



2 December 2020

Review of Legal Support for Injured People in the NSW CTP Scheme Consultation  
Manager, Scheme Policy  
State Insurance Regulatory Authority  
231 Elizabeth Street  
SYDNEY NSW 2000

By email only: [motoraccidents@sira.nsw.gov.au](mailto:motoraccidents@sira.nsw.gov.au)

## **SIRA Review of Legal Support for Injured People in NSW CTP Scheme**

Dear Sir/Madam

### **Executive Summary**

Suncorp welcomes the opportunity to provide our feedback in response to SIRA's review of Legal Support for injured people in the NSW CTP Scheme (MAIA).

In addition to the feedback provided by the Insurance Council of Australia (ICA), Suncorp believes that legal support plays an integral role in the CTP scheme by ensuring that injured people have the necessary support systems to access their statutory benefits.

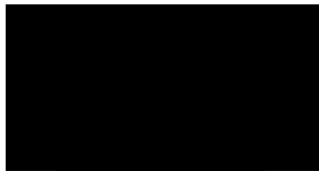
The 2017 CTP scheme reform has introduced some welcome changes for the NSW community. The scheme as it stands, has shifted away from a predominantly adversarial system to one that empowers those that are injured on our roads. This includes, but not limited to, allowing an insurer the ability to have direct communication with the injured person during the claims process and this experience has unquestionably been positive to date. The shift from being adversarial to the collaborative provision of statutory benefits is improving access to treatment and care, and weekly benefits. Further, our customers are now more aware of their entitlements including the options to proceed with Internal Reviews and access to the Dispute Resolution Service

Suncorp has always advocated that claimants with serious injuries should retain the right to legal representation. However, bearing in mind the nature of the most recent scheme reform and the design of MAIA, we believe SIRA should be cautioned on any increase to the proportion of legally represented claims, in particular from low severity injuries and/or low impact accidents. This of course will increase scheme costs and ultimately CTP premiums for NSW motorist.

Whilst SIRA may consider appropriate refinement to the cost limits imposed by the Motor Accident Injuries Regulation, Suncorp recommends that any such policy shift be made consistently with scheme objectives and on a targeted basis only. Ultimately, legal support should be provided for the benefit of an injured person. Policy decisions regarding the provision of such legal support should be driven by genuine need for legal expertise and not determined by the achievement of arbitrary "volume" metrics. Further, as indicated in our response below, Suncorp does not presently support the introduction of ILARS into the NSW CTP scheme.

For further information, please find enclosed a copy of our responses in relation to the questions asked of this consultation. Should you wish to discuss any further or require any information, please do not hesitate to contact me directly.

Yours faithfully



Executive Manager CTP NSW & SA  
**Suncorp Group**



	SIRA's Consultation Questions	Suncorp Responses
1.	<p><b>Specific concerns with the existing structure and provision of legal support in the CTP scheme</b></p>	<p>Suncorp observes that the existing structure and provision of legal support is appropriate. In our view,</p> <ul style="list-style-type: none"> <li>• The internal review (IR) process allows for disputes to be managed independently, informally and quickly. This process is accessible and less onerous as there is no requirement for lengthy submission to be provided or the need for representation by a lawyer.</li> <li>• If an injured person is not happy with the decision of the claims team, the IR Team will accept the application for management, and provide support and explain the decision to an injured person.</li> <li>• If there is a need for further escalation, the Dispute Resolution Service (DRS) allows for escalation of disputes to be independently determined by a decision maker. Legal representation is not an inherent requirement as the process will be guided by the DRS and its officers.</li> <li>• The current CTP Scheme was designed to be non-adversarial in nature and the focus is on fostering close relationship between the insurer and the injured person.</li> <li>• SIRA's CTP Assist service is also there to provide necessary support to an injured person and where appropriate, act as a conduit between the parties to resolve any matters.</li> </ul> <p>However, Suncorp is also of the view that several improvements could be made to the existing structure. Suncorp observes:</p> <ul style="list-style-type: none"> <li>• There appears to be increasing creepage of legal support entering the MAIA scheme. Cost Regime under the <i>Motor Accident Injuries Regulation</i> should be tailored and targeted to areas where it provides the most value to the scheme, and ultimately, the injured person instead of blanket cost allowance based on dispute types.</li> <li>• One example, we are increasingly seeing disputes relating to medical treatment where submissions are provided and drafted by a legal practitioner, yet the Motor Accident Guidelines do not require submissions to be made. Disputes relating to medical issues are resolved by the Medical Assessor based on his/her medical assessment.</li> <li>• We agree that legal support should be made available where appropriate. For example, once a Medical Assessor has determined an injured person sustained a minor injury in accordance with the definition of the Act, it will be appropriate for legal support to be made available for a further advice or prospect of an appeal to the decision.</li> <li>• For clarity, we are supportive of legal support in the scheme, but we are of the view that support should be targeted to areas where it provides the most value for its services, such as liability disputes, legal technicality and common law etc.</li> </ul>
2.	<p><b>Key principles that should govern the determination of legal costs and the weight to be given to each of these</b></p>	<p>Suncorp acknowledges the proposed principles by SIRA and is generally supportive of those principles.</p> <p>Suncorp advocates that one of the key principle governing the determination of legal cost should be whether <i>'the legal support provided has any reasonable prospect of success that is capable of making a material difference to a decision on hand.'</i></p>

		<p>Weight should be given to the importance of the issues in dispute such as complexity of a matter, examples include but not limited to damages claims, appeal of whole person impairment assessments, quadriplegic claimant etc. Furthermore, weight should also be given to a mechanism that will provide incentive for the early resolution of claims and the quick and just resolution of disputes.</p> <p>Cost regime should also be reviewed from the perspective of scheme participants' behaviour. The design of the cost regime or allowance should not be based on volume but on the overall value provided to the injured person and the need for legal expertise.</p>
3.	<b>Recommendations for specific changes to be made to the system of legal support</b>	<p>In relation to the introduction of the Independent Legal Assistance and Review Service (ILARS), in the absence of further information on the application, implication and design model to the CTP scheme, Suncorp does not presently support the introduction of this service to the MAIA scheme.</p> <p>One of the few purposes of scheme reform is to encourage the early resolution of claims and the quick, cost effective and just resolution of disputes. As such, if ILARS is introduced mirroring the design of the Workers Compensation scheme, Suncorp anticipates that scheme cost may increase, scheme design will have to change, and levy may need to be further funded due to the introduction of ILARS.</p> <p>As an alternative, Suncorp suggests that there may be further utility in enhancing the services provided by the Legal Advisory Service. This can be done by expanding matters that can be referred and an increased awareness of this service provided by SIRA.</p>
4.	<b>Any alternative models of legal support for injured people that would promote the objectives of the Act</b>	<p>In addition to the points raised above, Suncorp is of the view that the appropriate model for legal support should be based on the needs of an injured person. Suncorp is supportive and advocates for legal support where it provides the best value to the injured person and where there is reasonable prospect of success.</p> <p>When SIRA considers any proposal in this regard, we suggest that a strategic approach through forensic research into areas of the scheme where it requires the most support.</p>
5.	<b>Other feedback</b>	<p>There are two other areas where Suncorp wishes to provide feedback and seek clarity on:</p> <p><b>Legal Costs Exceeding the Maximum Costs Fixed by the regulations</b></p> <p>On 11 June 2020 the Supreme Court of NSW held in AAI Ltd trading GIO v Moon [2020] NSWSC 714 that:</p> <p>A claimant is permitted to incur legal costs exceeding the maximum fixed by the regulations and the Dispute Resolution Service has a discretion to permit the recovery and payment of legal costs in excess of the maximum costs fixed by the regulations in exceptional circumstances.</p> <ul style="list-style-type: none"> <li>○ concerned that a claimant, who incurs legal costs exceeding the maximum fixed by the regulations, may be left with a legal liability to pay legal costs to his/her lawyer where there are no exceptional circumstances.</li> </ul>

		<ul style="list-style-type: none"><li>○ Similarly, there is a concern that a claimant, who may be never be liable to pay legal costs, can incur unlimited legal costs which may only be permitted by the DRS when the insurer has failed or fell short of a subjective standard. In other words, the permission of the claimant to incur and recover unlimited legal costs may be punitive in nature.</li><li>○ Suncorp is concerned that the decision of Moon has given a discretion on the DRS to allow a claimant to incur and recover unlimited legal costs, whilst alleviating the contractual liability for such legal costs, is unfair and removes the discipline imposed on parties to determine what disputes to prosecute and may force insurers to capitulate and not defend a dispute out of fear of unlimited costs orders.</li></ul> <p>Suncorp will appreciate the following clarification:</p> <p><i>Was it the intention of the MAIA and regulations to empower the DRS to permit a claimant to incur unlimited costs and permit recovery of such costs from the insurer?</i></p> <p><i>It has been widely held by the DRS that an insurer has the evidentiary onus to establish that an injured person is wholly or mostly at fault in miscellaneous disputes. Did the scheme intend to shift the evidentiary onus to the claimant if the DRS reviews the insurer's decision and finds that the insurer has discharged its onus?</i></p>
--	--	--