>18</sup>
- 1.17** In regulating the delivery of the scheme, SIRA is responsible for issuing the *Motor Accident Guidelines* which establish clear processes and procedures, scheme objectives and compliance requirements. They also set expectations regarding the activities of stakeholders such as insurers, health practitioners, legal representatives and courts and other dispute resolution bodies.<sup>19</sup>
- 1.18** Compliance with the *Motor Accident Guidelines* is a condition of an insurer's licence from SIRA to administer the scheme.<sup>20</sup> There are currently six licenced insurance companies that underwrite

<sup>16</sup> See *Motor Accident Injuries Amendment Act 2022*.

<sup>17</sup> Submission 3, State Insurance Regulatory Authority, p 2.

<sup>18</sup> Submission 3, State Insurance Regulatory Authority, p 2.

<sup>19</sup> State Insurance Regulatory Authority, *Motor Accident Guidelines*, Version 8.2, 8 April 2022, p 4 available online at: [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/325777/Motor-Accident-Guidelines.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/325777/Motor-Accident-Guidelines.pdf)

<sup>20</sup> State Insurance Regulatory Authority, *Motor Accident Guidelines*, Version 8.2, 8 April 2022, p 4.



the CTP insurance scheme.<sup>21</sup> The *Motor Accident Injuries Act 2017* provides for SIRA to regulate the premiums charged by insurers, including adjusting premiums and fund levies in order to avoid excess profits or losses by insurers.<sup>22</sup>

**1.19** During the transition period for the 2017 scheme, the excess profits and losses of insurers are managed via a process referred to as the 'transitional excess profits and losses' or 'TEPL mechanism'.<sup>23</sup> This allows SIRA to assess and determine reasonable insurer profit and losses. SIRA has the power to retrospectively recoup profits greater than ten per cent, or manage losses below three per cent.<sup>24</sup> SIRA can return excess insurer profits to motorists through reduced fund levies or increase levies to reimburse insurers for a component of their losses.<sup>25</sup> The *Motor Accident Guidelines—Transitional excess profits and transitional excess losses* provide the procedures for the operation of this mechanism.<sup>26</sup>

**1.20** The table below compares the amount and percentage of insurer profit under the previous scheme, enabled by the *Motor Accidents Compensation Act 1999* (MACA), and those under the current CTP scheme, enabled by the *Motor Accident Injuries Act 2017* (MAIA). Information regarding the price of premiums in the two schemes is also shown.

Note: the MACA profit assessment is done on a financial year basis, as per SIRA's annual reporting, this has been converted to a calendar year basis for this table, using approximations.

**Table 2 Comparison of insurer profits and average premiums since 2001**

Scheme	Accident year (calendar year end Dec)	Profit (\$M)	Profit (%)	Average NSW CTP Premium (incl. GST & levies) (as at June each year)	Average NSW CTP Premium as a % of Average Weekly Earnings (as at June each year)
MACA	2001	\$395	30%	371	43%
MACA	2002	\$407	30%	375	41%
MACA	2003	\$379	27%	370	39%
MACA	2004	\$364	25%	370	38%
MACA	2005	\$356	24%	356	34%
MACA	2006	\$326	23%	344	32%

<sup>21</sup> Submission 3, State Insurance Regulatory Authority, p 3.

<sup>22</sup> *Motor Accident Injuries Act 2017*, division 2.3.

<sup>23</sup> State Insurance Regulatory Authority, *Motor Accident Guidelines—Transitional excess profits and transitional excess losses*, 30 September 2019, pp 4-5 available online at: [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/567642/Motor-accident-guidelines-transitional-excess-profits-and-transitional-excess-losses.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0003/567642/Motor-accident-guidelines-transitional-excess-profits-and-transitional-excess-losses.pdf).

<sup>24</sup> Submission 3, State Insurance Regulatory Authority, p 16. See also answers to questions on notice, State Insurance Regulatory Authority, p 1.

<sup>25</sup> Submission 3, State Insurance Regulatory Authority, p 16.

<sup>26</sup> State Insurance Regulatory Authority, *Motor Accident Guidelines—Transitional excess profits and transitional excess losses*, 30 September 2019, pp 4-5 available online at: [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0003/567642/Motor-accident-guidelines-transitional-excess-profits-and-transitional-excess-losses.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0003/567642/Motor-accident-guidelines-transitional-excess-profits-and-transitional-excess-losses.pdf).

MACA	2007	\$264	20%	346	31%
MACA	2008	\$143	12%	352	31%
MACA	2009	\$135	10%	403	33%
MACA	2010	\$244	17%	439	35%
MACA	2011	\$331	20%	482	36%
MACA	2012	\$399	22%	499	37%
MACA	2013	\$516	27%	556	40%
MACA	2014	\$587	28%	554	38%
MACA	2015	\$514	23%	552	37%
MACA	2016	\$572	24%	598	39%
MACA	2017 <sup>^</sup>	\$655	28%	637	41%
<i>MAIA</i>	<i>2018<sup>^^*</sup></i>	<i>\$224</i>	<i>10%</i>	<i>518</i>	<i>32%</i>
<i>MAIA</i>	<i>2019*</i>	<i>\$202</i>	<i>10%</i>	<i>490</i>	<i>29%</i>
<i>MAIA</i>	<i>2020*</i>	<i>\$192</i>	<i>10%</i>	<i>476</i>	<i>27%</i>

*MACA data assessed as at 30 June 2022*

*MAIA data assessed as at 31 December 2021*

*<sup>^</sup>2017 accident year ends on 30 Nov-17*

*<sup>^^</sup>2018 accident year includes the Dec-17 accident month*

*\*Profit shown is after all TEPL excess profit recoveries as estimated following the 2022 assessment (excluding any innovation support)*

**1.21** The CTP insurance scheme also provides claimants a support framework to assist them to navigate the scheme and resolve any disputes with insurers which may arise. These supports and processes include:

- SIRA's CTP Assist: an information and support service<sup>27</sup>
- SIRA's CTP Legal Advisory Service: a free independent legal advice service available via referral from CTP Assist during specific stages of a claim or dispute<sup>28</sup>
- insurer internal review process: where an insurer reviews a decision they have previously made about a claim<sup>29</sup>
- access to the Independent Review Office: an independent statutory agency which deals with complaints about insurers<sup>30</sup>

<sup>27</sup> State Insurance Regulatory Authority, *CTP Assist*, available online at: <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/ctp-assist>.

<sup>28</sup> State Insurance Regulatory Authority, *CTP Legal Advisory Service*, available online at: <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/ctp-legal-advisory-service>.

<sup>29</sup> State Insurance Regulatory Authority, *Insurer internal reviews*, available online at: <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/internal-reviews>.

<sup>30</sup> Submission 8, Independent Review Office, p 2. See also answers to questions on notice, Independent Review Office, pp 27-29.

- access to the Personal Injury Commission: an independent statutory tribunal which resolves disputes between claimants and insurers<sup>31</sup>
- limited legal representation on certain matters, or for certain claimants, with set maximum costs.<sup>32</sup>

## Key developments since 2020 review

**1.22** There has been a number of developments relevant to the CTP insurance scheme since the last review, including the statutory review process and legislative reforms. Key developments are outlined in this section.

### Statutory Review of the Motor Accident Injuries Act 2017

**1.23** In 2021 the first Statutory Review of the Motor Accident Injuries Act 2017 was undertaken by Clayton Utz and Deloitte. The statutory review considered all aspects of the 2017 scheme, including its framework, objectives and implementation, with thirty-one organisations or individuals, including insurers, legal practitioners, peak bodies, medical and allied health professionals, and individual injured motorists providing feedback for consideration.<sup>33</sup>

**1.24** The review acknowledged that the 2017 scheme is still maturing, but nevertheless found where there is sufficient experience to make an assessment, overall the scheme is meeting its objectives.<sup>34</sup> In total, two review reports made a total of 73 recommendations and 20 suggestions relating to numerous aspects of the schemes design, objectives, implementation and regulation.<sup>35</sup>

**1.25** The response to certain legislative recommendations were prioritised and introduced by the *Motor Accident Injuries Amendment Act 2022*. As mentioned earlier, these include changes which extend and expedite access to benefits for certain groups of persons injured in motor accidents, as well as other changes relating to treatment and care supports and scheme and regulatory enhancements.<sup>36</sup>

**1.26** SIRA has also commenced or completed work on recommendations which require administrative action, including enhancements to CTP Assist and changes to various policies and guidelines, such as the *Motor Accident Guidelines*, *TEPL Guidelines* and *Regulatory Publishing Policy*.<sup>37</sup>

<sup>31</sup> Personal Injury Commission, *The role of the Commission*, available online at: <https://pi.nsw.gov.au/the-role-of-the-commission>.

<sup>32</sup> State Insurance Regulatory Authority, *Review of legal support: For people injured in the NSW CTP Scheme*, dated 3 September 2021, p 13.

<sup>33</sup> Submission 3, State Insurance Regulatory Authority, p 3.

<sup>34</sup> Submission 3, State Insurance Regulatory Authority, p 3.

<sup>35</sup> Submission 3, State Insurance Regulatory Authority, p 8.

<sup>36</sup> Submission 3, State Insurance Regulatory Authority, p 9 and the Hon Shayne Mallard MLC (on behalf of the Hon Damien Tudehope MLC), Second reading speech: *Motor Accident Injuries Amendment Act 2022*, 17 November 2022.

<sup>37</sup> Submission 3, State Insurance Regulatory Authority, p 9.

## Independent Review of Legal Supports

- 1.27** SIRA has also commissioned an independent and comprehensive review into legal support for claimants within the CTP insurance scheme. This review examined the operation of the current legal framework, as it relates to scheme objectives, as well as the feasibility of expanding the Independent Legal Assistance and Review Service (ILARS). It also considered the role of SIRA's CTP Legal Advisory Service. The review was finalised in July 2021.<sup>38</sup>
- 1.28** The resulting report, known as the Taylor Fry report, observed that 'there remains an unmet need for claimant support' under the current scheme.<sup>39</sup> While the report did not recommend expanding ILARS in its current form, it put forward eight potential reforms options for further consideration by SIRA.<sup>40</sup> These were:
- Option 1: Make no change to existing legal services arrangements
  - Option 2A: Review the triggers for entitlement to legal services
  - Option 2B: Set legal fees to more closely reflect the work involved
  - Option 2C: Simplify some common specific issues disputes so that the requirement for legal representation is reduced
  - Option 2D: Increase resourcing for and the role of CTP Assist
  - Option 2E: Discontinue the Legal Advisory Service and consider alternatives to replace this function
  - Option 3A: Introduce a modified ILARS to the scheme
  - Option 3B: Defer consideration of ILARS so that it can be considered as part of the broader scheme review.<sup>41</sup>
- 1.29** To further inform decisions regarding the most appropriate model for legal support, SIRA has commissioned a work value assessment of the legal supports currently available in the scheme. The results of this assessment will inform public consultation planned by SIRA in early 2023.<sup>42</sup>

## Other key developments

- 1.30** A number of other developments relevant to the CTP insurance scheme are important to note, including:
- the Independent Review Office now provides oversight of claims complaints raised by injured people about their insurer and encourage complaint resolution<sup>43</sup>

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<sup>38</sup> Submission 3a, State Insurance Regulatory Authority, pp 1 and 2.

<sup>39</sup> State Insurance Regulatory Authority, *Review of legal support: For people injured in the NSW CTP Scheme*, dated 3 September 2021, p 5.

<sup>40</sup> Submission 3a, State Insurance Regulatory Authority, p 2.

<sup>41</sup> Submission 3a, State Insurance Regulatory Authority, p 2.

<sup>42</sup> Submission 3a, State Insurance Regulatory Authority, p 3.

<sup>43</sup> Submission 8, Independent Review Office, p 2.

- commencement of the Statutory Review of the Personal Injury Commission Act 2020<sup>44</sup>
- publication of the *2017 CTP Scheme Performance Report to 30 June 2021*, by SIRA, and the Post-Implementation Review of the Authorised Health Practitioner Framework<sup>45</sup>
- various legislative changes to the *Motor Accident Injuries Act 2017*, *State Insurance and Care Governance Act 2015* and the *Motor Accidents and Workers Compensation Legislation Amendment Act 2021*<sup>46</sup>
- the commencement of the CTP Care program in December 2022, providing support for people who require treatment and care for more than five years after an accident, but who do not meet the severe injury test of the Lifetime Care and Support Scheme. CTP Care is considered in detail in the committee's review of the Lifetime Care and Support (LTCS) scheme.<sup>47</sup>

## Scheme performance

- 1.31** A number of indicators may be used to assess the performance of the CTP insurance scheme. These can include the cost of premiums, the proportion of premiums spent on injured persons (referred to as scheme efficiency), and factors relating to insurer performance such as those regarding complaints and disputes.
- 1.32** In keeping with the data driven objectives of the scheme, SIRA uses regulatory intelligence, data and analytics to inform its regulatory actions. Scheme data is publicly published via an interactive Open Data Portal on its website.<sup>48</sup>
- 1.33** The infographics contained in Table 3 provide a snapshot of scheme performance as at June 2022.

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<sup>44</sup> Submission 3, State Insurance Regulatory Authority, p 6.

<sup>45</sup> Submission 3, State Insurance Regulatory Authority, p 7.

<sup>46</sup> Submission 3, State Insurance Regulatory Authority, p 7.

<sup>47</sup> Submission 3, State Insurance Regulatory Authority, p 34.

<sup>48</sup> Submission 3, State Insurance Regulatory Authority, p 2.

**Table 3 Scheme performance snapshot<sup>49</sup>**

Since commencement up to June 2022					From 1 July 2021 to 30 June 2022				
<b>\$13.348 billion</b> total premium collected (includes GST and levies)					<b>\$2.945 billion</b> total premium collected (includes GST and levies)				
<b>26,738,267</b> CTP Greenslip policies		<b>50,903</b> total claims reported from commencement			<b>6,042,200</b> CTP Greenslip policies		<b>2.7 million</b> Completed price checks on SIRA's CTP Green Slip website		
<b>7,997</b> At fault claims		<b>\$91 million</b> Excess profit recovered from insurers in 2022			<b>6,964</b> CTP Assist successful calls to claimants		<b>96.6%</b> claims accepted		
<b>7,275</b> Damages claims					<b>960</b> Complaints received by SIRA		<b>7,446</b> internal review requests		
<b>46,036</b> Statutory benefit claims		<b>59%</b> scheme efficiency			<b>+24</b> CTP Assist Net Promoter Score (NPS)		<b>80%</b> of claim decision upheld		
<b>\$1.853 billion</b> total claim payments					<b>94%</b> people accessing treatment and care within 4 weeks of lodgement				
% of expected claim payment paid as at June 2022					<b>95%</b> of people receiving weekly benefits within 13 weeks of lodgement				
<b>54%</b> First accident year	<b>40%</b> Second accident year	<b>22%</b> Third accident year	<b>12%</b> Fourth accident year	<b>2.1%</b> Fifth accident year	<b>69.2%</b> people who stayed at or returned to work within 26 weeks				
							<b>5,281</b> Dispute applications received		
							<b>3,304</b> Disputes finalised		
							<b>\$482</b> Average premium (all vehicles)		
							<b>\$153</b> Average premium saving in 2017 Scheme		

<sup>49</sup> Submission 3, State Insurance Regulatory Authority, p 11.

## Chapter 2 Key Issues

This review explored a broad range of issues relating to the operation of the Compulsory Third Party (CTP) insurance scheme, including the outcomes of the recent statutory review and other reforms, as well as the operation of the TEPL (transitional excess profits and losses) mechanism, the performance of the Personal Injury Commission in resolving disputes, and various other concerns raised by road user groups.

Inquiry participants also provided feedback on the scheme's legal support framework and whether the Independent Legal Assistance and Review Service, which operates as part of the workers compensation scheme, should be expanded to the CTP insurance scheme.

### 2021 Statutory Review and scheme reforms

- 2.1** As outlined in Chapter 1, there have been a number of developments in relation to the scheme since the last review by this committee, including various legislative changes and the first Statutory Review of the Motor Accident Injuries Act 2017.
- 2.2** The statutory review was undertaken in 2021 by two independent reviewers, Clayton Utz and Deloitte, who found that, where there is sufficient experience to make an assessment, the 2017 scheme is meeting its policy objectives.<sup>50</sup> The statutory review also identified a number of areas of improvement, making 73 detailed and wide-ranging recommendations relating to the design and implementation of the CTP scheme.<sup>51</sup>
- 2.3** Many stakeholders were generally supportive of scheme reforms to date, including the statutory review and its recommendations. For example:
- Mr Leigh Davidson, Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales, commended the statutory report to the committee, 'as a comprehensive and balanced commentary of the major issues currently facing the CTP scheme'<sup>52</sup>
  - The Law Society of New South Wales, Australian Lawyers Alliance, Insurance Council of Australia, and NSW Taxi Council each expressed support for recent industry reforms and/or the implementation of review recommendations<sup>53</sup>
- 2.4** The Independent Review Office also noted that a number of its 'suggestions were adopted in the ... recommendations' arising from the statutory review.<sup>54</sup>

<sup>50</sup> Submission 3, State Insurance Regulatory Authority, p 8.

<sup>51</sup> Submission 3, State Insurance Regulatory Authority, p 8.

<sup>52</sup> Evidence, Mr Leigh Davidson, Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales, 18 November 2022, p 11.

<sup>53</sup> See submission 10, Law Society of New South Wales, p 1; submission 4, Australian Lawyers Alliance, p 4; evidence, Mr Andrew Stone, SC, Australian Lawyers Alliance NSW, 18 November 2022, p 12; evidence, Mr Chris Butel, General Manager CTP, QBE Insurance, and Member Representative, Insurance Council of Australia, 18 November 2022, p 22; and submission 1, NSW Taxi Council, p 3.

<sup>54</sup> Submission 8, Independent Review Office, p 2.

- 2.5** Stakeholders commended SIRA's approach towards consultation, and indicated a desire for ongoing stakeholder consultation regarding the implementation of statutory review recommendations and other potential reforms.<sup>55</sup>
- 2.6** While the Australian Lawyers Alliance supported the statutory review's recommendations, it expressed concern that no formal commitment or implementation program had been publicly announced, limiting stakeholder ability to address potential concerns.<sup>56</sup> Similarly, the Insurance Council of Australia welcomed 'further consultation on the recommendations ... and their associated cost impacts on the Scheme', as did the Independent Review Officer, Mr Simon Cohen.<sup>57</sup>
- 2.7** Some stakeholders also highlighted other issues which they considered had not been appropriately dealt with through the response to the statutory review process. For example, the minor injury threshold, as well as the determination of reasonable and necessary medical care by insurers, were identified as two aspects of the scheme with outstanding issues requiring further discussion and resolution.<sup>58</sup>
- 2.8** In its submission to the inquiry, SIRA detailed both its administrative and legislative responses to the statutory review's recommendations. At the hearing in November 2022, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, provided an update on implementation of key reforms, including amendments under the Motor Accident Injuries Amendment Bill 2022. Mr Dent stated to the committee:
- The bill introduces a number of important changes ... We will prioritise the implementation of these changes and will remain focused on progressing the other recommendations, many of which are already well underway. Many recommendations didn't require legislation change and could be handled by SIRA administratively or through guidelines.<sup>59</sup>
- 2.9** Mr Dent emphasised SIRA's consultative approach to the committee, stating 'most stakeholders [at the hearing] today commented on the extent to which SIRA deeply consults with them'. He further remarked that future consultation processes 'will be full, frank, open and transparent, as we always are'.<sup>60</sup>

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<sup>55</sup> See evidence, Mr Brian Wood, Secretary, Motorcycle Council of NSW, 18 November 2022, p 3; evidence, Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council, p 3; evidence, Mr Stone, SC, 18 November 2022, p 12; evidence, Mr Butel, 18 November 2022, p 23; and evidence, Mr Simon Cohen, Independent Review Officer, Independent Review Office, 18 November 2022, p 50.

<sup>56</sup> Submission 4, Australian Lawyers Alliance, p 5.

<sup>57</sup> Submission 9, Insurance Council of Australia, p 1 and evidence, Mr Cohen, 18 November 2022, p 50.

<sup>58</sup> Submission 10, Law Society of New South Wales, pp 2-3, and Submission 11, New South Wales Bar Association, pp 7-11.

<sup>59</sup> Evidence, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, 18 November 2022, p 52.

<sup>60</sup> Evidence, Mr Dent, 18 November 2022, p 62.



## Operation of the CTP scheme

**2.10** During this review, inquiry participants drew the committee's attention to a broad range of detailed matters concerning the operation of the CTP scheme. As some of these matters have been considered via the statutory review process, or are being progressed through other legislative or administrative reforms, this section will focus on four key issues: the operation of the TEPL mechanism, the efficiency of the Personal Injury Commission in resolving disputes, road safety and equity in premiums.

### Excess profit and the TEPL mechanism

**2.11** A key feature of the 2017 CTP scheme was the introduction of a review mechanism to monitor insurer profits. As outlined in Chapter 1, the transitional excess profits and losses or 'TEPL' mechanism, allows SIRA to retrospectively recover profit above ten per cent from insurers, or manage excess losses below three per cent.<sup>61</sup>

**2.12** The 2020 review by this committee examined how the TEPL mechanism may work to address insurer 'super-profits'.<sup>62</sup> In this review, SIRA provided an update to the committee on the first two TEPL assessments, advising that:

- the first assessment, covering the 2018 accident year, was commenced in 2020 but 'did not proceed ... because of insufficient claims experience and significant uncertainty in the level of industry profitability'
- the second assessment occurred in 2021, covering the 2018 and 2019 accident years, and resulted in the return of \$91 million in excess insurer profits.<sup>63</sup>

**2.13** SIRA advised the committee that the returned profits from the 2021 assessment are to be redistributed to motorists from 15 January 2022 as an average saving of \$19 on each new or renewed Green Slip.<sup>64</sup> SIRA also explained the approach taken to the redistribution, stating:

As the Green Slips levy varies by vehicle type and region, the savings are applied as a 35 per cent reduction in the levy so that the savings can be shared fairly among motorists for a period of 12 months from 15 January 2022.<sup>65</sup>

**2.14** At the hearing, Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, explained SIRA's approach to assessing the profits of an accident year using the TEPL mechanism:

Each year we run two assessment processes to determine whether there is sufficient information that would allow us to make a decision with a probability of accuracy. Last year [2021] was the first year we reached our threshold of between 80 per cent and 85

<sup>61</sup> Submission 3, State Insurance Regulatory Authority, p 16.

<sup>62</sup> Standing Committee on Law and Justice, report no. 77, entitled, *2020 Review of the Compulsory Third Party Insurance Scheme*, dated July 2021, pp 14-17.

<sup>63</sup> Submission 3, State Insurance Regulatory Authority, p 16.

<sup>64</sup> Submission 3, State Insurance Regulatory Authority, p 16.

<sup>65</sup> Submission 3, State Insurance Regulatory Authority, p 16.

per cent for the 2018 accident year ... One of the important things we have to consider is, of course, that at the present time there is a 20-month delay for lodging damages claims, for example. ... It takes a couple of years for us to be able to look at that accident year and say that all of the appropriate claims and benefits have likely been paid from that year ... This year [2022], with further claims maturation, we were able to look again at 2018 and say that we think there is actually still some more that we have now got sufficient confidence is profit and we will potentially draw that back too.<sup>66</sup>

- 2.15** In December 2022, SIRA announced that the third assessment identified \$178.7 million in excess insurer profit from the 2018 and 2019 accident years that would be returned to the scheme.<sup>67</sup> As part of the announcement, SIRA advised that the returned profits would assist to offset scheduled increases to premiums, stating:

In the face of rising cost pressures, the profit will be used to maintain the affordability of Green Slips.

Two levies that form part of the cost of Green Slips are set to increase from 15 January 2023 ...

Mr Dent [Chief Executive] said that by recouping excess insurer profit NSW motorists will be less affected by the levy changes.<sup>68</sup>

- 2.16** During the inquiry, the drivers of the \$91 million in excess profits from the 2021 assessment, were discussed by inquiry stakeholders, with the Australian Lawyers Alliance calling for an explanation of the substantial value of this profit.<sup>69</sup>

- 2.17** The Australian Lawyers Alliance questioned whether profits arose from 'an unforeseen externality' such as accident reduction, or from scheme underperformance with excess profits 'being made because benefits are not being paid as intended to motor accident victims'.<sup>70</sup> Mr Andrew Stone, SC, Australian Lawyers Alliance NSW, commented that the Australian Lawyers Alliance is 'deeply concerned if a part of the answer ... is people not accessing benefits to which they are entitled because they're either not aware of those benefits or we've made it too complex and painful for them to access those benefits'.<sup>71</sup>

- 2.18** In this regard the Australian Lawyers Alliance suggested that 'every clawback of super profits [should] come with a public explanation from SIRA as to why the super profits have occurred'.<sup>72</sup>

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<sup>66</sup> Evidence, Mr Dent, 18 November 2022, p 53.

<sup>67</sup> Media Release, State Insurance Regulatory Authority, 'SIRA claws back \$178.7 million in excess insurer profit - SIRA', 21 December 2022, [https://www.sira.nsw.gov.au/news/sira-claws-back-\\$178.7-million-in-excess-insurer-profit](https://www.sira.nsw.gov.au/news/sira-claws-back-$178.7-million-in-excess-insurer-profit).

<sup>68</sup> Media Release, State Insurance Regulatory Authority, 'SIRA claws back \$178.7 million in excess insurer profit - SIRA', 21 December 2022, [https://www.sira.nsw.gov.au/news/sira-claws-back-\\$178.7-million-in-excess-insurer-profit](https://www.sira.nsw.gov.au/news/sira-claws-back-$178.7-million-in-excess-insurer-profit).

<sup>69</sup> Submission 4, Australian Lawyers Alliance, p 6.

<sup>70</sup> Submission 4, Australian Lawyers Alliance, p 6.

<sup>71</sup> Evidence, Mr Stone, SC, 18 November 2022, p 19.

<sup>72</sup> Submission 4, Australian Lawyers Alliance, p 6.

- 2.19** The equitable operation of the mechanism was also called into question by the Motorcycle Council of NSW, who raised concerns that the nature of TEPL calculations could allow insurers to earn excess profit from motorcycle users. The Motorcycle Council of NSW explained that it would like to ensure 'insurers are held to account and not claiming greater than the [allowed] ... rate in all vehicle classes not just for the scheme overall'.<sup>73</sup> Mr Brian Wood, Secretary, Motorcycle Council of NSW, acknowledged that a lack of public data may be contributing to this concern.<sup>74</sup>
- 2.20** The committee explored this issue further with representatives of the Insurance Council of Australia and SIRA.
- 2.21** Mr Dent advised the committee that the assumptions used to set premiums when the scheme was formed 'were considerably higher than reality has played out'. Mr Dent highlighted two contributing factors, stating that in 2018 there was an 'unseasonably low number of casualties and subsequent claims', and that the expected 'number of predicted disputes ... hasn't materialised to be the case in the new scheme given the shift to statutory benefits'.<sup>75</sup>
- 2.22** Ms Estelle Pearson, Actuary, Principal Finity Consulting, representing the Insurance Council of Australia at the hearing, explained that initially under the new scheme 'there was no experience to base premiums on', and consequently premiums were 'based on quite a lot of actuarial judgements'.<sup>76</sup>
- 2.23** Ms Pearson refuted any assertions that excess profits indicated 'people aren't getting what they're entitled to', instead attributing excess profits to 'uncertainties in those original assessments', 'about the numbers of claimants, what sorts of benefits they'd be entitled to, what their average benefit payments would be'.<sup>77</sup>
- 2.24** Ms Pearson also commented on the newness of the scheme and the benefits that the TEPL mechanism provides, remarking: 'It may also be the case that, as people get more used to the scheme, people will utilise more of the benefits that are available. In the meantime, the TEPL provides a guarantee to the extent that if they don't utilise all of the benefits that they can, that money doesn't go to insurers' profits; it gets returned to motorists'.<sup>78</sup>
- 2.25** The committee heard that over time SIRA expected the amount of excess profit and utilisation of the TEPL mechanism to decline as insurer experience increases and accuracy with pricing improves. Dr Petrina Casey, Executive Director, Motor Accidents Insurance Regulation Division, State Insurance Regulatory Authority, explained how annual premium guidance would support this, stating:

... every year the premium guidance that SIRA gives the insurers updates the experience. That will also contribute to a more realistic pricing and contribute to the fact that there will be less profits in the scheme as the experience develops, so the pricing

<sup>73</sup> Submission 7, Motorcycle Council of NSW, p 4.

<sup>74</sup> Evidence, Mr Wood, 18 November 2022, p 10.

<sup>75</sup> Evidence, Mr Dent, 18 November 2022, pp 53-54.

<sup>76</sup> Evidence, Ms Estelle Pearson, Actuary, Principal Finity Consulting, supporting the Insurance Council of Australia, 18 November 2022, p 23.

<sup>77</sup> Evidence, Ms Pearson, 18 November 2022, pp 27 and 23.

<sup>78</sup> Evidence, Ms Pearson, 18 November 2022, p 27.

is more reflective of the actual experience. That's recalibrated on an annual basis, which is a really important part of the pricing and premium guidance that SIRA gives the insurers, and then they have to follow that when they file on an annual basis.<sup>79</sup>

- 2.26** Mr Dent remarked that he expected more accurate estimates regarding premium pricing from 'the five- to seven-year mark'.<sup>80</sup>

### **Efficiency of the Personal Injury Commission**

- 2.27** The efficiency of the Personal Injury Commission (the Commission) and the current dispute resolution model was discussed during the course of the inquiry.
- 2.28** Under the CTP scheme, should a claimant remain dissatisfied with an insurer's decision, after an internal review with the insurer, the claimant may take their matter to the Commission for review and resolution.
- 2.29** In its submission, SIRA identified a steady increase in the number of dispute applications made each financial year since 2018, and a steady decline in the percentage of disputes finalised within either 26 or 52 weeks of application.<sup>81</sup>
- 2.30** SIRA noted that in the 2022 financial year 5,281 dispute applications were received, with 40 per cent finalised within 26 weeks, and 74 per cent within 52 weeks. A variability in the finalisation rate was also noted, with disputes related to medical assessments having the lowest finalisation rates, at 26 per cent within 26 weeks, and 64 per cent within 52 weeks.<sup>82</sup>
- 2.31** Some stakeholders raised concerns related to the efficiency and performance of the Personal Injury Commission.
- 2.32** The Australian Lawyers Alliance contended that the Commission 'is beset with delays', identifying a number of operational matters which it argued limited the performance of the Commission. While acknowledging the significant impact of the pandemic on the Commission, the Australian Lawyers Alliance expressed concern that the delays may be attributable to 'more widespread reasons' than the pandemic.<sup>83</sup>
- 2.33** In correspondence received by the committee, the Hon Judge Phillips, President, Personal Injury Commission, responded to the concerns of the Australian Lawyers Alliance, detailing the challenges faced by the Commission since it commenced in March 2021, including transitional issues inherited from the previous Dispute Resolution Service, and the significant disruption and assessment backlog resulting from the pandemic.<sup>84</sup>

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<sup>79</sup> Evidence, Dr Petrina Casey, Executive Director, Motor Accidents Insurance Regulation Division, State Insurance Regulatory Authority, p 54.

<sup>80</sup> Evidence, Mr Dent, 18 November 2022, p 54.

<sup>81</sup> Submission 3, State Insurance Regulatory Authority, p 25.

<sup>82</sup> Submission 3, State Insurance Regulatory Authority, p 25.

<sup>83</sup> Submission 4, Australian Lawyers Alliance, pp 4-5.

<sup>84</sup> Correspondence, from the Hon Judge Phillips, President, Personal Injury Commission to Chair, Standing Committee on Law and Justice, 10 November 2022, attachment p 2.

- 2.34** Judge Phillips refuted assertions that the 'Commission's operations are not efficient'.<sup>85</sup> Judge Phillips, in an attachment to correspondence he provided to the committee, outlined the significant volume of overall disputes registered and finalised with the Commission, and the measures adopted to address the assessment backlog. He also advised that eased operational pressures had allowed for a reduction in the motor accidents backlog from 4,667 unresolved applications in January 2022, to 1,950 as at 1 November 2022, with the Motor Accidents Division achieving a finalisation rate of 130 per cent for the 2022 financial year to 1 November 2022.<sup>86</sup>
- 2.35** Indeed, a number of inquiry participants acknowledged and supported the work by the Commission to resolve the backlog of disputes, including SIRA, insurer representatives, icare and the Independent Review Officer.<sup>87</sup>
- 2.36** However, notwithstanding this improvement, Judge Phillips acknowledged a number of impediments to more timely resolution of disputes, particularly those requiring medical assessment. For example, Judge Phillips stated that finalisation rates for medical assessments are impeded by a high demand for appointments for certain medical specialists, non-attendance at appointments by claimants, and the submission of high volumes of irrelevant medical records to applications.<sup>88</sup>
- 2.37** During the inquiry legal representatives made suggestions for specific reforms or areas for review that could improve the timely operation of the Commission and claimants experiences during dispute resolutions. These related to the number and retention of medical assessors,<sup>89</sup> and empowering the Commission to undertake merits review of treatment and care disputes.<sup>90</sup>
- 2.38** SIRA informed the committee that it is currently undertaking a Statutory Review of the Personal Injury Commission Act 2020 'to determine whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate', although it noted that this review 'does not extend to an examination of the efficiency of operations'.<sup>91</sup>
- 2.39** SIRA has published the submissions to this statutory review online, including a submission from the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists (RANZCP). In their submission the RANZCP NSW Branch raise concerns over the publication of Medical Review Panel certificates which include identifying information. While acknowledging the importance of ensuring the Commission remains 'accessible, open and transparent', the College argued that this 'should not, come at the expense of an individual's medical privacy'. The College

<sup>85</sup> Correspondence, from the Hon Judge Phillips to Chair, 10 November 2022, attachment p 2.

<sup>86</sup> Correspondence, from the Hon Judge Phillips to Chair, 10 November 2022, attachment pp 3/7 – 4/7.

<sup>87</sup> See answers to pre-hearing questions, State Insurance Regulatory Authority, p 3; evidence, Ms Zoe Wang, Manager Health and Recovery CTP Claims, IAG, and Member Representative, Insurance Council of Australia, 18 November 2022, p 24; evidence, Mr Richard Harding, Chief Executive Officer, icare, 18 November 2022, p 41; and evidence, Mr Cohen, 18 November 2022, p 45.

<sup>88</sup> Correspondence, from the Hon Judge Phillips to Chair, 10 November 2022, attachment p 2.

<sup>89</sup> Correspondence, from Australian Lawyers Alliance to the Chair, Standing Committee on Law and Justice, 17 November 2022, pp 11-13.

<sup>90</sup> Submission 11, New South Wales Bar Association, p 5.

<sup>91</sup> Answers to pre-hearing questions, State Insurance Regulatory Authority, pp 3-4.

strongly disagreed that the 'identification of an individual and publication of that individual's details, as is the case with Medical Review Panel certificates, are necessary for decisions to be transparent'.<sup>92</sup>

### Road safety and the CTP scheme

- 2.40** The benefits of improved road safety for the CTP Scheme were discussed during the inquiry by the Australasian College of Road Safety, who argued that 'the care and treatment of people injured after the occurrence of road crashes cannot be the sole focus of the administration of CTP and LTCS' schemes.<sup>93</sup>
- 2.41** At the hearing, Mr Michael Timms, Deputy Chair, Australasian College of Road Safety, NSW Chapter, explained that 'the best way to sustain post-crash care and lower premiums is by reducing the burden on the scheme' via improved road safety and the prevention of injury.<sup>94</sup>
- 2.42** Noting the National Road Safety Strategy 2021-2030 and the NSW 2026 Road Safety Action Plan, Australasian College of Road Safety identified opportunities to align road safety goals and the operation of the CTP scheme.<sup>95</sup> These included:
- formal stakeholder commitment to the NSW 2026 Road Safety Action Plan targets, including to halve fatalities and reduce serious injury by 30 per cent by 2030
  - renewed industry leadership and technological innovations, such as programs to support the replacement of older vehicles owned by younger people, young driver telematics and improved monitoring for heavy vehicles
  - incorporating 'Safe System' factors into the determination of CTP premiums, such as ANCAP vehicle ratings, or actions that manage a drivers exposure to risk
  - stakeholders reporting to this committee on action taken regarding these opportunities.<sup>96</sup>
- 2.43** Mr Timms also emphasised the need for innovative responses and timely action now, commenting that 'otherwise we will be sitting here in 2030 scratching our heads and wondering why there are still 10,000 people hospitalised as a result of road crashes'.<sup>97</sup>
- 2.44** SIRA advised the committee of the newly adopted Road Safety Partnership Memorandum of Understanding 2022/26 with Transport for NSW. Under the agreement, SIRA has committed \$3 million in funding to the NSW Centre for Road Safety to support the delivery of 13 projects

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<sup>92</sup> Statutory Insurance Regulatory Authority, *Submission from the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists to the Statutory Review of the Personal Injury Commission Act 2020*, dated 7 October 2022, p 2, available online at: [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0011/1117595/1-Sep-22-RANZCP-NSW-Branch.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0011/1117595/1-Sep-22-RANZCP-NSW-Branch.pdf).

<sup>93</sup> Submission 2, Australasian College of Road Safety, p 3.

<sup>94</sup> Evidence, Mr Michael Timms, Deputy Chair, Australasian College of Road Safety, NSW Chapter, 18 November 2022, p 2.

<sup>95</sup> Submission 2, Australasian College of Road Safety, p 4 and 6.

<sup>96</sup> Submission 2, Australasian College of Road Safety, pp 4-7; and evidence, Mr Timms, 18 November 2022, pp 8-9.

<sup>97</sup> Evidence, Mr Timms, 18 November 2022, pp 8 and 9.

targeting priority road user groups.<sup>98</sup> SIRA also noted it's work with the National Road Safety Partnership Program, which supports the implementation of a positive road safety culture in Australian organisations'.<sup>99</sup>

- 2.45** In respect to Safe Systems factors and premium prices, SIRA noted 'it is often difficult to quantify a direct relationship' between safety programs and their ability to impact premiums. SIRA observed that the *Motor Accident Guidelines* allow insurers to factor in safe behaviour or vehicle features, but more significant risk factors, such as driver age, 'would have a more material impact on Green Slip prices'.<sup>100</sup>

### **Equity in the point to point transport sector**

- 2.46** The submission from the NSW Taxi Council discussed the operation of the CTP Scheme in the point to point transport sector, and advocated for a 'competitor neutral scheme between Rideshare, Hire Cars and Taxis'.<sup>101</sup>
- 2.47** While the NSW Taxi Council expressed appreciation for the work undertaken by SIRA to introduce industry reforms and acknowledged the collaborative and consultative approach of the NSW Government in working towards addressing industry challenges, it maintained that 'more is required to achieve a true level playing field for all participants' in the CTP scheme.<sup>102</sup>
- 2.48** Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council, detailed how premium calculations are resulting in disparities between taxis, rideshare and hire cars despite conducting the 'same trip and same risks'.<sup>103</sup> Mr Rogers remarked:

Where we're heading is not in a direction where we're going to get neutrality; we're actually going to have more complexity, where taxis will be at a complete disadvantage. CTP will be a significant factor in determining whether a taxi is actually registered... We need to make sure we've got a scheme what captures all, not captures most.<sup>104</sup>

- 2.49** The NSW Taxi Council proposed a number of scheme reforms to address their concerns regarding ongoing inequities and 'commercial disparities' between taxi and rideshare services.<sup>105</sup> Recommendations for specific reforms related to premium classes, workers compensation requirements, the taxi Fares Order, vehicle audit and compliance processes, and demurrage rates.<sup>106</sup>

<sup>98</sup> Submission 3, State Insurance Regulatory Authority, p 35.

<sup>99</sup> Submission 3, State Insurance Regulatory Authority, p 35.

<sup>100</sup> Answers to pre-hearing questions, State Insurance Regulatory Authority, p 6.

<sup>101</sup> Submission 1, NSW Taxi Council, p 3 and 7. See also evidence, Mr Rogers, 18 November 2022, p 3.

<sup>102</sup> Submission 1, NSW Taxi Council, p 3 and 8.

<sup>103</sup> Evidence, Mr Rogers, 18 November 2022, p 6.

<sup>104</sup> Evidence, Mr Rogers, 18 November 2022, p 6.

<sup>105</sup> Submission 1, NSW Taxi Council, p 18.

<sup>106</sup> Submission 1, NSW Taxi Council, p 5. See also evidence, Mr Nick Abraham, Deputy Chief Executive Officer, NSW Taxi Council, 18 November 2022, p 5.

**2.50** In response to questions on this issue, Mr Dent, gave evidence seeking to address the range of concerns raised relating to the point to point transport sector, stating that:

... your principle is absolutely right that a vehicle doing the same thing with the same degree of risk should have the same pricing. Then where the risk is different, based on the amount of trips, the amount of time on the road and all of those factors, there is no reason that that shouldn't be equivalent. That's what we are absolutely aiming for.<sup>107</sup>

**2.51** Mr Dent informed the committee that the revised *Motor Accident Guidelines* expected in late 2022, will introduce 'pricing equivalence' in premiums, via a new 'minimum premium for taxis' that is equivalent to rates paid by ride share vehicles.<sup>108</sup>

**2.52** Adding to Mr Dent's evidence, Dr Casey noted that individual risk profiles do differ for both taxi and the rideshare drivers which would 'need to be factored into the premium'.<sup>109</sup>

**2.53** Mr Dent and Dr Casey confirmed with the committee that this would be a responsive and continually monitored process. Mr Dent commented that as a 'risk profile changes, that data will be available and that will be able to be made use of in premium calculations'.<sup>110</sup>

### **Motorcycles**

**2.54** The operation of the CTP scheme as it relates to motorcyclists was explored during the inquiry.

**2.55** The Motorcycle Council of NSW informed the committee that since the last review it now meets with SIRA quarterly, receiving 'updates on the number and size of claims ... [which] allows the MCC to assess how the scheme is performing' as it relates to motorcycle road users.<sup>111</sup>

**2.56** While expressing appreciation for increased consultation, the Motorcycle Council of NSW reiterated concerns raised in previous reviews, which it argued are disadvantageous for motorcyclists. In particular, Mr Brian Wood, Secretary, Motorcycle Council of NSW, drew the committee's attention three specific issues:

- inconsistencies in the insurance cover applicable to interstate accidents which continue to leave motorcyclists with reduced benefits or no insurance coverage
- the possibility of inequity in the operation of the TEPL mechanism
- the cost of accidents caused by road defects continuing to be covered by the CTP scheme, which is ultimately borne by policy holders, rather than having those costs reimbursed from road authorities required to maintain a safe road network.<sup>112</sup>

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<sup>107</sup> Evidence, Mr Dent, 18 November 2022, p 57.

<sup>108</sup> Evidence, Mr Dent, 18 November 2022, p 56. See also answers to pre-hearing questions, State Insurance Regulatory Authority, pp 7-8.

<sup>109</sup> Evidence, Dr Casey, 18 November 2022, p 57.

<sup>110</sup> Evidence, Mr Dent, 18 November 2022, pp 57-58.

<sup>111</sup> Submission 7, Motorcycle Council of NSW, p 3.

<sup>112</sup> Evidence, Mr Wood, 18 November 2022, pp 2-3.



- 2.57** In response to questions concerning the jurisdictional gaps that policy holders experience interstate, Dr Casey advised the committee that they 'have worked closely with the Motorcycle Council to provide clarity for their members', but the issue 'is not just confined to motorcycles' and requires further examination before it can be resolved.<sup>113</sup>

### **E-scooters**

- 2.58** During the inquiry the Public Interest Advocacy Centre (PIAC) raised concerns regarding the adequacy of the electric scooter (e-scooter) insurance framework in New South Wales.

- 2.59** PIAC informed the committee of exclusions in e-scooter rider policies which could limit the coverage available to injured third-parties, such as pedestrians. The committee was advised that as e-scooters are un-registered vehicles, they are excluded from the CTP scheme.<sup>114</sup> PIAC explained that:

Without an insurer to claim from, the limitations associated with suing a rider and no access to the motor vehicle CTP insurance scheme, a third-party injured in an accident involving an e-scooter can be left with significant out-of-pocket expenses and no legal recourse.<sup>115</sup>

- 2.60** PIAC argued that where e-scooter use is allowed, there should be 'effective protection for pedestrians under a public insurance scheme'.<sup>116</sup>

- 2.61** SIRA informed the committee it will be able to consider future scheme impacts as it is 'currently monitoring a shared-scheme electric scooter trials in NSW, which will help to fulfil the NSW Government commitment to investigate the benefits and issues around emerging micro-mobility devices'.<sup>117</sup>

### **Committee comment**

- 2.62** The committee recognises that the newness of the scheme remains a factor in assessing and further developing aspects of the scheme's performance and operation. We note the various initiatives and regulatory work by SIRA and stakeholders during this early phase of the scheme and commend the significant contribution of all stakeholders to scheme improvements since our last review.

- 2.63** The committee was particularly encouraged to see the high level of engagement, collaboration and consultation SIRA has undertaken with industry stakeholders.

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<sup>113</sup> Evidence, Dr Casey, 18 November 2022, p 62. See also answers to questions on notice, State Insurance Regulatory Authority, pp 3-4.

<sup>114</sup> Submission 5, Public Interest Advocacy Centre, p 2.

<sup>115</sup> Submission 5, Public Interest Advocacy Centre, p 3.

<sup>116</sup> Submission 5, Public Interest Advocacy Centre, p 3. See also evidence, Ms Michelle Cohen, Principal Solicitor, Public Interest Advocacy Centre, and Ms Sheetal Balakrishnan, Senior Solicitor, Public Interest Advocacy Centre, 18 November 2022, pp 3-5 and 7; and answers to questions on notice, Public Interest Advocacy Centre, p 2.

<sup>117</sup> Submission 3, State Insurance Regulatory Authority, p 7.

- 2.64** While evidence in this review was wide-ranging, we are cognisant of the detailed consultative work underway regarding implementation of the statutory review's recommendations and other scheme reforms. In general, this report focuses on complementary or additional issues.
- 2.65** In relation to the operation of the TEPL mechanism, the committee notes that \$269.7 million in excess profits was returned by the 2021 and 2022 assessments combined.
- 2.66** While the committee has confidence in SIRA's use of the TEPL mechanism to recover excess profits, the committee also acknowledges stakeholder concerns regarding the transparent use of the mechanism. The committee suspects that the scope of information published according to SIRA's Regulatory Publishing Policy may not be meeting the expectations of stakeholders. The committee consequently recommends that SIRA ensure sufficient information is available relating to profit assessments and utilisation of the TEPL mechanism to allow stakeholders to understand the drivers of excess profit, and whether profits are borne equitably by individual road user groups.
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### **Recommendation 1**

That the State Insurance Regulatory Authority ensure sufficient information is publicly available relating to profit assessments and utilisation of the transitional excess profit and loss mechanism, so as to allow stakeholders to understand the drivers of excess profit and whether profits are borne equitably by individual road user groups.

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- 2.67** The committee notes that the timely consideration and resolution of claims and disputes is a key objective of CTP insurance scheme. While the committee acknowledges that the pandemic has impacted the ability of the Personal Injury Commission to maintain timely finalisation rates for dispute resolution, and that the Commission has taken steps to address the backlog of disputes, we equally consider that there is merit in further reviewing aspects of the operation of the Commission which may limit its efficiency.
- 2.68** We also note concerns raised by the NSW Branch of the Royal Australian and New Zealand College of Psychiatrists in its recent submission to the review of the Personal Injury Commission Act 2020 regarding medical privacy and the publication of Medical Review Panel certificates.
- 2.69** The committee therefore recommends that this concern be considered by SIRA as part of the statutory review process, along with an examination of any aspects of the Act which may impede the timely resolution of disputes at the Commission.

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### Recommendation 2

That the State Insurance Regulatory Authority investigate, either through the Statutory Review of the *Personal Injury Commission Act 2020* or separately, whether any aspects of the Act or their operation:

- may impede the timely resolution of disputes by the Commission
  - undermine an individual's medical privacy during the publication of Medical Review Panel certificates.
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- 2.70** The committee reiterates its comments in the last review that improving road safety is paramount to reducing CTP claims. The committee is pleased to note recent commitments by SIRA aimed at improving road safety via the CTP scheme, and we encourage further consideration to be given to opportunities and initiatives which would allow road safety improvements, such as the inclusion of additional 'Safe System' factors, such as ANCAP ratings, to be considered in the calculation of CTP premiums.
- 2.71** The committee is likewise interested in seeing progress in relation to other matters raised by road users, such as jurisdictional issues relating to interstate accidents.
- 2.72** The committee recommends that SIRA examine these issues, in consultation with stakeholders, with a view to identifying or implementing solutions prior to the next review of this committee.
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### Recommendation 3

That the State Insurance Regulatory Authority further investigate the following issues, in consultation with stakeholders, with a view to identifying or implementing potential solutions prior to the next review of this committee:

- the benefits of introducing additional 'Safe System' factors, such as ANCAP ratings, in the calculation of CTP premiums as a measure to support improved road safety
  - jurisdictional issues relating to interstate accidents and CTP claims.
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## Legal support for claimants

- 2.73** As noted in Chapter 1, in this review the committee was required to assess the merits of expanding the Independent Legal Assistance and Review Service (ILARS) to CTP scheme claimants. ILARS is administered by the Independent Review Office and provides regulated legal support to claimants of the workers compensation scheme.
- 2.74** In 2021, as part of its regulatory work, the State Insurance Regulatory Authority (SIRA) commissioned an independent review of the provision of legal supports to CTP claimants, including consideration of the expansion of ILARS. The resulting report, known as the Taylor Fry report, has informed stakeholder discussions regarding potential reforms to legal support.
- 2.75** This section provides a summary of the views expressed by inquiry participants regarding legal and other supports and the merits of expanding ILARS to CTP scheme claimants.
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### **Expanding the Independent Legal Assistance and Review Service**

- 2.76** The Independent Review Office explained that ILARS provides funding for 'free, independent legal advice and assistance' to injured workers when 'seeking advice regarding the decisions of insurers' in workers compensation claims, and/or when 'finding solutions for disputes between workers and insurers'.<sup>118</sup>
- 2.77** There was general agreement from SIRA, the Independent Review Office, legal and insurer representatives that ILARS should not be extended into the CTP scheme in its current form without modification.<sup>119</sup>
- 2.78** The Insurance Council of Australia offered the view that 'it would be a retrograde step to lift and shift [ILARS] ...without tailoring to meet Scheme objectives and the needs of a more diverse group of claimants'.<sup>120</sup>
- 2.79** This view was also expressed by SIRA. Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority advised the committee that 'ILARS in its current form ... is not the appropriate solution for CTP'.<sup>121</sup>
- 2.80** Informed by the Taylor Fry review, SIRA provided an explanation of its position, advising that opposition to the expansion of ILARS was based on the following reasons:
- premium prices would be impacted and the risk to scheme sustainability is potentially very high
  - implementation of options that enable end-to-end support for injured people is underway and will be the subject of public consultation in early 2023
  - the early involvement of lawyers would impact all matters and is more consistent with the previous scheme
  - the ILARS model in the workers compensation system has not been tested through an independent review process.<sup>122</sup>
- 2.81** Notwithstanding general stakeholder agreement opposing the expansion of ILARS in its current form for use in the CTP scheme, the committee heard that further review and reform of legal and other support for claimants is warranted. The Independent Review Office drew to the committee's attention a finding of Taylor Fry review, which stated that 'there is an unmet need for claimant support which should be addressed', as well as a suggestion from the statutory review that improvements to the scheme's legal support model should be considered.<sup>123</sup>
- 2.82** While there was agreement ILARS, in its current form, should not be expanded to CTP claimants, a number of stakeholders indicated their support for a modified version of ILARS,

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<sup>118</sup> Submission 8, Independent Review Office, pp 19-20.

<sup>119</sup> See evidence, Mr Dent, 18 November 2022, p 61; evidence, Mr Cohen, 18 November 2022, p 44; and submission 10a, Law Society of New South Wales, p 2.

<sup>120</sup> Submission 9a, Insurance Council of Australia, p 3.

<sup>121</sup> Evidence, Mr Dent, 18 November 2022, p 61.

<sup>122</sup> Submission 3a, State Insurance Regulatory Authority, p 1.

<sup>123</sup> Submission 8, Independent Review Office, p 18.

including SIRA, the Independent Review Office, and legal representatives.<sup>124</sup> The Independent Review Officer, Mr Simon Cohen, stated that 'with appropriate modification, ILARS is a model that can address unmet legal needs in an effective manner'.<sup>125</sup>

**2.83** Speaking to the differing experiences of claimants within the CTP and workers compensation schemes, Mr Cohen noted how well integrated the ILARS model is with the dispute resolution framework, remarking:

... my solutions team, probably what they would say is the biggest difference is that, where we can't solve complaints, the options that we have for people injured at work as to those injured in motor accidents are very different. For people who are injured at work, we can often give a pretty seamless hand-off in the context of referring them to information about ILARS so that they know that they can confidently go and see an expert, an independent lawyer and get advice about their matter at no cost to them. Whereas in the CTP space, it's a much less certain hand-off.

We might need to, for example, send them to the New South Wales Law Society website to see whether they might be able to find someone who can assist them, and we can't provide them any assurance about the expertise of that person as we can in the workers compensation space.<sup>126</sup>

**2.84** Generally speaking, stakeholders did not make explicit suggestions as to how to modify ILARS for the CTP scheme. The primary areas of discussion regarding ILARS, the current legal support model and potential reforms are detailed in the following sections.

### **Early access to legal support**

**2.85** The key point of discussion regarding legal support centred on when claimants should be able to access legal representation. During the inquiry, stakeholders expressed views on whether early access to legal support, as available under the ILARS model, would be beneficial or detrimental to claimants and the operation of the scheme.

**2.86** In broad summary, the Australian Lawyers Alliance, Law Society of New South Wales and New South Wales Bar Association argued that given the complexity of the scheme, early access to free legal support would be beneficial to both claimants and the scheme.<sup>127</sup>

**2.87** Mr Leigh Davidson, Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales outlined this position to the committee, stating:

... the Law Society considers that the experience of injured persons in the CTP scheme will often benefit from early access to the services of a legal adviser and advocate. This

<sup>124</sup> See evidence, Mr Dent, 18 November 2022, p 52; evidence, Mr Cohen, 18 November 2022, p 44; submission 10a, Law Society of New South Wales, p 2; submission 9a, Insurance Council of Australia, p 1; and evidence, Mr Butel, 18 November 2022, p 22.

<sup>125</sup> Evidence, Mr Cohen, 18 November 2022, p 44.

<sup>126</sup> Evidence, Mr Cohen, 18 November 2022, p 51.

<sup>127</sup> See submission 4, Australian Lawyers Alliance; submission 10a, Law Society of New South Wales; submission 11a, New South Wales Bar Association; and evidence Mr John Turnbull, SC, New South Wales Bar Association, and Mr Davidson, 18 November 2022, pp 11-12.

much has been recognised in the Clayton Utz-Deloitte [statutory review] report and the Taylor Fry [SIRA] review of legal supports. The scheme is complex, and access to a lawyer can lead to better outcomes, including access to entitlements that may enhance the claimant's experience of the operation of the scheme.<sup>128</sup>

**2.88** The evidence received from legal representatives in support of early access to legal support explored a number of factors, with benefits broadly argued to include:

- earlier, less adversarial and more cost-effective, resolution of claims
- increased support, fairness and justice for claimants
- improved claimant recovery outcomes
- efficiencies in the operation and performance of the scheme.<sup>129</sup>

**2.89** The evidence from legal representatives highlighted there were differing options available within an early access model, with legal support available at a point 'where there is a disagreement with insurers regarding entitlements',<sup>130</sup> or earlier – at the 'front-end ... to assist with the making of a claim'.<sup>131</sup>

**2.90** Conversely, Ms Estelle Pearson, Actuary, Principal Finity Consulting, appearing on a panel with the Insurance Council of Australia, remarked that 'the scheme by its design was not intended to have early legal representation because, for the vast majority of claims, there shouldn't be that complexity'.<sup>132</sup>

**2.91** While much of the evidence from insurer representatives was provided to the committee in the context of the expansion of ILARS, the Insurance Council of Australia expressed clear support for 'retaining the current framework'.<sup>133</sup>

**2.92** The Insurance Council of Australia stated that the design and operation of the scheme 'enables injured people to self-manage their care and access to treatment and care quickly and easily'.<sup>134</sup> The Insurance Council of Australia argued that accessibility and informality were key considerations in the scheme's design, and that the internal review mechanism 'facilitates access to a simple, cost-effective and efficient dispute resolution system without the need for legal representation or escalation to the Personal Injury Commission'.<sup>135</sup>

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<sup>128</sup> Evidence Mr Davidson, 18 November 2022, p 11.

<sup>129</sup> See submission 4, Australian Lawyers Alliance; submission 10a, Law Society of New South Wales; submission 11a, New South Wales Bar Association; and evidence Mr Turnbull, SC, and Mr Davidson, 18 November 2022, pp 11-12.

<sup>130</sup> Submission 11a, New South Wales Bar Association, p 1.

<sup>131</sup> Submission 10a, Law Society of New South Wales, p 2.

<sup>132</sup> Evidence, Ms Pearson, 18 November 2022, p 25.

<sup>133</sup> Submission 9a, Insurance Council of Australia, p 2.

<sup>134</sup> Submission 9, Insurance Council of Australia, p 2.

<sup>135</sup> Submission 9a, Insurance Council of Australia, p 3; and submission 9, Insurance Council of Australia, p 3.

- 2.93** In support of this view, the Insurance Council of Australia detailed the benefits of the current scheme, arguing legal reform would result in negative impacts to scheme efficiency and 'introduce additional costs with no additional benefit'.<sup>136</sup> Arguments put forward by the Insurance Council of Australia and insurer representatives regarding ILARS, purported:
- a more complex, adversarial and drawn out claims process
  - increased administration and legal fees, increasing overall scheme cost and a reduction in the percentage of premiums paid in benefits
  - potential for behavioural change and increases in unmeritorious claims and gaming behaviour
  - that the current scheme design promotes accessibility, insurer compliance, early treatment and rehabilitation
  - that the current dispute resolution framework, including internal insurer review, CTP Legal Advisory Service, CTP Assist service, and the Commission, provides support and legal assistance to claimants and is just, quick and cost effective.<sup>137</sup>
- 2.94** Relevant to the discussion of these issues, SIRA provided the committee with an overview of the Taylor Fry review, which it advised was conducted in line with the following principles:
- legal support frameworks should ensure that injured people can access the necessary benefits under the scheme to promote their recovery and return to work and other activities.
  - legal supports should provide an incentive for the early resolution of claims and the quick, cost-effective, and just resolution of disputes
  - legal supports should work with other mechanisms in the scheme to ensure continued affordability for policy holders
  - legal supports should be proportionate to the complexity of the issue in dispute.<sup>138</sup>
- 2.95** SIRA drew to the committee's attention findings from the review that:
- disputes, legal representation, and legal costs have been below levels that were expected under the 2017 reforms, potentially due to:
    - 'the scheme working better than expected'
    - 'some injured people finding the claims process difficult to navigate'
    - 'the scheme needing more time to mature'
  - while ILARS could assist injured people at key points of friction and provide simplicity, its introduction was not recommended as it could disincentivise insurers, be potentially costly, and this proposed model would represent a significant departure from the policy objectives of the 2017 reforms

<sup>136</sup> Submission 9a, Insurance Council of Australia, p 2.

<sup>137</sup> Submission 9a, Insurance Council of Australia, pp 1, 3 and 7-8.

<sup>138</sup> Submission 3a, State Insurance Regulatory Authority, p 1.

- eight reform options were put forward for further consideration by SIRA.<sup>139</sup>

**2.96** Echoing the evidence from the Insurance Council of Australia in relation to an early access legal support model, Dr Petrina Casey, Executive Director, Motor Accidents Insurance Regulation Division, State Insurance Regulatory Authority, advised that such a model was 'at odds' with the CTP scheme design, and 'one of the fundamental approaches' to the scheme: that people get 'earlier access to care and statutory benefits'.<sup>140</sup>

**2.97** Mr Dent, further explained that in response to the review, SIRA was adopting an 'end-to-end' approach in its consideration of a model of legal support that would best suit the experiences of claimants in the CTP scheme. Mr Dent stated:

There are a range of points in the claimant journey that we would want to look at improving—starting, first of all, with minimising the reasons for complaints and disputes to arise in the first place. Then we move into—when they do arise—through CTP Assist, can we help claimants understand their rights and the benefits available to them? Then you have the option of the resolutions team at the IRO [Independent Review Office], and I commend it for the incredible work it does do in resolving complaints very quickly before they turn into disputes. Then at that point there is an opportunity for legal support. As the regulator across this scheme and others, we need to take an end-to-end view. Ideally we'd like to reduce complaints and disputes by a reasonably significant amount in the first place, rather than just addressing it with one piece of the journey.<sup>141</sup>

**2.98** Evidence received from the Independent Review Officer, Mr Cohen, raised a number of concerns over the position of SIRA in relation to reforms to legal supports. Mr Cohen stated that the submission from SIRA contained 'a number of inaccuracies, omissions and misstatements' which 'fundamentally misunderstands ILARS'.<sup>142</sup>

**2.99** Mr Cohen further spoke to the substance of SIRA's proposed approach to legal reforms, stating that 'it is unclear what additional legal supports are proposed' by SIRA, and adding that 'CTP Assist cannot replace the role of a lawyer who can advocate for the injured person and provide advice about their individual circumstances'.<sup>143</sup>

**2.100** In its submission, the Independent Review Office provided detailed evidence to the committee examining the current legal support model as well as discussing the strengths and benefits of ILARS. Aspects of ILARS, potential reform considerations and legal assistance models discussed by the Independent Review Office included:

- scheme complexity and the need to have legal support available
- the extent to which claimants currently access legal supports offered by ILARS
- regulation mechanisms, including approved lawyer and funding guidelines
- scheme transparency and efficiency

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<sup>139</sup> Submission 3a, State Insurance Regulatory Authority, p 2.

<sup>140</sup> Evidence, Dr Casey, p 53.

<sup>141</sup> Evidence, Mr Dent, 18 November 2022, p 53.

<sup>142</sup> Evidence, Mr Cohen, 18 November 2022, p 44.

<sup>143</sup> Evidence, Mr Cohen, 18 November 2022, p 44.



- positive outcomes for claimants and stakeholder satisfaction.<sup>144</sup>

### **Scheme performance and affordability**

- 2.101** Two critical considerations in the discussion of early access to legal support related to the impact of legal support on scheme performance and affordability. Stakeholders presented differing views on how the scheme was currently 'performing' – meaning how well the scheme was meeting its objectives to support injured motorists to recover. Differing views on the cost implications of early access to legal advice and the ongoing affordability of CTP premiums were also put to the committee.

#### *Scheme performance*

- 2.102** Stakeholders expressed differing views on whether the scheme was performing in a manner which ensured the full provision of entitlements to claimants.
- 2.103** During the inquiry, legal representatives raised concerns that in the absence of legal representation claimants may not be receiving entitlements in full, resulting in scheme underperformance.
- 2.104** In support of this view, the New South Wales Bar Association drew the committee's attention to the findings and comments in the reports of the statutory review and Taylor Fry review on legal supports. It noted in particular that the statutory review stated:

... the experience of a number of claimants in the scheme bears out the self-evident proposition that many injured persons will benefit from having access to the services of a professional adviser and advocate, in terms of accessing entitlements under a complex scheme of statutory benefits where decisions are made by a person (the relevant insurer) whose interests are not necessarily the same as those of the claimant.<sup>145</sup>

- 2.105** The New South Wales Bar Association also noted that the legal supports review found that:

Legally represented claimants are more likely than unrepresented claimants to seek an internal review to challenge an unfavourable decision and to challenge unfavourable internal review outcomes; and Legally represented claimants have a higher overall rate of success in achieving an overturn of an initially unfavourable decision.<sup>146</sup>

- 2.106** The Australian Lawyers Alliance suggested that there was a correlation between legal representation, scheme performance and excess profits, stating:

When the MAI Act [*Motor Accident Injuries Act 2017*] was introduced, SIRA set the regulated professional fees for legal assistance on the basis of gross over-estimates as to the likely number of disputes. There have in fact been less than one quarter of the number of disputes that SIRA anticipated would occur. No doubt the lack of legal resources to assist claimants with disputes is part of the reason the scheme is generating the current super profits that it does. It should not be the goal of the scheme to generate

<sup>144</sup> Submission 8, Independent Review Office, pp 19-23.

<sup>145</sup> Submission 11a, New South Wales Bar Association, pp 3-5.

<sup>146</sup> Submission 11a, New South Wales Bar Association, pp 3-5.

super profits through claimants not recovering the benefits to which they are entitled under the Act.<sup>147</sup>

- 2.107** Mr John Turnbull, SC, New South Wales Bar Association supported this view, remarking that the current operation of the scheme is 'unfair', and would 'remain that way whilst-ever claimants don't get representation'.<sup>148</sup>
- 2.108** As discussed from paragraph 2.22, the Insurance Council of Australia refuted arguments concerning excess profits and any assertion that initial over-estimates were an indication of scheme under performance or evidence of a barrier to scheme participation. Ms Pearson, Actuary, Principal Finity Consulting, encouraged the committee to look at other indicators to assess how the scheme is performing—'is it meeting its objectives in terms of is it affordable, is it efficient, are injured people getting treatment and care and weekly benefits in a prompt fashion?'.<sup>149</sup>
- 2.109** In this regard, the Insurance Council of Australia and insurer representatives drew scheme performance data to the attention of the committee, noting that:
- over 96 per cent of claims are accepted in terms of the first liability decision<sup>150</sup>
  - in the 2022 financial year, 98.3 per cent of disputes were completed within their timeframes<sup>151</sup>
  - while the percentage of internal reviews with legal representation increased between 2018 and 2020, the proportion review decisions which resulted in a better outcome for the claimant was alike for both claimants with legal representation and those without<sup>152</sup>
  - the '2021 Scheme Performance Report demonstrates that since the commencement of the Scheme to 30 June 2021, 77% had the initial claim decision affirmed'.<sup>153</sup>
- 2.110** The Insurance Council of Australia argued that it did 'not believe that the Scheme is exhibiting issues which would require a substantial reform to legal support, or that there was a 'performance-based' reason for substantial reform that would result from the implementation of ILARS.<sup>154</sup>
- 2.111** In her evidence, Ms Pearson spoke to the newness of the scheme and potential changes which may arise as the scheme matures. Ms Pearson noted that there was a year on year increase in the 'average amount of statutory benefit payments' driven by 'a greater proportion of claimants utilising treatment and care benefits'. Ms Pearson expressed the view that it 'may also be the case that, as people get more used to the scheme, people will utilise more of the benefits that are available'.<sup>155</sup>

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<sup>147</sup> Submission 4, Australian Lawyers Alliance, p 6.

<sup>148</sup> Evidence, Mr Turnbull, SC, 18 November 2022, p 12.

<sup>149</sup> Evidence, Ms Pearson, 18 November 2022, p 23.

<sup>150</sup> Evidence, Ms Wang, 18 November 2022, p 25.

<sup>151</sup> Evidence, Mr Butel, 18 November 2022, p 24.

<sup>152</sup> Submission 9a, Insurance Council of Australia, p 9.

<sup>153</sup> Submission 9, Insurance Council of Australia, p 3.

<sup>154</sup> Submission 9a, Insurance Council of Australia, p 9.

<sup>155</sup> Evidence, Ms Pearson, 18 November 2022, p 23.

**2.112** The committee sought SIRA's view on whether increased legal costs may negatively impact the financial stability of the scheme or reduce the benefits paid by insurers. SIRA detailed their processes for determining and accepting premiums proposed by insurers to ensure scheme targets are achieved, reiterating that: 'Insurers must meet their obligations to injured people in accordance with their licence conditions and the legislative framework and cannot alter the benefits to customers, including access to legal cost'.<sup>156</sup>

*Scheme affordability*

**2.113** Whether early access to legal support would result in increased costs to the scheme and undermine scheme affordability was debated by inquiry participants.

**2.114** The Insurance Council of Australia expressed a clear concern regarding the financial impacts of reform to legal support. The Insurance Council of Australia argued that increased administration and legal fees would increase the overall scheme cost, increase premium prices and reduce the percentage of premiums paid in benefits.<sup>157</sup>

**2.115** Indeed, SIRA identified a range of factors which required consideration in this regard, including the costs of legal fees associated with representation, as well as potential increases to claimed entitlements following disputes.<sup>158</sup>

**2.116** SIRA informed the committee that, based on a commissioned actuarial assessment that assumed legal fee rates consistent with those of ILARS and payable from an earlier claim stage, scheme costs could be expected to increase by \$95 to \$165 million per accident year, or \$16 to \$28 per CTP policy.<sup>159</sup>

**2.117** SIRA highlighted that the 'costing did not include additional operating or administrative expenses' and that there were uncertainties in the costing relating to potential behavioural changes, changes to the level of legal representation, and any relationship between increased legal representation and increased disputation of benefits.<sup>160</sup>

**2.118** Mr Dent, advised the committee, that the cost implications were considered to be a 'reasonably significant increase and cause for concern about whether that model [ILARS] ... would work'.<sup>161</sup>

**2.119** In relation to the potential cost impacts to the scheme, the Law Society of New South Wales advocated for a holistic review of the financial impact of an ILARS-style scheme, as well as stating that the current rates of legal fees warrants review.<sup>162</sup>

<sup>156</sup> Answers to supplementary questions, State Insurance Regulatory Authority, p 1.

<sup>157</sup> Submission 9a, Insurance Council of Australia, pp 1, 3 and 7-8.

<sup>158</sup> Submission 3a, State Insurance Regulatory Authority, p 3.

<sup>159</sup> Submission 3a, State Insurance Regulatory Authority, p 3.

<sup>160</sup> Submission 3a, State Insurance Regulatory Authority, p 3.

<sup>161</sup> Evidence, Mr Dent, 18 November 2022, p 52.

<sup>162</sup> Submission 10a, Law Society of New South Wales, pp 2-3. See also submission 11a, New South Wales Bar Association, p 7.

- 2.120** The current fee model was discussed by legal representatives who expressed the view that increases to legal fees would result in benefits for claimants and the operation of the scheme. The Law Society of New South Wales suggested that:
- 'claimant solicitors tend to avoid incurring disbursements ... until a matter is eligible to be referred to the PIC [Personal Injury Commission] for assessment, where legal fees and disbursements are recoverable'
  - the provision of early legal support would ensure the early provision of advice and 'incentivise early and thorough investigation of claims with relevant documents being submitted to the insurer'
  - 'unmeritorious referrals to the PIC [Personal Injury Commission] will be less likely to occur'.<sup>163</sup>
- 2.121** The rates for legal fees were also discussed by the Independent Review Office, who drew the committees attention to comments from the statutory review suggesting that legal fees needed to be 'sufficient to enable experienced practitioners to continue to remain active in the scheme'.<sup>164</sup> The Independent Review Office also detailed the fixed ILARS funding and fee structure which is paid as a grant 'at the conclusion of the legal relationship or where a final outcome is achieved'.<sup>165</sup>
- 2.122** In evidence, SIRA noted that between the 2015/16 and 2020/21 financial years, the Independent Review Office 'increased legal fees by 47 per cent', and that the costs that Independent Review Office 'has set in the ILARS Funding Guidelines do not align with regulated amounts'.<sup>166</sup> For SIRA, the rising legal costs under ILARS was a particular point of concern in their consideration of the impact legal support reforms may have on the CTP scheme. SIRA noted that the ILARS model requires review to assess 'how it is delivering benefits that balance affordability and financial viability'.<sup>167</sup>
- 2.123** The direct cost of legal support to the scheme was discussed by Mr Turnbull, SC, who sought to provide context to the current costs and potential increases. Mr Turnbull stated that 'in the previous twelve months, legal costs have been \$95 million', noting that this was well below an Ernst & Young estimate that suggested annual legal costs for all claims would be \$274 million in the matured scheme.<sup>168</sup> In Mr Turnbull's view 'the scheme's not costing all that much'.<sup>169</sup>

### **Implementing reforms**

- 2.124** In relation to the implementation of reforms, the committee heard that SIRA had already started to further review and improve legal and other supports in response to the findings and recommendations of the Taylor Fry review.

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<sup>163</sup> Submission 10a, Law Society of New South Wales, pp 2-3.

<sup>164</sup> Submission 8, Independent Review Office, p 19.

<sup>165</sup> Submission 8, Independent Review Office, p 21.

<sup>166</sup> Submission 3a, State Insurance Regulatory Authority, pp 5-6.

<sup>167</sup> Submission 3a, State Insurance Regulatory Authority, pp 5-6.

<sup>168</sup> Evidence, Mr Turnbull, SC, 18 November 2022, p 12.

<sup>169</sup> Evidence, Mr Turnbull, SC, 18 November 2022, p 12.

- 2.125** SIRA informed the committee of the scope of work it had commenced in this regard, including:
- changes to *Motor Accident Guidelines* to require insurers to provide information to claimants regarding the Independent Review Office
  - expansion and enhancements to CTP Assist
  - a 'work value assessment' of the cost of legal fees to the scheme as well as the cost of increased legal support
  - reviewing processes to better understand barriers to scheme participation and claimant experiences within the scheme, such as the medio-legal assessment process.<sup>170</sup>
- 2.126** At the hearing, the Independent Review Officer, Mr Cohen expressed concerns that SIRA may have come to a position regarding ILARS prematurely and without consultation or the 'opportunity to complete evidence gathering about the various options'.<sup>171</sup>
- 2.127** The committee also received evidence which expressed views relating to some of the areas of work being undertaken by SIRA. For example, legal and insurer representatives put forward views relating to the CTP Legal Assistance Service and CTP Assist.<sup>172</sup>
- 2.128** Addressing the concerns expressed by Mr Cohen, Mr Dent confirmed with the committee that SIRA had not finalised its view on a legal supports model, and noted further work was planned for 2023, stating:

... on the basis of consultation that we intend to undertake over the course of 2023, a view of a modified version of ILARS or a range of supports would certainly be on the table. We are absolutely committed to making sure the appropriate level of legal support is brought into the scheme, while balancing that tension of affordability ... We are looking at it from an end-to-end point of view.<sup>173</sup>

### Other issues

- 2.129** In addition to a discussion of ILARS and early access to legal support, specific recommendations regarding the current legal framework were made in order to improve the experience of claimants within the scheme. For example, it was argued that the determination of the causation of injuries should be decided by a legally qualified professional rather than by doctors.<sup>174</sup>
- 2.130** The committee also heard that improvements to information processes during the claim process could improve scheme efficiency and reduce disputes. Insurer representatives noted that the 'internal review process can facilitate the provision of additional information', which may result in a review decision in favour of claimants.<sup>175</sup> Additionally, Mr Cohen, noted that the complaints

<sup>170</sup> Submission 3a, State Insurance Regulatory Authority, pp 6, 9, 10, 30-33.

<sup>171</sup> Evidence, Mr Cohen, 18 November 2022, p 44.

<sup>172</sup> Submission 11a, New South Wales Bar Association, p 5 and submission 10a, Law Society of New South Wales, p 2.

<sup>173</sup> Evidence, Mr Dent, 18 November 2022, p 53.

<sup>174</sup> See evidence, Mr Turnbull, SC, 18 November 2022, p 11.

<sup>175</sup> Submission 9, Insurance Council of Australia, p 3.

of a number of claimants contacting the Independent Review Office were just a matter of providing information', as the 'injured person hasn't got all the information they need to be able to understand the decision that has been made'.<sup>176</sup>

- 2.131** To address this issue Mr Cohen recommended consideration of a provision in the workers compensation scheme that stipulates what information insurers are required to provide to claimants in decision notices, with content to include an explanation for decisions, and the provision of evidence that's been relied upon in the decision making process.<sup>177</sup>
- 2.132** Mr Dent, welcomed the insight and suggestion from Mr Cohen as a possible solution SIRA can take up with insurers.<sup>178</sup>

### Committee comment

- 2.133** The committee recognises the need to ensure there is comprehensive, efficient and affordable support available to claimants in the CTP scheme, including effective legal support.
- 2.134** The committee notes the general consensus that ILARS in its current form should not be expanded to CTP claimants. While noting the evidence regarding early access to legal support, regulation of legal support, scheme maturity and cost considerations, it was unclear to the committee what a modified ILARS model would ultimately include and how it would operate in the CTP scheme.
- 2.135** During this review, stakeholders did not explicitly consider specific modifications to the proposal which would address concerns regarding the impact of legal support, and indeed expansion of ILARS, on the scheme's performance and affordability.
- 2.136** It is evident to the committee that further consultation and detailed examination of reform options is required. In this regard, we support SIRA's continuing work in this area, noting it has plans for public consultation in 2023 based on a work value assessment of the legal supports currently available in the scheme.
- 2.137** Finally, the committee notes the evidence received from the Independent Review Office highlighting issues relating to the provision of information to claimants, and the regulation of the content of decision notices issued by insurers in the workers compensation scheme. The committee notes the support expressed by SIRA to the suggestion that the CTP scheme would benefit from a similar approach. The committee also supports this change.

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<sup>176</sup> Evidence, Mr Cohen, 18 November 2022, pp 48-49.

<sup>177</sup> Evidence, Mr Cohen, 18 November 2022, p 48 and submission 8, Independent Complaints Office, p 17.

<sup>178</sup> Evidence, Mr Dent, 18 November 2022, p 55-56. See also answers to pre-hearing questions, State Insurance Regulatory Authority, p 5.

## Appendix 1 Submissions

No.	Author
1	NSW Taxi Council
2	Australasian College of Road Safety
3	State Insurance Regulatory Authority (SIRA)
3a	State Insurance Regulatory Authority (SIRA)
4	Australian Lawyers Alliance (ALA) NSW
5	Public Interest Advocacy Centre (PIAC)
6	Confidential
7	Motorcycle Council of NSW
8	Independent Review Office (IRO)
9	Insurance Council of Australia
9a	Insurance Council of Australia
10	Law Society of New South Wales
10a	Law Society of New South Wales
11	New South Wales Bar Association
11a	New South Wales Bar Association

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Friday 18 November 2022 Macquarie Room Parliament House, Sydney	Mr Michael Timms	Deputy Chair, Australasian College of Road Safety, NSW Chapter
	Mr Brian Wood	Secretary, Motorcycle Council of NSW
	Mr Martin Rogers	Chief Executive Officer, NSW Taxi Council
	Mr Nick Abraham	Deputy Chief Executive Officer, NSW Taxi Council
	Ms Sheetal Balakrishnan <i>(via videoconference)</i>	Senior Solicitor, Public Interest Advocacy Centre
	Ms Michelle Cohen <i>(via videoconference)</i>	Principal Solicitor, Public Interest Advocacy Centre
	Mr Andrew Stone SC	Australian Lawyers Alliance NSW
	Mr John Turnbull SC	New South Wales Bar Association
	Ms Jnana Gumbert	New South Wales Bar Association
	Mr Leigh Davidson	Deputy Chair of the Injury Compensation Committee, Law Society of New South Wales
	Mr Chris Butel	General Manager CTP, QBE Insurance, and Member Representative, Insurance Council of Australia
	Ms Zoe Wang	Manager Health and Recovery CTP Claims, IAG, and Member Representative, Insurance Council of Australia
	Ms Estelle Pearson	Actuary, Principal Finity Consulting, representing the Insurance Council of Australia
Mr Richard Harding	Chief Executive Officer and Managing Director, icare	



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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Dr Nick Allsop	Group Executive Lifetime Schemes, icare
	Mr Simon Cohen	Independent Review Officer, Independent Review Office
	Mr Adam Dent	Chief Executive, State Insurance Regulatory Authority
	Dr Petrina Casey	Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority

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## Appendix 3 Minutes

### Minutes no. 48

Monday 6 June 2022

Standing Committee on Law and Justice

Room 1136, Parliament House, Sydney at 10.01 am

#### 1. Members present

Mr Rath, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato

Mr Buttigieg (participating)

Mr D'Adam

Mr Fang

Mr Farlow (substituting for Mr Martin until 12.08 pm)

Mr Martin (from 12.08 pm)

Mr Roberts

#### 2. Apologies

Ms Boyd

#### 3. Previous minutes

Resolved, on the motion of Mr Amato: That draft minutes no. 47 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### *Received:*

- 16 March 2022 – Email from Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service to the secretariat providing additional information requested by the committee on SafeWork NSW inspections of manufactured stone worksites
- 16 March 2022 – Email from the office of the Hon Scott Farlow MLC to the secretariat advising that Mr Farlow is an apology for the hearing on Friday 18 March 2022
- 28 March 2022 – Letter from Mr John Merritt, Chair, WorkSafe Victoria to the Chair providing information on WorkSafe Victoria's engineered stone licensing scheme.

Resolved, on the motion of Mr Roberts, that the committee authorise the publication of the following items of correspondence:

- Correspondence from Mr John Merritt, Chair, WorkSafe Victoria, regarding Victoria's engineered stone licensing scheme, dated 28 March 2022
- Correspondence from Mr Tim Noonan, SIRA, including the Driscoll Evidence Review, dated 23 February 2022
- Correspondence from the Office of the Deputy Secretary, Better Regulation Division, Department of Customer Service providing information on SafeWork NSW inspections of manufactured stone worksites, dated 16 March 2022
- Correspondence from Ms Clemency Morony, icare, including reports prepared by PriceWaterhouse Coopers and Deloitte regarding remediation of underpayments to workers under the dust diseases scheme, dated 14 March 2022.

## 5. 2021 Review of the Dust Diseases Scheme

### 5.1 Submissions

The committee noted that the following supplementary submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 15a.

### 5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Kate Cole OAM, President, Australian Institute of Occupational Hygienists, received 7 March 2022
- answers to questions on notice from Mr Ben Kruse, Legal/Industrial Officer, CFMEU Construction, received 14 March 2022
- answers to questions on notice from Mr Chris Donovan, National WHS Director, the Australian Workers' Union, received 15 March 2022
- answers to questions on notice from Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers, received 16 March 2022
- answers to questions on notice from Associate Professor Deborah Yates, Respiratory Physician, Department of Thoracic Medicine at St Vincent's Hospital Sydney and Conjoint Associate Professor at UNSW, representative, Royal Australasian College of Physicians and Thoracic Society of Australia and New Zealand, received 25 March 2022
- answers to questions on notice from Mr Michael Shearer, President, Mine Ventilation Society of Australia, received 27 March 2022
- answers to questions on notice from Dr Graeme Edwards, Senior Consulting Physician, Occupational and Environmental Medicine and representative, Royal Australasian College of Physicians, received 28 March 2022
- answers to questions on notice from Ms Joanne Wade, Asbestos/Dust Diseases Practice Group Leader, Slater and Gordon Lawyers, Representative, Australian Lawyers Alliance, received 30 March 2022
- answers to questions on notice and supplementary questions from SafeWork NSW, received 27 April 2022
- answers to questions on notice and supplementary questions from icare, received 29 April 2022.

### 5.3 Consideration of Chair's draft report

The Chair submitted his draft report entitled *2021 Review of the Dust Diseases Scheme*, which, having been previously circulated, was taken as being read.

#### Chapter 1

Resolved, on the motion of Mr Donnelly: That paragraph 1.11 be amended by inserting after the word 'scarring' the following new sentence: 'Each review has also head that silicosis is a preventable lung disease.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.12 be amended by inserting 'far' before 'more'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.19 be amended by inserting after '2020' the following new sentence: 'Of the 14 recommendations, the government supported six (recommendations 1, 2, 9, 11, 12 and 13), supported in principle seven (recommendations 3, 4, 5, 6, 7, 10 and 14) and rejected one (recommendation 8).'

Resolved, on the motion of Mr Donnelly: That paragraph 1.21 be amended by inserting 'mining' after 'cement'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.23 be amended by omitting 'questions' after 'have been' and inserting instead 'significant questions raised'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after 1.29:

'The matter of underreporting of the disease caused by exposure to respiratory crystalline silica was raised in a number of submissions and witnesses to this inquiry. This matter is discussed in more detail in Chapters 2 and 3 of the report.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.38 be amended by inserting 'very clearly' after 'underlined'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.45 be amended by inserting 'Hospital' after 'the Alfred'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.49 be amended by omitting the words 'to some extent focused' after 'The last three reviews of this committee have' and inserting instead 'provided a particular focus'.

Mr Donnelly moved: That the following new sentence be added after the end of paragraph 1.50:

'We believe that on the balance of the evidence once again brought before the inquiry, it is clear that the government does not understand the seriousness of this occupational disease.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 1.52 be omitted: 'We call upon the government to consider not only the recommendations we outline in this report, but also whether it can and should do more to ensure workers are not being exposed to harmful levels of silica dust. In our view, there is clearly more work to be done in this area, and we hope it happens soon, so that other lives are not taken prematurely and the social, economic and human costs associated with silicosis are avoided' and the following new paragraph be inserted instead:

'This is now the fourth report by the Standing Committee on Law and Justice sounding the alarm regarding the occupational disease caused by respirable crystalline silica. We call on the government, without further delay, to examine closely the compelling evidence brought once again before a parliamentary inquiry about the seriousness of the matter. We urge the government to support all the recommendations made by the committee and move expeditiously to implement them.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

## **Chapter 2**

Resolved, on the motion of Mr Donnelly: That the introductory paragraph be amended by inserting 'serious' before 'concerns' after 'continuing' (line 3) and 'given' (line 7).

Resolved, on the motion of Mr Donnelly: That paragraph 2.1 be amended by omitting 'the previous review' and inserting instead 'previous reviews'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.2 be amended by inserting ', except for Victoria,' after 'has been'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.4 be amended by omitting 'The committee's previous review' and inserting instead 'The committee's 2019 review.'

Resolved, on the motion of Mr Donnelly: That paragraph 2.23 be amended by omitting 'push for' and inserting instead 'advocate for' after 'encouraged this committee'.

Resolved, on the motion of Mr Donnelly: That paragraphs 2.29, 2.33 and 2.44 be amended by omitting 'previous review' and inserting instead '2019 review'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.47 be amended by inserting 'significant' before 'improvements required in terms of education and training'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.55 be amended by omitting 'report' and inserting instead 'reports' before 'the committee noted that'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.68 be amended by inserting 'both at factories and at installation' after 'manufactured stone workplaces'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.109 be amended by omitting 'review' and inserting instead 'reviews' after 'In our previous'.

Mr Donnelly moved: That Recommendation 1 be amended by:

- omitting 'work towards' and inserting instead pursue' before 'a health based workplace exposure standard'
- inserting 'a time-weighted average over 8 hours' before 'of 0.02mg/m<sup>3</sup>'
- inserting 'strongly' before 'advocating for this change at a national level'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 2.117 be amended by omitting 'suggest there is room to step up' and inserting instead 'support the stepping up of' before 'efforts in other industries to ensure that air quality is monitored regularly.'

Mr Donnelly moved: That Recommendation 2 be amended by:

- inserting 'by no later than 31 December 2022' after 'implement' and before 'measures to enhance air quality monitoring'
- inserting mandatory after 'enhance' and before 'air quality monitoring'
- inserting 'including details of all legislative and regulative breaches' after 'air quality monitoring and reporting' and before 'in relation to respirable crystalline silica'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That recommendation 3 be amended by inserting at the end: 'Such mandated product labelling and safety data sheets must be provided across the entire manufactured stone supply chain and be available in multiple languages'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Roberts: That the following new paragraph be inserted after paragraph 2.122:

'Taking into account evidence received, the committee has concerns regarding the limited amount of compliance inspections undertaken 'on-site' where manufactured stone is being installed. For this reason, we recommend that SafeWork NSW undertake a more rigorous regime of random on-site compliance inspections at sites where manufactured stone is being installed.'

Mr Roberts moved: That the following new recommendation inserted after paragraph 2.122:

**Recommendation X**

That SafeWork NSW develop and implement a compliance strategy directed toward the elimination of dry cutting in the manufactured stone industry, incorporating a more rigorous regime of random on-site inspections at sites where manufactured stone is being installed'.

Mr D'Adam moved: That the motion of Mr Roberts be amended by inserting at the end: 'That the compliance strategy be implemented from 1 January 2023 for a period of 12 months with a review of its effectiveness to be completed and published by no later than 30 June 2024'.

Amendment of Mr D'Adam put.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Original question of Mr Roberts, put and passed.

Resolved, on the motion of Mr Donnelly: That recommendation 4 be amended by omitting the words 'silica exposure presents a risk' and inserting instead 'licensing requirements for silica exposure operate'.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 4 (paragraph 2.122):

'The committee notes that in site visitation data provided by SafeWork NSW there were very low numbers of Health and Safety Representatives in manufactured stone workplaces. The committee is concerned that SafeWork NSW has not placed sufficient emphasis on encouraging and facilitating workplace representation as part of their compliance strategy and is relying too heavily on educational strategies directed towards employers. To remedy this SafeWork NSW should implement an organisational goal of increasing the numbers of Health and Safety Representatives elected in the manufactured stone industry.'

**Recommendation X**

That SafeWork NSW implement an organisational goal of increasing the number of Health and Safety Representatives elected in the manufactured stone industry.'

Mr Farlow moved: That the motion of Mr Donnelly be amended by omitting 'implement' in the recommendation and inserting instead 'investigate the feasibility of implementing' before 'an organisational goal of increasing the number of Health and Safety Representatives.'

Amendment of Mr Farlow put.

The committee divided.

Ayes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Noes: Mr Donnelly, Mr D'Adam.

Amendment of Mr Farlow resolved in the affirmative.

Original question of Mr Donnelly, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That paragraph 2.122 be amended by omitting 'potentially still' and inserting instead 'still some' before 'workers engaged in installation for small businesses that SafeWork's monitoring and compliance regime does not reach.'

Mr D'Adam moved: That the existing paragraph 2.124 and recommendation 5 be omitted and the following new paragraph and recommendation be inserted instead:

'Noting the principles put forward by the National Dust Disease Taskforce to underpin the development of licensing schemes at a jurisdictional level, we call on the New South Wales Government to legislate to establish a licensing scheme for manufactured stone, that must be renewed every 12 months, by no later than 31 December 2022 and that such a licensing scheme include a publicly available database of licence holders.

#### **Recommendation X**

That the NSW Government by no later than 31 December 2022 legislate to establish a licensing scheme for businesses working with manufactured stone, that must be renewed every 12 months, and that such a licensing scheme include a publicly available database of licence holders.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Amato: That Recommendation 5 be amended by inserting 'including a publicly available database of licence holders' after 'in New South Wales'.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 5:

'When legislating for a licensing scheme that the NSW Government include provisions for Silica Control Plans that require the following elements:

- a requirement for the registration with the regulator of all workers operating within the scope of the control plan including any subcontractors
- a requirement for mandatory minimum training to be provided to the workers by a provider accredited by the regulator and that completion of the training be a precondition for the registration of a worker under the licensing scheme
- a requirement for the control plan to be independently audited prior to the issuing or renewal of any business license
- a requirement that license holders with more than five workers must elect Health and Safety Representatives and the details of the elected representatives be registered with the regulator.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr D'Adam: That Recommendation 5, as previously amended, be further amended by inserting at the end: 'When legislating for a licensing scheme, that the NSW Government

consider the feasibility of including provisions for silica control plans that require registration with the regulator of all workers operating within the scope of the control plan including any subcontractors.'

Mr Donnelly moved: That recommendation 6 be omitted and the following recommendation inserted instead:

'That the NSW Government will support the ban on manufactured stone if by July 2024:

- there is no measurable and acceptable improvement in regulatory compliance rates for the manufactured stone sector
- the evidence indicates that preventative measures are not effectively protecting those working with manufactured stone from silicosis and silica-related diseases.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after recommendation 6:

'The committee notes concerns from a number of stakeholders about the adequacy of SafeWork NSW's compliance and enforcement work. The inquiry received evidence that supported the need for an independent review to be undertaken into SafeWork NSW reflecting a recommendation made by the McDougall Review. The committee supports this and recommends that such a review be initiated by the NSW Government.'

### **Recommendation X**

That consistent with the recommendation of the McDougall Review, the NSW Government initiate an independent review into SafeWork NSW to include consideration of its exercise of both regulatory and educational functions.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Farlow, Mr Rath.

Question resolved in the negative.

Mr Martin joined the meeting and Mr Farlow left the meeting.

## **Chapter 3**

Resolved, on the motion of Mr Donnelly: That paragraph 3.23 be amended by omitting 'previous' and inserting instead '2019'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.36 be amended by omitting 'previous' and inserting instead '2019'.

Mr Donnelly moved: That Recommendation 7 be amended by:

- omitting 'review the approach taken to' and inserting instead 'will ensure that regarding'
- omitting 'silica, to ensure that' and inserting instead 'silica:'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.



Resolved, on the motion of Mr Donnelly: That Recommendation 7 be amended by inserting ', former, current and future' after 'all workers' in the first bullet point.

Mr Donnelly moved: That Recommendation 8 be amended by omitting 'review and improve' and inserting instead 'will ensure that'.

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Recommendation 8 be amended by omitting 'greater clarity' in the second bullet point and inserting instead 'certainty'.

#### Chapter 4

Resolved, on the motion of Mr Donnelly: That paragraphs 4.5, 4.6 and 4.7 be amended by omitting 'last' and inserting instead '2019'.

Mr Donnelly moved: That the following new paragraph be inserted after paragraph 4.66:

'The Auditor-General's Financial Audit, 20 April 2022, entitled *Treasury 2021* notes at page 18:

The Workers Compensation (Dust Diseases) Authority increased its outstanding claims liability by \$93.9 million at 30 June 2021 to allow for additional payments to injured workers. The increase comprised:

- \$39.3 million to correct historical underpayments to affected workers
- \$54.6 million for higher future claim costs, relating to existing exposures

The underpayments relate to totally disabled retired workers being incorrectly paid in the first 26 weeks of their entitlements. Under existing legislation, the fortnightly entitlements in this period should be based on their current weekly wage rate, instead of a lower statutory indexed rate. It is estimated that 1,345 workers were incorrectly paid, resulting in underpayments of \$39.3 million. icare advise that underpaid workers will be remediated through compensation payments.

According to an icare Board paper dated 4 June 2021, the Authority sought legal advice on the underpayments issue in 2014, and sought to explain that changes in leadership meant that the advice was not being picked up again until 2020. As a result, the Authority continued to pay at the lower statutory rate until 2020–21.

The Authority has also been overpaying some participants. It is estimated up to 754 workers with an injury before 30 June 1987 have been receiving the same rate of compensation as workers with an injury after 30 June 1987, when their compensation should be 20 per cent lower. In addition, the Authority found it incorrectly paid a dependent allowance for up to 334 individual workers with an injury after 30 June 1987. The icare Board has approved the continuation of current payment practices, while NSW Treasury seeks legislative amendments to preserve entitlements.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Martin: That the following new paragraph be inserted after paragraph 4.66:

'It is noted that the Auditor General, in the Financial Audit reported entitled *Treasury 2021*, released after the conclusion of public hearings for this inquiry, commented on various matters relating to the remediation program'.

[FOOTNOTE: Audit Office of New South Wales, *Treasury 2021*, Financial Audit, 20 April 2022.]

Resolved, on the motion of Mr Donnelly: That Recommendation 9 be amended by:

- inserting 'adequacy of the' before 'legal, financial, physical and mental support provided to workers'
- inserting 'with an intention of expanding the support and care provided to workers' after 'case management models'.

Resolved, on the motion of Mr Donnelly, that Recommendation 10 be amended by omitting 'as a matter of priority' and inserting instead 'within this term of Parliament' before 'amend the definition of a 'dust disease'.

Mr Donnelly moved: That the following new recommendation be inserted after paragraph 4.74:

**'Recommendation X**

That the NSW Government provide an appropriate level of additional annual funding to SafeWork NSW to strengthen its regulatory enforcement and monitoring of health and safety standards within the manufactured stone industry.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee heard evidence from the Asbestos Diseases Foundation of Australia pertaining to the current configuration of the Dust Diseases Board which no longer caters directly to the specific needs of victims of Dust Diseases. Under the pre-2015 configuration the dust diseases board had a more unique and empathetic perspective on the plight of those victims and allowed them to tailor compensation appropriate to those circumstances on a case-by-case basis. Under the current configuration Board members exclusively deal with the allocation and administration of research grant funding, as opposed to compensation which is governed by standardised formulaic metrics rather than a more hands on human approach. The committee also heard that the vast majority of research grant funding is allocated outside NSW.

**Recommendation X**

That the government review the current operation and outcomes of victim compensation payments in respect of the way compensation payments are handled and administered compared with the pre-2015 regime which was formulated by the former, section 5. Workers' Compensation (Dust Diseases) Board, whereby Board members were nominated by Unions and Industry and had exclusive jurisdiction to examine into, hear and determine all matters and questions arising out of a claim for compensation under this Act. This model should be reconsidered as a means for improving the allocation of compensation payments.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new recommendation be inserted after Recommendation 10:

'That the NSW Government examine and report on the reasons why the vast majority of research grant funding allocated by the Board has been directed outside of New South Wales.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Mr Donnelly moved: That the following new paragraph and recommendation be inserted after Recommendation 10:

'The committee notes the evidence provided to the inquiry by icare regarding the remediation program. icare reported that progress had been made with respect to addressing the matters of both underpayments and overpayments with the expectation that outstanding issues will be resolved by June 2022.

**Recommendation X**

That the responsible Minister provide a statement to the House by no later than 30 June 2022 reporting on the progress made by icare with respect to the remediation program established to address both underpayment and overpayments in workers entitlements, including entitlements under the Dust Diseases Scheme.'

The committee divided.

Ayes: Mr Donnelly, Mr D'Adam, Mr Roberts.

Noes: Mr Amato, Mr Fang, Mr Martin, Mr Rath.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The secretariat table the report at 11.00 am, 10 June 2022.

**6. Next oversight reviews**

The committee discussed the timeline for its next reviews of the Workers Compensation scheme and CTP insurance and Lifetime Care and Support schemes. Discussion ensued about whether the Workers Compensation Scheme should have focus on the rise in psychological claims.

Resolved, on the motion of Mr Roberts: That the committee agree over email as to whether the next review of the workers compensation scheme should have a specific focus, and that the following timeline be adopted:

- submissions to open on Friday 17 June and close 24 July 2022
- two hearing dates to be held in September 2022
- report to be tabled by end November 2022.

Resolved, on the motion of Mr Roberts: That the combined Review of the CTP insurance scheme and Lifetime Care and Support scheme adopt the following timeline:

- submissions to open on 15 August and close on 25 September 2022
- two hearing dates to be held in November 2022
- report to be tabled by end February 2023.

## 7. Adjournment

The committee adjourned at 1:07 pm until Thursday 16 June, 9.30 am (public hearing for the medical cannabis bill inquiry).

Peta Leemen

**Committee Clerk**

## Minutes no. 53

Friday 18 November 2022

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 9.05 am

### 1. Members present

Mr Rath, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato (via videoconference)

Mr D'Adam (via videoconference)

Mr Fang (from 9.13 am until 1.35 pm)

Mr Martin

Mr Roberts

### 2. Apologies

Ms Boyd

### 3. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 44, 45, 52 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### **Received:**

- 6 September 2022 – Email from Office of the Secretary, Department of Customer Service to secretariat, advising State Insurance Regulatory Authority will submit a response to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 10 November 2022 – Letter from Judge Phillips, President of the Personal Injury Commission to the Chair, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme
- 11 November 2022 – Email from State Insurance Regulatory Authority (SIRA) to secretariat providing responses to pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 14 November 2022 – Email from Insurance & Care NSW (icare) to secretariat providing responses to pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 17 November 2022 – Letter from Australian Lawyers Alliance (ALA) to the Chair, providing a response to issues raised in correspondence to the 2022 Review of the Compulsory Third Party insurance scheme.

**Sent:**

- 25 August 2022 – Email from Chair, the Hon Chris Rath MLC, to key stakeholders, issuing submission invitations to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 24 October 2022 – Email from Chair, the Hon Chris Rath MLC, to submission authors, calling for supplementary submissions to the inquiry into the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes on the extension of the Independent Legal Assistance and Review Service (ILARS) to claimants under the Motor Accident Injuries Act 2017
- 31 October 2022 - Email from secretariat to Insurance & Care NSW (icare) issuing pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes
- 31 October 2022 - Email from secretariat to State Insurance Regulatory Authority (SIRA) issuing pre-hearing questions relating to a hearing on 18 November 2022 for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes.

## 5. 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

### 5.1 Supplementary submissions

The committee noted, as previously agreed to via email, submission authors were invited to make supplementary submissions to the inquiry on the extension of the Independent Legal Assistance and Review Service (ILARS) to claimants under the Motor Accident Injuries Act 2017.

### 5.2 Public submissions and supplementary submissions

The committee noted the following submissions, including supplementary submissions, to the 2022 review of the Compulsory Third Party insurance scheme were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1 to 5, and 7 to 11a.

The committee noted following submissions to the 2022 review of the Lifetime Care and Support scheme were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1 to 6.

### 5.3 Confidential submissions

Resolved, on the motion of Mr Fang: That the committee keep the following submission confidential: submission no. 6.

### 5.4 Attachments to submissions

Resolved, on the motion of Mr Martin: That the committee authorise the publication of attachments to submission nos 8 and 11.

### 5.5 Pre-hearing questions

The committee noted, as previously agreed to via email, pre-hearing questions were issued to Insurance & Care NSW (icare) and State Insurance Regulatory Authority (SIRA).

The committee noted the following answers to pre-hearing questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to pre-hearing questions from SIRA, received 11 November 2022
- answers to pre-hearing questions from iCare, received 14 November 2022.

### 5.6 Public hearing

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Michael Timms, Australasian College of Road Safety
- Mr Brian Wood, Secretary, Motorcycle Council of NSW

- Mr Martin Rogers, CEO, NSW Taxi Council
- Mr Nick Abraham, Deputy CEO, NSW Taxi Council
- Ms Sheetal Balakrishnan, Senior Solicitor, Public Interest Advocacy Centre (via videoconference)
- Ms Michelle Cohen, Principal Solicitor, Public Interest Advocacy Centre (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Stone SC, Australian Lawyers Alliance NSW
- Mr John Turnbull SC, New South Wales Bar Association
- Ms Jnana Gumbert, New South Wales Bar Association
- Mr Leigh Davidson, Law Society of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Chris Butel, Chair, Motor Accident Insurance Scheme Committee, Insurance Council of Australia
- Zoe Wang, Chair, Claims Managers Association Committee, Insurance Council of Australia
- Estelle Pearson, Actuarial Advisor, Compulsory Third Party Committee, Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Harding, CEO & Managing Director, icare
- Dr Nick Allsop, Group Executive Lifetime Schemes, icare.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Simon Cohen, Independent Review Officer, Independent Review Office.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority
- Dr Petrina Casey, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority.

Mr Dent tabled the following document:

- Letter from Judge Phillips, President of the Personal Injury Commission to Mr Joshua Dale, NSW President, Australian Lawyers Alliance, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The hearing concluded at 4.10 pm.

### **5.7 Tendered document**

Resolved, on the motion of Mr Donnelly: That the committee accept the following document tabled during the public hearing, and publish only if the document differs to that previously received by the committee:

- Letter from Judge Phillips, President of the Personal Injury Commission to Mr Joshua Dale, NSW President, Australian Lawyers Alliance, providing a response to issues raised in a submission to the 2022 Review of the Compulsory Third Party insurance scheme, tendered by Mr Dent.

## 5.8 Correspondence

Resolved, on the motion of Mr Roberts: That:

- the committee accept and publish the correspondence, including attachments, from:
  - Judge Phillips, President of the Personal Injury Commission to the Chair, received 10 November 2022
  - Australian Lawyers Alliance (ALA), received 17 November 2022
- the Chair write to Judge Phillips, President of the Personal Injury Commission, to:
  - outline the proper process that should be followed if the Personal Injury Commission wishes to make a contribution to an inquiry in the future, including making a late submission or requesting to be a witness if there are concerns they wish to respond to
  - note the committee's concern at the approach the Judge has taken to respond directly to a witness regarding matters the witness has raised specifically with the committee in the context of an inquiry, noting that such an approach could be perceived as an attempt to intimidate a witness or influence a witness in making future or further contributions to a parliamentary inquiry
  - invite the Personal Injury Commission to make a late submission to the current review, addressing the issues raised by Australian Lawyers Alliance, should the Personal Injury Commission wish to further respond
  - invite Judge Phillips to give evidence at a hearing on a date to be confirmed, potentially via videoconference, and subject to the availability of members.

## 6. Adjournment

The committee adjourned at 4.13 pm until Monday 28 November 2022, Room 1136, Parliament House (report deliberative).

Allison Stowe

**Committee Clerk**

## Draft minutes no. 55

Tuesday 21 February 2023

Standing Committee on Law and Justice

Via WebEx, Sydney, 10.05 am

### 1. Members present

Mr Rath, *Chair*

Mr D'Adam *Acting Deputy Chair*

Ms Boyd (substituting for Ms Higginson for the 2022 review of the workers compensation scheme)

Mr Buttigieg (substituting for Mr Donnelly)

Mr Fang

Mr Farlow (substituting for Mr Amato for the 2022 reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes and substituting for Mr Martin for the 2022 review of the workers compensation scheme)

Mrs MacDonald (substituting for Mr Martin for the 2022 reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes and substituting for Mr Amato for the 2022 review of the workers compensation scheme)

Mr Roberts

### 2. Election of Acting Deputy Chair

The committee noted the apology of Mr Donnelly, Deputy Chair. The Chair called for nominations for a member to act as Deputy Chair for the purpose of the meeting.

Mr D'Adam moved: That Mr D'Adam be elected Acting Deputy Chair of the committee for the purpose of the meeting.

There being no further nominations, the Chair declared Mr D'Adam elected Acting Deputy Chair for the purpose of the meeting.

### 3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 54 be amended to note when Mr Donnelly and Mr D'Adam left the meeting.

Resolved, on the motion of Mr D'Adam: That draft minutes nos 53 and 54, as amended, be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 23 September 2022 – Letter from Mr Joshua Dale, NSW President of the Australian Lawyers Alliance to State Insurance Regulatory Authority (SIRA), copied to the committee, providing a submission for the statutory review of the Personal Injury Commission Act 2020, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*
- 28 November 2022 – Letter from Judge Phillips, President of the Personal Injury Commission to the Chair, providing a response to correspondence from the committee dated 21 November 2022, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*
- 6 December 2022 – Email from Mr Peter Ellis, private individual, to secretariat, providing copy of a letter to Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, *relevant to the 2022 review of the workers compensation scheme*
- 6 December 2022 – Email from Mr David Waugh, private individual, to the Standing Committee on Law and Justice, concerning the workers compensation system, *relevant to the 2022 review of the workers compensation scheme*
- 10 December 2022 – Email from Herschel Baker, International Liaison Director, Queensland Director, Drug Free Australia, to the Committee Chair, reviewing the need for changes to vaping regulations including a crackdown on imports, introducing quality and safety standards and restricting labels and flavours to make e-cigarettes less appealing to children
- 11 December 2022 – Email from Mary Xian, private individual, to the Standing Committee on Law and Justice, entitled 'Dominello ICAC referral, Westpac rip-off scheme, and NSW Premier Mike Baird fell downstairs' and attachments
- 13 December 2022 – Email from Phillip Armstrong, private individual, to the secretariat, regarding a potential law reform matter for consideration by the Legislative Council dealing with Criminal Law amendments to 2001 NSW CARA Part 7 - SS 84 - 85 "Application for Quashing of Conviction following Governor FREE PARDON"
- 20 February 2022 – Email from Mary Xian, private individual, to the Standing Committee on Law and Justice, entitled 'Please help to stop the violence against women'

#### *Sent*

- 21 November 2022 – Letter from the Chair to Judge Phillips, President of the Personal Injury Commission, in response to correspondence from Judge Phillips dated 10 November 2022, *relevant to the 2022 reviews of the CTP insurance and Lifetime Care and Support schemes*.

Resolved, on the motion of Mrs MacDonald: That the committee keep the correspondence from Mr Peter Ellis, private individual, providing a copy of a letter to Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority, dated 6 December 2022, confidential as it contains potential adverse mention.



## 5. 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

### 5.1 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution establishing the inquiry:

- answers to questions on notice from Mr Andrew Stone SC, Australian Lawyers Alliance NSW, received 2 December 2022
- answers to questions on notice from Ms Sheetal Balakrishnan, Public Interest Advocacy Centre, received 6 December 2022
- answers to questions on notice from Ms Gabrielle Bashir SC, New South Wales Bar Association, received 7 December 2022
- answers to questions on notice from Dr Nick Allsop, icare, received 14 December 2022
- answers to questions on notice from Ms Joanne van der Plaats, Law Society of New South Wales, received 14 December 2022
- answers to questions on notice from Mr Simon Cohen, Independent Review Office, received 15 December 2022
- answers to questions on notice and supplementary questions from the State Insurance Regulatory Authority (SIRA), received 16 December 2022
- answers to questions on notice from the Insurance Council of Australia, received 19 December 2022.

### 5.2 Transcript correction

Resolved, on the motion of Mr D'Adam: That the committee, as previously agreed via email, authorise:

- the publication of correspondence from Mr Brian Wood, Motorcycle Council of NSW, received 29 November 2022, providing transcript corrections to the evidence given at the hearing for the 2022 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes held on 18 November 2022, and
- the insertion of a footnote on the transcript noting receipt of correspondence clarifying the evidence given and providing a hyperlink to the published correspondence.

### 5.3 Consideration of Chair's draft report: 2022 Review of the Compulsory Third Party insurance scheme

The Chair submitted his draft report entitled *2022 Review of the Compulsory Third Party insurance scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Fang: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 9.00 am, on Thursday 23 February 2023;
- The secretariat table the report on Friday, 24 February 2023;
- The Chair is to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5.4 Consideration of Chair's draft report: 2022 Review of the Lifetime Care and Support scheme**

The Chair submitted his draft report entitled *2022 Review of the Lifetime Care and Support scheme*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Roberts: That:

- The draft report be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to pre-hearing questions, questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat by 9.00 am, on Thursday 23 February 2023;
- The secretariat table the report on Friday, 24 February 2023;
- The Chair is to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**6. 2022 Review of the Workers Compensation scheme**

The Chair submitted his draft report entitled *2022 Review of the workers compensation scheme*, which, having been previously circulated, was taken as being read.

Debate ensued.

Resolved, on the motion of Mr D'Adam: That the:

- report deliberative for the 2022 review of the workers compensation scheme be deferred
- legacy report for the 57th Parliament include a recommendation that the House consider referring the evidence from the 2022 review of the workers compensation scheme to the Standing Committee on Law and Justice in the 58th Parliament, to form part of the process for the next review of the workers compensation scheme.

**7. Legacy report**

The committee noted that the secretariat is currently preparing a legacy report for the 57th Parliament and will liaise with members shortly regarding a date for its consideration.

**8. Adjournment**

The committee adjourned at 10.37 am, *sine die*.

Allison Stowe and Talina Drabsch  
**Committee Clerks**



