

REPORT OF THE INDEPENDENT REVIEW OF  
THE OPERATION OF SIRA'S  
LEGAL ADVISORY SERVICE PILOT

**Dr Andrew Fronsko**  
Principal, ADIIS Group  
May 2019

## ADIIS Group

Mary Maini  
Executive Director, Motor Accidents Insurance Regulation  
Motor Accidents Insurance Regulation  
State Insurance Regulatory Authority  
Level 6, 2-24 Rawson Place  
Haymarket NSW 2000

Dear Ms Maini

### **Independent Review of the operation of SIRA's Legal Advisory Service Pilot**

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I have pleasure in submitting to you my report on the First Independent Review of the operations of SIRA's Legal Advisory Service Pilot, that supports the New South Wales Compulsory Third Party (CTP) Insurance Scheme.

I would like to thank you, SIRA staff and stakeholders who participated in interviews. The open approach and frank feedback about the implementation of the Legal Advisory Service Pilot and opportunities to improve the service has significantly assisted in formulating this report.

Yours sincerely

**Dr Andrew Fronsko**  
Principal, ADIIS Group

May 2019

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## Glossary and Acronyms

1999 Scheme	Injuries incurred in motor vehicle accidents before 1 December 2017 (refer <i>Motor Accidents Compensation Act 1999</i> )
2017 Scheme	Injuries incurred in motor vehicle accidents on or after 1 December 2017 (refer <i>Motor Accident Injuries Act 2017</i> )
Accident year	The year in which the motor vehicle accident giving rise to the claim occurred
ALA	Australian Lawyers Alliance
ANF	Accident Notification Form
CARS	Claims Assessment and Resolution Service (independent dispute resolution services for accidents before 1 December 2017)
CTP	Compulsory Third Party (CTP) Insurance for motor vehicle injury
DOA	Date of Accident
DOD	Date of Decision
DOL	Date of Lodgment
DRS	Dispute Resolution Service (SIRA's independent dispute resolution services for accidents on or after 1 December 2017)
Green Slip	CTP Insurance policy issued in NSW
IIR	Insurer Internal Review (internal review of decisions, applicable to claims relating to accidents on or after 1 December 2017)
LAS	SIRA's Legal Advisory Service
LSR	SIRA's Legal Services Relationships (LSR) Team
MAA	Motor Accidents Authority (NSW)
MAS	Medical Assessment Service (independent dispute resolution services for accidents before 1 December 2017)
MACA	<i>Motor Accidents Compensation Act 1999</i> (NSW)
MAIA	<i>Motor Accident Injuries Act 2017</i> (NSW)
MAIR	Motor Accident Injuries Regulation 2017
NPS	Net Promoter Score
PIAWE	Pre-Injury Average Weekly Earnings
SIRA	State Insurance Regulatory Authority (NSW)
SLA	Service Level Agreement

### **Legislation & Regulations**

1999 Act	<i>Motor Accidents Compensation Act 1999</i> (also referred as 'MACA')
The Act	<i>Motor Accident Injuries Act 2017</i> (also referred as '2017 Act' or 'MAIA')
The Regulation	Motor Accident Injuries Regulation 2017

## EXECUTIVE SUMMARY

The Legal Advisory Service (“the service”) commenced as a pilot operation in mid-December 2017 with the express purpose of providing access to legal advice relating to statutory benefits claims, for select eligible matters where access to legal advice may be restricted, because of fee constraints imposed by the *Motor Accident Injuries Act 2017* and supporting regulations.

The service provides a ‘safety net’ that enables eligible claimants to access legal advice in circumstances where this may not be otherwise available. There is consensus that the service can fill a gap in access to professional services, and that the provision of a ‘safety net’ is meritorious and beneficial.

There is a compelling case for providing free and accessible legal advice for injured people to enable them to make judgements about the merits of challenging insurer decisions or to provide assurance that the insurers decisions are sound, lawful and consistent with evidence obtained.

There is also a strong argument in ensuring claimants can navigate the system to gain access to benefits that will assist their recovery and to exercise their rights in circumstances where they disagree with decisions by an insurer. There is accountability upon insurers to ensure claimants are fully informed on their rights and obligations and the basis of claims decisions. This will remain an essential core service offering, particularly in circumstances where lawyers cannot be paid for, or recover costs for providing advice on certain matters related to obtaining statutory benefits.

There is already a well-established program of independent information and navigation support provided by SIRA’s CTP Assist service, which uniquely places CTP Assist to identify claimants whose circumstances warrant referral for additional professional legal support to help claimants understand decisions made on their claim and to equip claimants to pursue their rights to review decisions. CTP Assist should continue to act as the gatekeeper for access to the Legal Advisory Service.

Most stakeholders interviewed as part of this review have indicated that there is a recognised need for access to legal advice in areas of the statutory benefit regime to ensure claimants receive their benefit entitlements. There remains contention, particularly with legal stakeholders, as to whether this should be a comprehensive platform of funded legal supports, or a ‘safety net’ to address gaps for eligible claimants to access legal support where legal cost are not recoverable. Much of this argument falls outside the scope of this review to resolve, and it is therefore recommended that SIRA consider enhancing the circumstances/matters that may be referred to the Legal Advisory Service to ensure appropriate access to supports.

The implementation of Legal Advisory Service has been a 'soft-launch' in the pilot phase, with limited targeted promotion pending a review of the pilot. This corresponds with low levels of awareness among key stakeholders and limited accessible information for claimants about the scope and how to access the service, prior to information on the service being migrated to the SIRA website in late September 2018.

To effectively assess the efficiency and effectiveness or otherwise of the Legal Advisory Service moving forward, there is a need to move out of the 'soft launch phase' to increase awareness targeting claimants who are most likely to benefit from the service and leverage the goodwill of stakeholders to enable the Legal Advisory Service to meet its objectives and maximise its potential to support the target audience.

The work already in development to increase awareness of the service towards specific claimants whom the service was designed to help, should continue as a priority.

This report provides discussion and recommendations that are primarily targeted at ensuring clarity of scope of the Legal Advisory Service, strengthening operational practices (and promotion of the service) and ensuring a planned and targeted approach to stakeholder education and engagement. These actions are expected to increase awareness and potential utilisation of the service.

## LIST OF RECOMMENDATIONS

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## BACKGROUND

### 2017 NSW CTP Scheme Reforms

On 1st December 2017, the NSW Government's reforms to the CTP Insurance (Green Slip) scheme came into effect, under the *Motor Accident Injuries Act 2017* ("the Act"). The reforms aimed to better support people injured in motor accidents through early access to benefits under no-fault arrangements, reducing the time it takes to resolve a claim, and directing an increased proportion of benefits to seriously injured people. A range of other reforms aimed to reduce the cost of Green Slip premiums, such as an increased focus on reducing opportunities for claims fraud and exaggeration; and restricting legal cost recoveries.

A thematic depiction of benefits under the 2017 Scheme is presented at **Appendix 1**.

### SIRA's 'CTP Assist' service in the context of the 2017 Scheme reforms

SIRA has historically provided a *Claims Advisory Service* to provide information and advice to claimants and policy holders. This was structured to primarily respond to inbound calls, receiving about 40,000 calls per annum (SIRA 2018a, p.3) supplemented with an outbound service to assist people representing themselves at CARS or MAS. About thirty per cent of the workload was responding to enquiries about motor vehicle policies, predominately relating to Green Slip price comparisons.

The Act explicitly introduced a mandatory requirement for SIRA to establish a claimant support service, within its operations, to provide injured people with advice on claims and dispute processes (and assistance with completing and lodging forms, as alluded to in the second reading speech)<sup>1</sup>. This mandate is codified under s.10.1(i) and 7.49 of the Act<sup>2</sup> as an explicit function of SIRA.

**Figure 1 Legislative basis for the establishment of a Claimant Support Service**

Motor Accident Injuries Act 2017	Second Reading Speech (9 March 2017)
<p><b>Part 10 Administration</b></p> <p><b>Division 10.1 Functions of Authority</b></p> <p>(i) to provide an advisory service to assist claimants in connection with claims for statutory benefits and claims for damages, and with dispute resolution under Part 7.</p> <p><b>Part 7 Dispute Resolution</b></p> <p><b>Division 7.7 Miscellaneous</b></p> <p>7.29 Advisory Service</p> <p>The Authority is to establish in association with its operations an advisory service to assist claimants in connection with their claims for statutory benefits and claims for damages and with the dispute resolution procedures under this Part.</p>	<p>The State Insurance Regulatory Authority will also establish a claimant support service to provide injured people with assistance with completing and lodging forms as well as advice on claims and dispute processes.</p>

<sup>1</sup> Second Reading Speech, Motor Accident Injuries Bill 2017, motion by Mr Victor Dominello — Minister for Finance, Services and Property, 9 March 2017 (Hansard)

<sup>2</sup> S.10.1 vests with SIRA the explicit function of assisting claimants in connection with claims for statutory benefits and [common law] damages and dispute resolution. With respect to dispute resolution, s7.49 clarifies that SIRA is to provide assistance on dispute resolution procedures.

In this context, SIRA's CTP Assist service was established in December 2017 as part of the implementation of the 2017 Scheme reforms under *Motor Accident Injuries Act 2017*. The service aimed to help people with making a claim such as with filling out forms, and advice around getting a decision reviewed (SIRA, n.d.(a)). Claimant support and information navigation services aims to “ensure all claimants have access to information and are supported and empowered through their claims journey - it will provide inbound [reactive] and outbound [proactive] services to support, advise and assist people who seek to make or have to make a CTP Claim (SIRA 2017, p.9).

At an operational level, CTP Assist aims to provide a multi-channel, personalised claims support and information for injured people, policy holders and others in the CTP scheme such as doctors and health professionals (SIRA, 2018a, p.7).

The rationale for outbound [proactive] contact with claimants is that of an assurance function, that “claimants are *empowered* to make informed choices on how to proceed with their recovery and claim... if necessary [help to get] connected with their insurer in the quickest possible time to assist them in early accesses to benefits” (SIRA 2017, p.9 -emphasis added). Accordingly, CTP Assist staff routinely contact injured people after they have lodged a claim to make sure they get the support they need (SIRA 2018a, p.7).

### ‘Legal Advisory Service Pilot’ in the context of broader CTP Scheme reforms

Section 8.3. of the 2017 Act limits the matters for which an Australian legal practitioner is entitled to be paid or recover for a legal service in relation to CTP claims. It also allows Regulations to be made that limit the legal services for which a legal practitioner is entitled to be paid, and to set maximum costs for those legal services.

Part 6 of, and Schedule 1 to the Regulation provides, among other things, for the maximum legal costs in connection with statutory benefit claims and disputes arising in respect of those claims. The Regulations govern what legal fees can be charged in connection with legal work performed and do not prohibit the provision of legal advice and/or assistance nor pro-bono arrangements (SIRA n.d.(f)).

Whilst SIRA's CTP Assist service will provide information navigation support to claimants on the claims and dispute resolution process, it does not provide ‘legal advice’ or legal services. This creates a potential risk that claimants will not have access to appropriate legal advice where legal costs are not recoverable.

To provide a ‘*safety net*’ to support eligible claimants who may not have access to legal advice on matters relating to statutory benefits (i.e. inability to obtain advice on matters where no legal cost recovery is available), SIRA established a Legal Advisory Service pilot scheme in mid-December 2017. Under this service, CTP Assist may refer claimants to a panel of solicitors, contracted by SIRA, to provide independent legal advice, directly to the claimant, on specific matters (refer **Chapter-1** of this review for detail).

## SIRA's role in Monitoring and Reporting:

Whilst there is nothing new for the Regulator to monitor scheme performance (including outputs and outcomes), the 2017 Act requires SIRA to enhance its data collection (including data on insurer behaviours and claims experience) to enable better regulation of the scheme.

**Figure 2 Legislative basis for enhanced data collection**

Motor Accident Injuries Act 2017	Second Reading Speech (9 March 2017)
<p><b>Part 10, Administration</b>  <b>Division 10.1 Functions of Authority</b>                      (a) to monitor the operation of the motor accidents scheme under this Act, and in particular to conduct (or arrange for other persons to conduct) research into and to collect statistics or other information on the level of statutory benefits and damages paid by insurers, the level of damages assessed by claims assessors and awarded by the courts, the handling of claims by insurers and other matters relating to that scheme.</p>	<p>Part 10 of the Bill will introduce enhanced data collection and reporting, and real-time performance monitoring of insurer behaviour and claims experience, to enable SIRA to better regulate the scheme</p>

## SCOPE AND STRUCTURE OF THIS REVIEW

### Context

Several features of the 2017 Scheme reforms have influenced SIRA to place a *greater focus on the provision of publicly available and accessible information and support services for policy holder and claims enquiries*:

- All injured road users under the 2017 Scheme have access to statutory income, medical and commercial attendant care benefits regardless of who is at fault (including blameless accidents) for the first six months, which may continue beyond this time limit for non-minor injuries for those not at fault. Statutory benefits in the first six months are more comprehensive than those available under the previous Accident Notification Form (ANF)<sup>3</sup> system. This enables reasonable benefits and supports to be delivered soon after making a claim, with early intervention viewed to assist the recovery process
- Reduction in the Green Slip prices, with a Green Slip Premium Refund scheme established to reimburse eligible motorists who paid their CTP Insurance premiums prior to the 2017 Scheme taking effect<sup>4</sup>
- Lawyers cannot be paid for or recover costs for providing advice on certain matters relating to statutory benefits. Regulation governs how much they can charge for other types of services.

In this regard, SIRA has introduced the following new service activities under its “CTP Assist” service banner:

- Proactive contact with injured road users for 2017 Scheme claimants after they lodge a claim, at defined times, to make sure they are getting the support they need (SIRA, 2018d, p.12)
- Legal Advisory Service to support unrepresented claimants on certain matters relating to statutory benefits (SIRA n.d.(f))
- Systematic collection of Feedback (complaints, compliments, enquiries and [general] feedback), to identify issues requiring intervention, or opportunities to improve service delivery
- Periodic surveys to monitor claimant experience.

The Legal Advisory Service pilot was launched by SIRA in mid-December 2017. The service provides legal advice relating to statutory benefits claims, where legal fees are restricted by the 2017 Act and supporting regulations. To use the service, injured people call CTP Assist who will arrange a referral if they are eligible. Advice is personal and confidential. There is no charge to injured people (SIRA 2018f, p.9).

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<sup>3</sup> Limited to a cap of \$5,000.

<sup>4</sup> CTP Green Slip prices were reduced for most classes of vehicles from 1 December 2017 when the 2017 Scheme started. So, policy holders who purchased or renewed a Green Slip with a start date before 1 December 2017 may paid pre-reform prices, they may therefore be eligible for partial refund calculated on a pro-rata basis. The deadline for claiming is 30 June 2019.

## Scope of this Review

This review focusses upon the following matters with respect to the Legal Advisory Service:

1. Review of the efficiency and effectiveness of the Legal Advisory Service in providing injured people with legal advice to date
2. The methods that SIRA has used to raise community awareness of this service, including:
  - a. Internal: training materials, knowledge transfer, and artefacts used to communicate with potential users of this service by CTP Assist and the Dispute Resolution Service
  - b. External communications including website information about the service
3. Review of stakeholder knowledge and communication of the service which will include an evaluation of methodologies for referring this service to claimants, such as case management awareness, training materials, and artefacts in use to communicate with potential users of this service
4. Recommendations in relation to any of the above.

## Out Scope of this Review

It is not the intent of this Review to audit the efficacy of advice provided by Legal Advisory Service panel solicitors.

The review does not make recommendation of changes to the scope of the Legal Advisory Service, noting there is yet to be a significant body of experience emerge, with the most urgent priority to improve the promotion of service. Notwithstanding, recommendation is made with respect to the governance framework needed to capture and consider stakeholder feedback in this respect (refer **Appendix 3**).

## Structure of this Report

This Report comprises four chapters

Chapter 1 Evaluates the **objectives and operation** of the Legal Advisory Service, the underlying service philosophy, scope (e.g. policies) and key *inputs*. This includes, an overview of enabling technology platforms, operational functions, structure and resourcing of the Legal Advisory Service.

Chapter 2: Evaluates the **key outputs** of the Legal Advisory Service (what is delivered), including discussion of procedures and performance.

Chapter 3: Focuses on stakeholder perspectives on the **understanding of the service perceived benefits (outcomes) and suggestions for improvement**. This chapter includes the views of stakeholders gathered through semi - structured interviews.

Chapter 4: Provides a synthesis of key issues through a discussion section and recommendations to improve the service.

Annexures:

- A. Matters that may be referred to the Legal Advisory Service (LAS)
- B. Legal Costs recoverable at DRS
- C. Legal Advisory Service Process (key steps)
- D. Service Delivery Timelines: from date of LAS referral to closure

## Methodical Approach

This review is based on a review of materials provided by SIRA management. This includes internal policy, procedure and training documents,

Data about activity relating to insurer internal reviews and dispute resolution was obtained from SIRA's Published *Green Slip Quarterly Insights* report. In addition, high-level data by way of ad-hoc data requests were provided by SIRA relating to operational activity (outputs) of the Legal Advisory Service pilot .

Semi-structured qualitative interviews were undertaken in the following categories<sup>5</sup>:

- CTP Assist Staff (6) and the Knowledge and Training Manager for CTP Assist
- Various SIRA personal overseeing communications, insurer performance and liaison and the project management implementing the pilot
- Each of SIRA's contracted Legal Advisory Service panel solicitors who had provided advice under the service (six from a current panel of eight)
- Representative from the Australian Lawyers Alliance
- Representatives from the Law Society of NSW
- Representatives from licensed insurers (Suncorp, NRMA, Allianz and QBE).

In addition, six claimants who were referred to the Legal Advisory Service that had opted-in to participate in feedback surveys, were contacted and invited to submit feedback. Contact was established via email with a follow-up phone call, with an invitation to submit feedback of their experience either via an on-line survey or via phone interview. Four people submitted responses via the online survey. Two people that were contacted had not responded at the time of completing this report.

For privacy reasons this report does not attribute comments to any individual or organisation within the above sub-categories (other than where statements are on the public record). To ensure the protection of legal professional privilege, the content of advice provided by Legal Advisory Service solicitors to claimants was not assessed.

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<sup>5</sup> The *NSW Bar Association* declined the invitation to be interviewed, advising that there was nothing more to add that had not already been stated on their submission to the New South Wales Legislative Council Law and Justice Committee Review of the Compulsory Third Party (CTP) Insurance Scheme (22 June 2018), and representation made at the Inquiry (23 August 2018).

## Milestone dates for key claims decisions

Milestone dates for key claims decisions under the scheme governed by the 2017 Act, will progressively evolve. This is illustrated in the table below.

By March 2019, fifteen months experience has begun to emerge with respect to claims lodgement and liability determination decisions, treatment/care decisions, and weekly benefit decisions. Twelve months experience for the second liability decision (whether to extend benefits beyond 26 weeks), step down in income benefits, and requests for a review of decision by SIRA's Dispute Resolution Service (DRS). Nine months experience is begun to emerge with respect to the cessation of benefits for minor injury or those mostly at fault.

**Table 1** Time evolution of key decision points under the 2017 Act (MAIA)

Decision Milestone	Time	Experience Emerging	3 months experience	Six months experience	12 months experience
Claims Lodgment	3 mths from DOA	Dec 2017	Mar 2018	Jun 2018	Dec 2018
Liability determination to accept	28 days DOL	Dec 2017	Mar 2018	Jun 2018	Dec 2018
Treatment and Care decisions	ongoing	Dec 2017	Mar 2018	Jun 2018	Dec 2018
Weeklies: 1st Eligibility Period (commence)	DOA	Dec 2017	Mar 2018	Jun 2018	Dec 2018
Request DRS review	various	Mar 2018	Jun 2018	Sep 2018	Mar 2019
Weeklies: 2nd Eligibility Period (commence)	3 mths DOA	Mar 2018	Jun 2018	Sep 2018	Mar 2019
Liability determination extend benefits >26 wks	3 mths DOL	Mar 2018	Jun 2018	Sep 2018	Mar 2019
Cessation of benefits for minor injury or mostly at fault	6 mths DOA	Jun 2018	Sep 2018	Dec 2018	Jun 2019
Weeklies: 3rd Eligibility Period (commence)	18 mths DOA	Jun 2019	Sep 2019	Dec 2019	Jun 2020
Earliest Common Law lodgment for less severe injuries	20 mths DOA	Aug 2019	Nov 2019	Feb 2020	Aug 2020
Earliest Common law settlement for less severe injuries	24 mths DOA	Dec 2019	Mar 2020	Jun 2020	Dec 2020
Cessation of 3rd EP for Weeklies non-serious injury+no C/Law claim pending	24 mths DOA	Dec 2019	Mar 2020	Jun 2020	Dec 2020
Cessation of 3rd EP for Weeklies non-serious injury + C/Law claim pending	36 mths DOA	Dec 2020	Mar 2021	Jun 2021	Dec 2021

## CHAPTER 1: OBJECTIVES & OPERATION OF THE LEGAL ADVISORY SERVICE PILOT

### Service Objectives

SIRA's CTP Legal Advisory Service was launched on 18 December 2017 (SIRA 2018f, p.9), as part of SIRA's implementation of the 2017 Scheme reforms, and forms an extension to the service offered by CTP Assist.

In the context that the 2017 Act and supporting regulation, does not provide for legal cost recovery with respect to certain matters on statutory benefits, there is a potential issue in claimants not being able to obtain legal advice on such matters in the absence of a legal provider being willing to provide such services.

The service was launched as a *'pilot'* with the intent to avoid a situation where an issue occurs that was not anticipated. It is not meant to replace the access to legal advice that is provided for in legal costs – rather, it is meant to be a *'safety net'* (Donnelly 2018, p. 78).

SIRA's implementation planning documents (dated 20 October 2017), indicates the pilot was scheduled to be reviewed six months after the commencement of operation. However, the review was delayed pending a more significant number of referrals to be made, noting that at the time of launch SIRA was not expecting referrals to commence until the quarter ending June 2018 (SIRA 2018a, p.11).

A panel of nine solicitors had been contracted by SIRA in mid-December 2017 to provide the service. One panel solicitor has since withdrawn services, leaving a current panel of eight.

#### Box 1: Extract from SIRA Website: 'CTP Legal Advisory Service'

##### 'What is the CTP Legal Advisory Service?'

When the new CTP Green Slip scheme came into effect on 1 December 2017, new laws were introduced which prevents lawyers from receiving payment for certain services and regulates how much they can charge for other types of services. This means lawyers cannot be paid for or recover costs for providing advice on certain matters.

To ensure you have access to legal advice in these instances, SIRA has established a CTP Legal Advisory Service. This service is made up of a panel of lawyers who provide independent legal advice to people who have been injured in a motor accident on or after 1 December 2017.

If you are already receiving advice from a lawyer on your CTP claim it is recommended that you speak to them.

The intent of having a *'pilot'* roll-out of the service was to provide the opportunity for the service to be evaluated, prior to deciding to formally institutionalise the operation (or otherwise).

## Scope of the Legal Advisory Service

The SIRA website articulates the scope of the service by way of matters that may be referred to the Legal Advisory Service (**Annexure A** refers) and the conditions and constraints (refer SIRA n.d.(c)), summarised below:

A matter can be referred at different stages during the life of a claim:

- before a decision is made by an insurer
- at any time before or after internal review (but not in connection with the internal review application)<sup>6</sup>
- at any time before an application is made to the Dispute Resolution Service.

A matter cannot be referred if it is:

- a claim under the *Motor Accidents Act 1988* or the *Motor Accidents Compensation Act 1999*
- a common law claim
- advice relating to an application for internal review.

Where a potential Legal Advisory Service matter arises, and a claimant is legally represented the preference is to refer them back to their legal representative in the first instance (refer Box 2 below).

**Box 2: Extract from** *Legal Advisory Service CTP Assist Training* (Internal Training Document, September 2018, p.11)

**Critical points:**

- For claimants who have an existing relationship with a solicitor *the first point* should be to refer them to that solicitor. This is necessary to avoid conflict of interest
- Many enquiries received through claimants, you may find that they can be referred to alternative or more suitable pathways – i.e. going back to the insurer
- Where the issue cannot be resolved by yourself, the insurer or through alternative pathways, this can then be referred to the Legal Advisory Service.

In effect, the Legal Advisory Service is promoted by SIRA as a last resort 'safety net', after alternative pathways of resolution are explored or considered. *Inter alia*, this is underpinned on the obligation of insurers to advise claimants on their rights and obligations with respect to statutory benefits.

### Quantum of Advice

The service is limited to three hours of advice by the Legal Advisory Service panel solicitor but may be extended to four hours with the approval of SIRA. This limit broadly aligns with the quantum of advice on matters where legal cost recovery apply.

The fee arrangement does not provide for a Legal Advisory Service panel solicitor to file any documents or make any applications in a court or to the Dispute Resolution Service on a claimant's behalf, or represent a claimant at Dispute Resolution or in a court.

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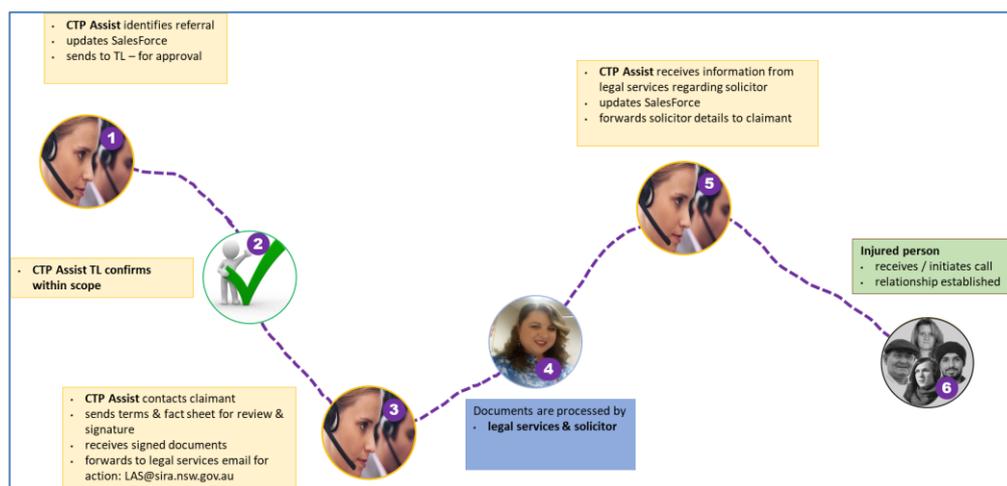
<sup>6</sup> The exclusion of LAS services in connection with an internal review (point 2 above) is premised s.23 of the Regulation that states "It is declared that no costs are payable for legal services provided to a claimant or to an insurer in connection with an application for internal review by the insurer under Part 7 of the Act".

## Referral Process

The referral process was designed in mid-December 2017 and remains in place (refer **Annexure C**).

A referral for the Legal Advisory Service is initiated by a CTP Assist staff member as a result of an inbound or outbound telephone call with a claimant. The need for referral is assessed based on 'verbal cues' in the course of conversation (or a direct request is made by the claimant). There is no codified algorithm or prescribed dialogue text to uncover a need for the service, however a training module (launched in April 2018) provides guidance in the form of a logical line of questions to help identify the need.

**Figure 3** Legal Advisory Service Approval Process (high-level schematic)



**Source:** *Legal Advisory Service CTP Assist Training* (Internal Training Document, September 2018, p.9)

A CTP Assist staff member wishing to make a referral must first consult their Team Leader to confirm the referral is within scope, with final approval authorised in consultation with SIRA's Legal Services Relationships (LSR) Team. Technical support in the process, if required, is provided by the CTP Assist Training and Knowledge Manager.

Once approved, the CTP Assist staff member contacts the claimant to confirm approval and sends a Fact-Sheet and a document entitled the *Terms of the SIRA Legal Advisory Service* for review and signature<sup>7</sup>. This document outlines the obligations of each party (Figure 4 below), claimant consent for their names being provided to a panel solicitor for a conflict of interest check, and acknowledgement of their acceptance of the service obligations. On this form, the claimant indicates whether they will initiate contact with the Legal Advisory Service panel solicitor, or whether they want the panel solicitor to initiate contact.

<sup>7</sup> A request is made that that the signed copy of the *Terms of the SIRA Legal Advisory Service* be returned within five working days (email or post).

CTP Assist also request that the claimant send through all relevant documentation that will be on-forwarded to the panel solicitor.<sup>8</sup>

When CTP Assist receives the signed documents, the LSR Team contacts a Legal Advisory Service panel solicitor (on random allocation basis) to gauge their capacity to undertake referral without conflict of interest. Once agreed, the LSR Team forwards the referral, signed *Terms of the SIRA Legal Advisory Service* and supporting documentation to the appointed Legal Advisory Service panel solicitor.

**Figure 4** Obligations & Constraints: '*Terms of the SIRA Legal Advisory Service*'

Claimant Obligations	
<ul style="list-style-type: none"> <li>provide the panel solicitor with timely, accurate and proper instructions, and all documents and other records relevant to the services provided to you, and</li> <li>act in a courteous and respectful manner at all times.</li> </ul>	
SIRA Obligations	SIRA will not -
<ul style="list-style-type: none"> <li>decide whether a referral to a solicitor through the Legal Advisory Service is to be made;</li> <li>refer the matter to the Panel Solicitor within 1 business day of receiving this signed document;</li> <li>provide you with the name and contact details of the Panel Solicitor;</li> <li>Provide the Panel Solicitor with your contact details and signed Terms;</li> <li>pay the Panel Solicitor for the services provided in advising you under the referral, and</li> <li>maintain administrative and reporting records of the Legal Advisory Service.</li> </ul>	<ul style="list-style-type: none"> <li>request a copy of the legal advice provided to you;</li> <li>pay for any services provided to you that fall outside the scope of the referral, or</li> <li>pay for any expenses that you may incur in managing your claim and accessing this service including but not limited to telephone costs, photocopying, postage, obtaining reports or undertaking investigations etc.</li> </ul>
LAS Panel Solicitor Obligations	Panel Solicitor will not -
<ul style="list-style-type: none"> <li>perform the work with professional skill and diligence acting as your independent legal adviser;</li> <li>act solely in your interests and provide legal advice only on the matter referred by SIRA Legal Advisory Service (your matter);</li> <li>explain to you that legal advice will only be provided with respect to the legal issues that relate your matter;</li> <li>request and obtain your consent to speak with the CTP insurer or other third parties to obtain information or investigate the claim, in order to advise you on the matter referred;</li> <li>inform you in a timely manner of any relevant timeframes as soon as he/she becomes aware; and</li> <li>inform you and SIRA when the referral has concluded.</li> </ul>	<ul style="list-style-type: none"> <li>perform work for you where a conflict of interest exists;</li> <li>perform work for you outside of the matter referred such as advising generally on the claim;</li> <li>charge you any fees for providing legal advice;</li> <li>represent you at an internal review, dispute resolution service or court;</li> <li>brief a barrister or obtain expert reports; or</li> <li>be entitled to any reimbursement or charge related to obtaining any file, document or other item in connection with the provision of legal services to you under this referral.</li> </ul>

Source: *Terms of the SIRA Legal Advisory Service* - extract

<sup>8</sup> Depending where the matter is within the claims cycle this may include the claim form, decline letter from Insurer, internal review request / internal review letter from Insurer, and any supporting documentation.

## Legal Advice Process

The process and timelines for the provision of advice by the Legal Advisory Service panel solicitor to the claimant is set out in **Annexure D**.

*In brief*, after the claimant and panel solicitor make contact, and documents are reviewed, the panel solicitor will provide verbal legal advice to the claimant within five working days of referral. This advice is confirmed in writing by (via letter or email) within two working days of providing verbal advice. The panel solicitor does not provide SIRA with a copy of the advice to protect the claimant's legal professional privilege.

If the claimant seeks additional legal advice on their CTP claim that is outside the scope of the referral, the Legal Advisory Service panel solicitor will advise the claimant that the advice is outside the scope of the referral and:

- refer the claimant to SIRA through CTP Assist, who will assess additional requirements and decide whether a further referral for additional services is required; or
- obtain the claimants consent and contact SIRA on the claimant's behalf, to request a further referral for additional services.

## Claimants seeking to engage the Panel Solicitor for additional services

Separate to the services provided under the Legal Advisory Service referral, should the claimant seek to instruct the panel solicitor to act for them in relation to their CTP claim or other matter, the panel solicitor must:

- notify SIRA in writing
- enter into a costs disclosure agreement with the claimant within their own or firm's capacity in accordance with professional obligations; and
- make it clear to the claimant in writing that the new arrangement is not part of the services of the Legal Advisory Service and is separate from and not related in any way to SIRA.

## Monitoring and reporting

At present the monitoring and reporting of the Legal Advisory Services activity and performance, and task work-flow management is undertaken manually, with diary notes of activity maintained in Salesforce.

## CHAPTER 2: OUTPUTS

### Introduction

This Chapter examines the number and nature of referrals received under the Legal Advisory Service pilot, and the activity by SIRA in promoting the service (internally and externally).

### Referrals to the Legal Advisory Service pilot program

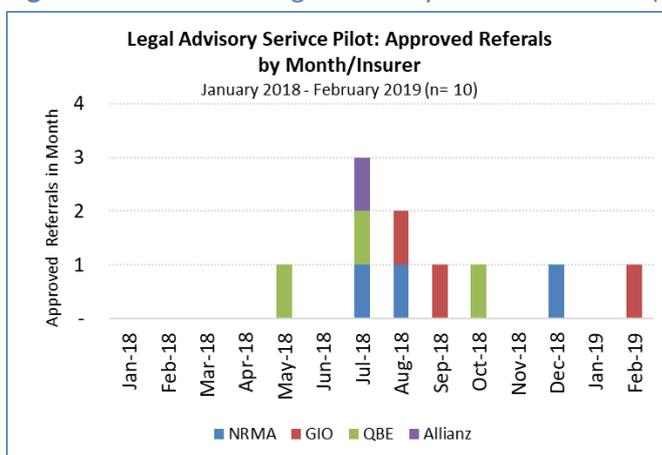
Since the launch of the Legal Advisory Service pilot, there have been ten (10) approved referrals up to the end of February 2019. Of the ten referrals made, nine claimants ultimately pursued seeking legal advice, one claimant did not contact the Legal Advisory Service Solicitor to progress the referral.

#### Distribution of Referrals by month

The first referral received was in May 2018, with the peak number of referrals received in July 2018 (three).

Of the ten referrals, three each were managed by three licensed insurers (GIO, NRMA and QBE) with one referral relating to a claim managed by Allianz.

**Figure 5** Number of Legal Advisory Service Referrals (by Month and Insurer)



Source: SIRA

#### Point in Claims Cycle at time of referral

For all referrals, the request for assistance occurred after the insurer had issued its liability notice under section 6.19(2) of the 2017 Act, which requires that the insurer is to give the claimant notice as to whether the insurer accepts liability for the payment of statutory benefits after the first 26 weeks after the date of the accident.

Of the ten referrals, six were made post an insurer internal review decision, and four prior to any insurer internal review decision. All six referrals post insurer internal review related to accidents prior to June 2018. All four referrals made prior to any insurer internal review related to accidents on or after June 2018.

**Table 2** Point in the Claims Cycle at time of referral to the Legal Advisory Service

Managing Insurer	Date of Accident (DOA)	Date of Referral (DOR)	Time between DOA - DOR	Point in Claims Cycle
NRMA	Jan - 2018	Jul - 2018	21 weeks 6 days	Post Internal Review
Allianz	Feb - 2018	Jul - 2018	22 weeks 2 days	Post Internal Review
QBE	Mar - 2018	May - 2018	9 weeks 0 days	Post Internal Review
QBE	Apr - 2018	Oct - 2018	25 weeks 5 days	Post Internal Review
QBE	Apr - 2018	Jul - 2018	12 weeks 4 days	Post Internal Review
NRMA	May - 2018	Aug - 2018	12 weeks 6 days	Post Internal Review
GIO	Jun - 2018	Sep - 2018	12 weeks 2 days	Pre Internal Review
GIO	Jun - 2018	Aug - 2018	8 weeks 5 days	Pre Internal Review
GIO	Jul - 2018	Feb - 2019	29 weeks 0 days	Pre Internal Review
NRMA	Oct - 2018	Dec - 2018	5 weeks 5 days	Pre Internal Review

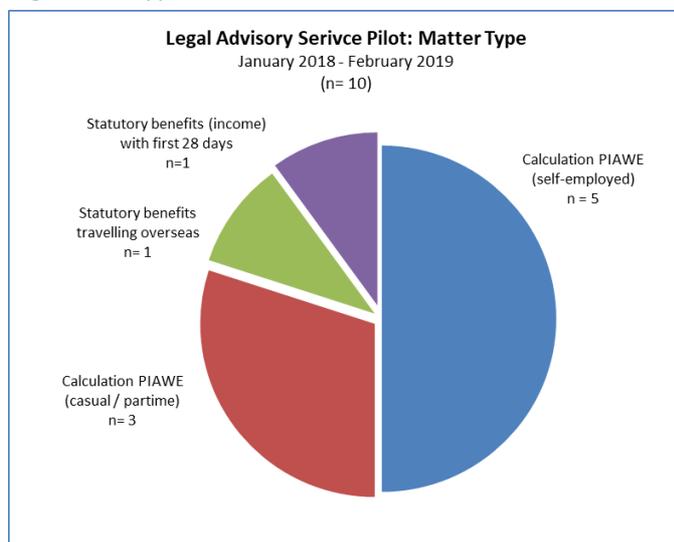
### Type of Matters Referred

Eight of the ten referrals were related to the calculation of the claimant's pre-injury average weekly earnings (PIAWE): five cases related to claimants who were self-employed, three cases related to claimants who were in casual or part-time employment.

One referral related to entitlements to statutory benefits for a person travelling overseas.

One referral related to a dispute about an entitlement to statutory benefits in the first 28 days (back-pay of lost income).

**Figure 6** Types of Matters Referred

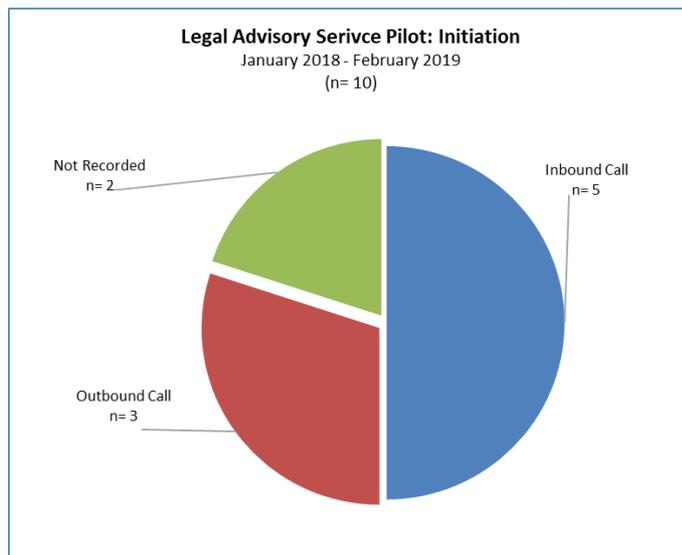


Source: SIRA

## Initiation of referral

For all referrals, the request was initiated by the CTP Assist staff member (i.e. not explicitly requested by the claimant). Most cases referred, were as a result of an inbound call by the claimant, rather than through the scheduled 10-week and 23-week outbound calls by CTP Assist.

**Figure 7** Types of Matters Referred to the Legal Advisory Service



## What happened post receipt of legal advice?

For seven of the nine 'active' referrals, the claimant was provided with final advice by the panel solicitor within eight working days (average 3.5 working days). Two referrals exceeded this time (14 days and 20 days respectively) as more information needed to be provided by the claimant.

After legal advice was received:

- Five claimants made application to the Dispute Resolution Service for a Merit Review of the insurer decision and received an outcome favorable to the claimant
- One claimant's insurer reversed its decision and made a fresh decision with an outcome favourable to the claimant
- Three claimants did not take any further action.

## Operational Delivery: SIRA Artefacts

### Initial Launch Activity

#### ***Appointment of Legal Advisory Panel Solicitors***

The conceptualization of the Legal Advisory Service pilot occurred in late 2017, during the stakeholder consultation process associated with the 2017 scheme reforms. The process (workflow) design of the service was substantively completed by October 2017.

Following consultation with legal peak bodies, a panel of nine (9) solicitors were appointed by SIRA to provide services. The solicitors received training by SIRA in a group session covering the scope of service and on the process of referrals, with the intent that service was to go live from 18 December 2017. Attendees were provided with a copy of the presentation material and were asked to provide feedback on a draft version of the claimant letter and associated documentation.

SIRA's expectation at the time was that referrals would not begin to emerge until several months' time (i.e. the second quarter of 2018) given key insurer decisions on new scheme claims would not start to emerge until this time.

#### ***Initial Training of CTP Assist Staff***

The initial training of CTP Assist staff was undertaken over a two-week period concluding mid-April 2018. Training sessions covered the purpose and scope of the service, procedures for referral and five scenario based learning activities of matters that should and should-not be referred (in the latter case providing direction on the appropriate course of action). The training material was made electronically available to staff, that could be accessed on the Salesforce system.

CTP Assist Call-scripting guides provided prompts regarding the provision of information on where and how claimants may be able to access free legal services (when identified), and for the 10/23 week outbound a closing 'Decision Point/Next Steps' prompt to "identify whether the Legal Advisory Service" is needed. An internal training & knowledge article document provided guidance on the logical structure of lines of questioning to support this (SIRA. n.d. (h), pp. 1,5).

#### ***Insurers Briefings***

Insurers were first notified of the launch of the Legal Advisory Service pilot on 22 December 2017, via a letter informing insurers of the appointment of the Legal Advisory Service panel solicitors, and was an agenda item at monthly meetings between Insurer representatives and SIRA's Insurance Performance Team.

An invitation was extended for CTP Assist representatives to visit each insurer and provide a formal training session (lasting one hour). Two insurers accepted the offer for training, two insurers did not respond to the offer. Of the insurers who accepted the training offer, one insurer received training in February 2018, the other insurer training early in the second quarter of 2018 (after requesting a slight delay due to

internal restructuring). Presentation materials were not left with insurers post the training on the basis that the Legal Advisory Service was in a pilot phase and subject to ongoing refinement, however, an email descriptive summary was distributed.

During March-April 2018 insurer representatives were contacted by SIRA's Claims Performance & Monitoring team (via email) on two separate occasions seeking feedback on the *Terms of the SIRA Legal Advisory Service* intended to be sent to prospective claimants seeking to use the service. All insurers noted with acknowledgement, two insurers providing substantive feedback. Separate to this, SIRA also prepared a Fact Sheet on the Legal Advisory Service which was issued to all insurers.

### **Subsequent Activity**

#### ***Follow-up training for CTP Assist staff***

There have been two significant rounds of follow-up training sessions on the Legal Advisory Service for CTP Assist staff. These occurred in mid-July 2018 (covering the scope and purpose of the Legal Advisory Service, and more broadly legal costs within the CTP Scheme); and early February 2019 as part of an update on the 2019 MAIA amendments.

Training on the Legal Advisory Service is incorporated in induction-training modules for new CTP Assist Staff; a new induction program completed for eight new staff who participated in December 2018. Refresher training specifically covering the Legal Advisory Service was conducted for new starters in late January 2019. Eight scenario based learning activities were incorporated in the refresher and starter training sessions.

In addition to the above, the Legal Advisory Service is periodically discussed at CTP Assist team meetings (which is currently occurring), and CTP Assist staff receive periodic email distribution of '*knowledge articles*' relating to the service (short emails from the SIRA's CTP Assist Knowledge and Training Manager clarifying issues or 'tips' to assist in the identification of needs).

#### ***Follow-up engagement with Insurers***

Post the initial launch, the Legal Advisory Service pilot was a standing agenda item on the monthly meeting held between Insurers and SIRA's Insurance Performance Team, including a formal presentation on the operation of the Legal Advisory service in mid-2018.

The Legal Advisory Service is currently not a standing agenda item, but may be raised under general business. To date, no substantive feed-back has been received in relation to the Legal Advisory Service.

## SIRA Web-based artifacts

### **SIRA Website**

A stand-alone webpage with detail of the legal costs under the 2017 Act, *SIRA Legal costs in claims for CTP statutory benefits*. (SIRA n.d.(f)) was launched on 28 June 2018, specially written for legal practitioners. This webpage provides detail of relevant legislative and regulatory provisions, explicitly referring to the non-recovery of legal costs with respect to statutory benefits. This webpage does not make explicit reference to the Legal Advisory Service, however, does provide a link to CTP Assist should further information on legal cost be sought.

A dedicated webpage pertaining to the Legal Advisory Service was launched by SIRA on 24<sup>th</sup> September 2018, targeting a claimant audience. This was planned several months prior and migrated as part of the ongoing optimization review of content on the SIRA website.

This dedicated webpage is accessed from the heading webpage *CTP Claiming Compensation: The accident happened on or after 1 December 2017*<sup>9</sup>, that links to the dedicated webpage for the Legal Advisory Service (SIRA n.d.(c)).<sup>10</sup> On average, there are about 150 webpage views per month (it is estimated that about 5% of these views are from people within professional institutions).

The Legal Advisory Service webpage has two downloadable 'Fact Sheets' written for claimants as the target audience, containing detail of the scope of the service and how to access the service:

- *CTP Legal Advisory Service* (SIRA n.d.(d))
- *CTP Timeframe expectations* (SIRA n.d.(e)).

Downloads of the *CTP Legal Advisory Service* Fact Sheet over the last three months have been averaging about 20 per month, with much lesser demand for downloading the *CTP Timeframe expectations* Fact Sheet

### **Green Slip scheme quarterly insights report**

Announcement of the launch of the CTP Assist Legal Advisory Service was published in the report *Green Slip Scheme Quarterly Insights, October-December 2017* (SIRA 2018(a), p.11).

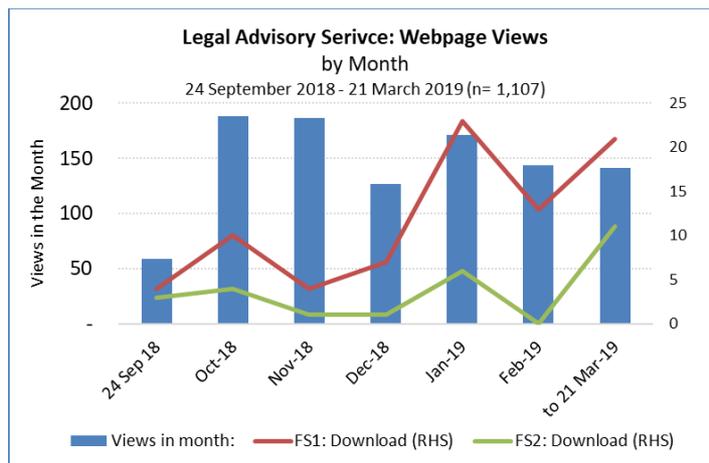
Each subsequent *Green Slip Scheme Quarterly Insights* report contains brief reference to the purpose of the Legal Advisory Service pilot and activity during the period.

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<sup>9</sup> <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017>

<sup>10</sup> <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/ctp-legal-advisory-service>

**Figure 8** SIRA Legal Advisory Service Webpage: Views per Month



FS1 = Fact Sheet: *CTP Legal Advisory Service*  
 FS2 = Fact Sheet: *CTP Timeframe expectations*

## Knowledge Management

### CTP Assist: Knowledge and Training Manual

In addition to training material, CTP Assist staff members had access to a documented *‘Knowledge and Training Manual*, that provides a broad-based description of claimant benefits and entitlements under the 2017 Act (with links to SIRA Catalogued Guidance notes) and includes work-book style questions to test knowledge. The manual was released to the CTP Assist Voice team for feedback in July 2018 and rolled out to the rest of the teams in September 2018<sup>11</sup>.

This *Knowledge and Training Manual* has an explicit sub-section with reference to the scope and coverage of the Legal Advisory Service, and presentation of a logically structured line of questions for CTP Assist staff members to use in claimant conversations to help identify whether referral to the Legal Advisory Service is appropriate.

This document was supplemented by a stand-alone Fact Sheet *‘Legal Advisory Service Guide’* (an internal staff training resource) issued in September 2018, to assist with identifying matters that may be within the scope of the Legal Advisory Service and includes a summary of the referral process.

In February 2019 all Legal Advisory Service knowledge material was condensed into a single documented procedure manual entitled *‘Legal Advisory Service Process Guide’* which has subsequently been circulated to all CTP Assist staff members.

### Knowledge Repository

From September 2018, all training material and knowledge articles were migrated to a centralised “SharePoint” platform. This involved the removal of historic versions of training and knowledge materials to ensure better version control and currency of

<sup>11</sup> For reference, the June 2018 version of this document and revised September 2018.

materials. Staff rely on this platform to access information. They can also refer to information contained on the SIRA website, and the retrieval of previously emailed knowledge articles.

It is noted that it is cumbersome for CTP Assist staff to locate and navigate knowledge articles and training materials. This impacts the ability to have fluid conversations with claimants as time is spent trying to locate relevant information.

At the time of this review, SIRA was designing a new 'wiki-style' centralised information repository (Knowledge Base) for policy, procedures and knowledge articles/training materials, to be implemented within the Confluence software architecture. This will act as a 'single source of truth', that the CTP Assist team can quickly access and navigate for reference during their daily customer interactions. To facilitate ease of use, the plan is to integrate this Knowledge Base within the Salesforce workflow system to enable direct access under the one operating system.

## Current & Pending Activity

### Communications Plan

A draft communications strategy and plan specific to the Legal Advisory Service has been developed by SIRA, that incorporates key stakeholders (internal and external) with respect to the Legal Advisory Service. The intent is to ensure that with the Legal Advisory Servicing transiting out of pilot phase, that there is an explicit articulation and common understanding of the role of each stakeholder, key messages and desired outcomes with respect to communicating the service. The communication strategy and plan will be finalised pending review of the content and recommendations contained in this report.

### Promotion: Media & Editorial

A suite of communication artifacts is currently under development:

#### ***Revised Web Base content***

1. Content/copy specific to the Legal Advisory Service, and related content that, can be linked to/from
2. Fact-Sheets (review)
3. Animation (illustrating the purpose, access and end-end process).

An Animation for the Legal Advisory Service is in the advanced stages of development, with internal-testing consultations underway of a draft version to ensure clarity of messaging.

#### ***Social Media & Editorial***

The leveraging of social media and third party and editorial content (e.g. publicity) has been considered, to be incorporated as appropriate within the above communications strategy and plan.

## CHAPTER 3: OUTCOMES: STAKEHOLDER PERSPECTIVES

### Introduction

This chapter reviews the perspectives of key stakeholders on the following matters, via a qualitative assessment based on semi-structured interviews:

1. How well is the policy intent of the Legal Advisory Service understood, and the perceived benefit of program?
2. How is the service promoted (insurers only)?
3. Opportunities for improvement, including mitigating unintended consequences.

In addition, this chapter summarises the perspectives of a select number of CTP Assist staff who participated in a focus-group feedback session, and the results of a survey on claimant experience with the service.

### Qualitative Assessment:

#### Legal Peak Bodies

##### *Introduction*

As an overarching perspective, Legal Peak Bodies (i.e. Australian Lawyers Alliance (“ALA”), Law Society of NSW and the NSW Bar Association), indicate that a primary problem with dispute resolution is one of scheme design: the only reason for the creation of the Legal Advisory Service is that lawyers are prevented from recovering costs (or adequately covering costs) for professional services in circumstances where such services are required by claimants with respect to statutory benefits. This is particularly the case for decisions that have potential to impact future rights.

These views are reflected in submissions (June 2018) and representations (August 2018) to the *Legislative Council Standing Committee on Law and Justice, 2018 Review of the CTP Scheme*. Calls for reform include the development of protocols like those operating at the Transport Accident Commissions Victoria (NSW Bar Association, 2018, p.4), and the establishment of an independent tribunal (Law Society of NSW 2018, p. 6) or equivalent modelled similarly to the NSW Workers Compensation Independent Review Office (ALA 2018, pp 26; Stone 2018, p.58).

It is expected that these views will not alter, and peak bodies will continue to advocate for a more complete platform of funded legal advice services and independent review of decisions to support claimants, rather than a ‘safety net’ of support in defined circumstances that is provided by the Legal Advisory Service.

This is an issue of scheme design that is beyond scope of this review.

Notwithstanding, in the absence of scheme redesign to reform legal support arrangements, there is a strong view that the quality of insurer decision making needs to be strengthened (Stone 2018, p.5; Henderson 2018 p.30) and that an aggressive and adversarial claims management approach may be detrimental to the claimant (ALA 2018, p.19; Henderson 2018, p.30).

**Box 3: Reorientation at the Legislative Council Standing Committee on Law and Justice, 2018 Review of the CTP Scheme (Stone 2018, p.55)**

“ Lawyers do not want to be involved in statutory benefits claims. We want an insurer to get together with a claimant, sort out what you need by way of weekly payments and sort out your treatment expenses. We have no interest in being involved in that, save that we want the claimant to be treated properly and fairly.

The concern is that from the smallish number of claims that are being seen by legal practitioners, there are multiple instances of claimants not being treated properly and fairly...

***Understanding of the Legal Advisory Service***

Whilst the policy intent of the Legal Advisory Service is understood, there appears to be a slight lack of unprompted recall awareness, of detail surrounding the process for referral, and types of matters that can be referred. For example, whether the service is available before an insurer decision or internal review occurs, the processes of referring a claimant to the service and subsequent receipt of advice, and whether a Legal Advisory Panel solicitor could legally represent the same client moving forward.

There appears to be a reasonable awareness of matters where recovery of professional legal services relating to statutory benefits are available: one person interviewed citing examples where an insurer was advising claimants that legal costs were not recoverable for a statutory benefit matter where this was not the case (this matter has since been referred to SIRA).

There is an awareness that a panel of competent solicitors have been appointed by SIRA to provide Legal Advisory Services, and there have been very few referrals to date.

Whilst it is acknowledged that some claimants are receiving legal advice pertaining to statutory benefits matters on a pro-bono basis (see Henderson 2018, p.30), one person interviewed indicated that more referrals to the Legal Advisory Service would be desirable. This was premised upon the observation that claims may involve complex matters like the calculation of weekly benefits for self-employed people or casual workers that may also be the subject of forensic accounting reports obtained by an insurer.

A view was expressed that there was *“no such thing as an unmeritorious referral”*, because even if claimants had been given a sound decision, they could benefit from independent professional advice to assure them of the efficacy of the advice (and potentially head-off unnecessary disputation).

### ***Suggestions raised for improvement to the service***

The ALA and Law Society members interviewed were strongly of the view that if the Legal Advisory Service were to be [more] successful there needed to be a considerable uplift in awareness to ensure the service is accessible and utilized.

Suggestions for improvement for the effectiveness of the service, included the expansion of the scope of the service to include general advice, investigative services and advocacy.

### **Legal Advisory Service Panel Solicitors**

#### ***Introduction***

At the launch of the Legal Advisory Service in late-2017, nine solicitors were appointed by SIRA to provide the service. One solicitor has subsequently withdrawn their service, leaving a panel of eight. To date, six of the eight panel solicitors have provided advice. Each of the six panel solicitors who have provided advice were interviewed as part of this review.

In general, there was broad support for the service. Most matters referred to panel solicitors (bar one) were regarded as appropriate for referral. Panel solicitors felt that claimants derived value from the advice provided. Two of the claimants have subsequently retained the Legal Advisory Service panel solicitor to represent them with respect to their claim.

It was noted that most matters referred to date related to the calculation of weekly benefits (Pre-Injury Average Weekly Earnings). This is not unsurprising given the complexity associated with calculating weekly benefits, especially for groups such as self-employed, independent contractors and overseas residents.

It was noted that two claimants were legally represented at the time of referral (the claimant advising at the time of referral that were not legally represented). In each case, the panel solicitor was of the opinion that the lawyer representing the claimant was not prepared to advise on the matter that was the subject of the referral.

#### ***Perception of the Legal Advisory Service***

There was a common understanding and support of the policy for Legal Advisory Service to act as a safety net to support claimants with respect to statutory benefit matters, who may not otherwise have access to legal advice when needed.

The benefit of the service was perceived as serving a dual purpose:

1. Advice on definitive matters of disputation, leading up to an insurer's internal review of a decision, or leading up to a review of decision by the Dispute Resolution Service
2. Independent advice on the efficacy of an insurer decision, where there was uncertainty (to decide whether to accept the decision or progress to disputation).

There was support expressed for CTP Assist to retain its role as the most appropriate gateway to access the service, to ensure quality referrals.

Anecdotal observations were made that the 2017 Act was driving a contraction of the legal market that made it increasingly difficult for claimants to find a suitable lawyer who could assist them with matters of a kind covered by the Legal Advisory Service. Several panel solicitors also made the anecdotal observation that some lawyers were focusing only on people with common law potential, and for this cohort of claimants, some lawyers were not prepared to assist with legal advice pertaining to statutory benefit matters where legal cost recovery was not possible.

### ***Suggestions raised for improvement to the service***

The majority view among panel solicitors was that the number of referrals should be significantly higher. Four members of the panel indicated they were also assessors for the Dispute Resolution Service and offered the view that they had seen several matters where unrepresented claimants would have benefitted from legal advice of the kind provided by the Legal Advisory Service.

There were a range of views expressed about how to improve the service:

- Most panel solicitors interviewed (four) favored retention of the service with significant improvement in promotion of the service and stakeholder education.
- One panel solicitor suggested there needed to be reform of the dispute resolution system to allow for the broader provision and access to legal advice, and in the absence of this stronger auditing of the quality of insurer decision making with the power for SIRA to make direct referrals of decisions where it felt insurer decisions were open to challenge.
- One panel solicitor saw little merit in the service, primarily based on a view that no one was using the service and the schemes design was primarily to deter claims and deter lawyers from practicing in the field. It is noted that this panel member had only received one referral that they regarded as unmeritorious.

There were differing views about the scope of the service. Three of the panel solicitors interviewed were comfortable with the existing scope of matters that could be referred. Two of the panel lawyers favored expansion of the scope of service to include general advice, particularly where there is complexity and poor knowledge of the scheme and entitlements (e.g. overseas residents). One of the panel solicitors felt the service would be better if the panel solicitors could help with preparing submissions and documents for the claimant.

Several panel solicitors interviewed referred to the need to clarify the policy on referrals involving claimants who were already legally represented. The preference was that CTP Assist should refer claimants back to the lawyer representing them in the first instance. It was acknowledged, however, that whilst some lawyers would help with matters where there was no cost recovery, some would not. The latter situation requires clarification on whether the Legal Advisory Service should be available.

One panel member expressed a view that the [low] number of referrals reflected that scheme experience was yet to fully mature. There was general agreement that the Legal Advisory Service needed to be better promoted and that stakeholder understanding, particularly with insurers needed to be enhanced.

Some panel solicitors (three) expressed a view that the service should extend beyond single issue matters and enable referrals for general claims advice.

Panel solicitors all noted that since the initial presentation associated with their engagement to participate in the program (mid-December 2017) they have not had further formal engagement or briefings by with SIRA regarding how the service was progressing or discussion on improvement opportunities that could be made to the service to improve effectiveness.

## **Insurer Perspective**

### ***Introduction***

Representatives of each of the four insurer groups were interviewed, the people interviewed were either directly overseeing dispute resolution, or overseeing claims policy that spans dispute resolution.

### ***Perception of the Legal Advisory Service***

At the time of interview, insurer representatives indicated they were familiar with SIRA's CTP Assist service, and where to locate information on the SIRA website, albeit recall of specific detail on the operational delivery of the Legal Advisory Service was not certain (noting two insurer representatives interviewed were fairly new in their positions and had only recently become aware of the service).

Although insurers are not involved in the referral process, only one insurer representative was aware that referrals had been made where they were the managing insurer<sup>12</sup>. This is largely explained by the low utilisation rate and CTP Assist staff liaising directly with insurer case officers on issues.

With regards to the purpose/aim of the Legal Advisory Service, representatives interviewed acknowledged there could be circumstances where claimants would benefit from access to the service, principally with respect to disputes post internal review of a decision (where a claimant is not legally represented), and also to provide assurance around efficacy of the initial decision to reduce unnecessary disputes and/or escalation of issues.

### ***Insurer Education and Artefacts to promote the Legal Advisory Service***

To verify artifacts used to communicate the service, insurers have provided SIRA with written confirmation on artifacts to communicate the service. In general, a standard operating practice is that claims staff are informed of the service, such that they can converse with the claimant, as required, with respect to the service. One insurer has explicitly indicated the preparedness to provide 'refresher' information to claims staff as additional information becomes available from SIRA.

With respect to claimant correspondence relating to adverse decisions and the result of an internal review decision, one insurer advised they will make explicit reference to the Legal Advisory Service highlighting links to the SIRA website. Other insurers make no explicit reference to the Legal Advisory Service, in preference to reference to the CTP Assist service on the basis that CTP Assist is the appropriate initiating referral source for access to the Legal Advisory Service.

### ***Suggestions raised for improvement to the service***

All insurer representatives cited better stakeholder promotion and education of the service as the primary improvement opportunity, including providing insurer claims staff with periodic briefings/information about the Legal Advisory Service and its utilisation.

There was support for further engagement with SIRA on how the service could be better promoted and leveraged to reduce disputation.

*Prima facie*, there was a call for caution in including reference to Legal Advisory Service in claimant letters, given there is current reference to SIRA's CTP Assist service. Promotion of the Legal Advisory Service with insurer communication artifacts needs careful consideration to guard against the hazard of inadvertently precipitating demand for the service irrespective of need. Accordingly, there was indicative supportive of CTP Assist's role as the gatekeeper for making referrals to the Legal Advisory Service.

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## Dispute Resolution Service

### ***Introduction***

Interviews were undertaken with three members of the leadership of Dispute Resolution Service.

### ***Perception of the Legal Advisory Service***

There was a good understanding of policy intent and operation of the Legal Advisory Service.

The primary perceived benefit of the Legal Advisory Service was the potential to reduce unnecessary disputation, either through the provision of information that could alter the original decision of the insurer (before reaching the Dispute Resolution Service), or providing independent assurance that the decision made was appropriate in the circumstances.

A general observation was made that about one quarter of matters referred to Dispute Resolution Service involved claimants who were unrepresented by legal professionals. The primary matter that Dispute Resolution Service hears where legal costs are not recoverable relates to the calculation of weekly benefits.

Anecdotally there was the view that a proportion of these claimants could benefit from receiving legal advice that would have assisted them to make their submission to the Dispute Resolution Service, including help for claimants to identify relevant or new information they should obtain to support their application for review.

A view was expressed that the best time for making referrals to the Legal Advisory Service was after initial decisions were made by insurers but before the insurer completes their internal review. This was premised in the view that claimants were likely to be unsure about what information was required to support the request and how-to best document/present that information.

### ***Suggestions raised for improvement to the service***

In the context that the scope of matters that can be referred to the Legal Advisory Service covers a limited range of matters and that tight time limits to apply for an internal review and any subsequent Dispute Resolution Service review (28 days), the following suggestions were made:

1. Better promotion of the Legal Advisory Service to assist self-represented claimants locate and access relevant information about the service where there may be a need
2. Broaden the referral gateway to the service to enable the Dispute Resolution Service to directly make referrals
3. Broaden the scope of the Legal Advisory Service to include matters where legal cost recovery applies at the Dispute Resolution Service, but does not apply prior (in instances where the claimant is self represented).

With respect to the latter suggestion, it was noted there would need to be provisions to avoid 'double dipping' (seeking cost recovery twice for the same matter) with respect to non-meritorious matters, and an ability to identify with certainty that the claimant was not legally represented at an earlier stage in the process.

It was noted that several of the Legal Advisory Service panel solicitors are also assessors for the Dispute Resolution Service. Should there be significant increase in the utilisation of the Legal Advisory Service, this would result in increased complexity in managing conflicts of interest and potential capacity constraints.

## **CTP Assist Staff: Focus Group Feedback**

### ***Introduction***

Six CTP Assist staff were interviewed in a facilitated focus-group session. The aim of this session was to explore staff members ("participants") understanding of the purpose of the Legal Advisory Service, their experience with operational delivery and suggestions for improvement.

The views and options expressed by participants should not be interpreted as reflective of the entire CTP Assist team or endorsed SIRA policy intent. Notwithstanding, feedback provided has helped to shape recommendations in the Review to improve the service.

Of the six participants, three had been in their roles for more than twelve months and each had made one referral to the Legal Advisory Service. The other three participants commenced employment in December 2018 and had not made a referral to Legal Advisory Service.

The focus group session was attended by the CTP Assist Knowledge and Training Manager as an observer and resource that could be called upon should technical questions arise.

### ***Perception of the Legal Advisory Service***

During the session, participants demonstrated good knowledge on the purpose of the service.

All participants recalled receiving formal training on the Legal Advisory Service, periodic receipt of knowledge articles issued by the CTP Assist Knowledge and Training Manager, and discussion of the service at recent team meetings. Although there was limited [unprompted] recall of dates and subject matter of specific training sessions and knowledge articles, all staff members were confident they knew where to access information if needed.

Where it was considered that the claimant might benefit from the Legal Advisory Service, the predominant preference of participants was they would be likely to seek advice (in conjunction with their Team Leader) from technical experts such as the CTP Assist's Knowledge and Training Manager or a Senior Advisor within SIRA's Legal

Services Relationship Team directly, rather than consult training artifacts or knowledge articles.

### ***Operational Delivery Perspective***

Participants in the focus group session who had made referrals to the Legal Advisory Service, recalled the referrals were made as a result of an inbound telephone contact that related to a specific insurer decision. The referral to the Legal Advisory Service was prompted by the CTP Assist staff member, rather than being a direct request by the claimant.

An observation raised by one participant, and generally agreed by participants, was that identifying a claimant need for referral to the service was more likely to be linked to an inbound call. This was because the timing of regular outbound call program (3-weeks postdate of claim lodgment and 10/23 weeks postdate of accident) didn't necessarily align with the timing of insurers decisions that a claimant may not agree with or understand.

In discussion, it was evident that there were some mixed views on the ideal time when the service should be provided. This observation is qualified, in that it reflects participants initial reaction, without reference to training material and knowledge articles, whereas in operational practice these materials and/or a technical expert would be consulted.

When probed about the provision of 'general' legal advice on an individual's claims strategy after some discussion the majority view was that it would be difficult to determine the criteria on whether a person would benefit from such general legal advice. It was understood that access to the Legal Advisory Service may occur at different times if there were separate matters, moreover, participants were confident that they could provide adequate informational navigation assistance on the claims and dispute resolution process.

The following areas of divergent procedural interpretation, were noted, that warrants procedural clarification (noting the incidence of such scenarios is low):

- Whether the service was available before an insurer's internal review when close to the 28-day cut-off period for lodgment after the initial decision<sup>13</sup>
- Access to the service where a claimant is legally represented but the lawyer representing the claimant is not prepared to provide advice on matters where costs are not recoverable.

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<sup>13</sup> It is noted that initial training to CTP Assist Staff in April 2018 contained a Fact Sheet advising that an internal review must first be undertaken before referral to the Legal Advisory Service. This no longer reflects current policy as articulated in the current Fact Sheet.

When probed about whether a claimant with concern over an insurer decision should in the first instance be guided towards an internal review or have the matter referred to the Legal Advisory Service, there was a mixed view. Notwithstanding, there was consensus if a claimant had a concern, they should be encouraged to discuss it with the insurer before a final decision is made as to the appropriate course of action. The divergence of opinion on operational practice centred about what should [ideally] happen when a matter is close to the 28-day cut-off time limit to lodge an application for internal review, whereby receipt of legal advice would most likely be received after the internal review request is lodged and the review process commenced.

All participants were clear that the Legal Advisory Service was not appropriate for claimants who were legally represented, and in this scenario when a matter is raised, the claimant should refer to their lawyer in the first instance. In circumstances where the claimant's legal representative is not prepared to assist with the specific matter (due to the inability for legal cost recovery), there needs to be policy clarification that access to the service is able to be granted (see **Appendix 3**).

### ***Suggestions raised for improvement to the service***

In addition to guidance to clarify policy and procedural guidance on the above matters, ideas offered by participants to improve the service are listed below:

- stronger promotion of the service through information available to claimants on the SIRA website
- more frequent refresher training for CTP Assist staff, including coaching on guided discussion with claimants (to assist with identification of needs and alerting eligible claimants to the service).

## **Claimant Feedback**

### **Introduction**

Of the ten claimants who were referred to the Legal Advisory Service, six claimants had opted-in to participate in feedback surveys. These claimants were contacted and invited to submit feedback.

Contact was established via email with a follow-up phone call, with an invitation to submit feedback of their experience via an anonymous on-line survey or facilitated response via a phone interview. Three people submitted responses via the online survey unprompted and one completed the on-line survey after the follow-up phone call. Two people that were invited to participate and respond to the email correspondence or telephone messages. Hence, the response rate was 60%.

The results of the survey cannot be regarded as statistically significant for three reasons. First, there is a very small sample size; Second there appears to be a selection bias in that those with a favorable experience appear likely to be the respondents to the survey; and Third is the timing between the conduct of the survey and service utilisation varies considerably between respondents, noting people's perceptions and recollections may change over time.

Accordingly, the results are purely indicative. Due to the small number of respondents, discussion of the results is presented in a descriptive format rather than graphical.

### Results of Claimant Survey

The survey comprised a set of 24 questions covering four areas of investigation:

- Referral Process and Knowledge of the Legal Advisory Service
- Engagement with the Legal Advisory Service panel solicitor
- Satisfaction with the Service & Net Promotor Score
- Suggestions for improvement to the service.

Where possible, for questions relating to 'engagement with the panel solicitor' a five-point Likert scale was used to gauge the range of response, with opportunity to comment on most questions. In the commentary below, the superscript # indicates the highest rank of possible responses and ## the second highest response ranking.

The Satisfaction and NPS survey questions were in a standard format that enables benchmarking against comparable services.

#### ***Referral Process and Knowledge of the Legal Advisory Service***

Three respondents (75%) first became aware of the Legal Advisory service via contact with SIRA's CTP Assist team, and one respondent (25%) via the SIRA website.

In addition to expecting to find out about the Legal Advisory Service from SIRA's CTP Assist team, three respondents (75%) advised they would also expect to find information on the service on the SIRA website, two respondents (50%) would also expect to find information on the service from their insurer, and one respondent (25%) from the Dispute Resolution Service.

All respondents recalled receipt of the *Terms of Legal Advisory service* and stated that purpose, terms of service and information provided was clear, including the process to be followed in the provision of advice from the panel solicitor.

#### ***Engagement with the Legal Advisory Service panel solicitor***

With respect to whether the respondents thought the methods of communication from the Legal Advisory Service solicitor met their needs, three respondents (75%) and advised *always*<sup>#</sup> and one respondent *usually*<sup>##</sup> (no comment provided).

All respondents advised the Legal Advisory Service solicitor they dealt with behaved in a professional manner and had enough expertise regarding the issue with their claim. With respect to whether the respondent felt that the solicitor they dealt acted solely in their interests three respondents (75%) and advised *always*<sup>#</sup> and one respondent *usually*<sup>##</sup> (no comment provided).

Two respondents (50%) provided authority for the panel solicitor to speak with the insurer or another party to obtain information. None of the respondents could confirm if the panel solicitor had contacted the insurer.

All respondents advised the panel solicitor *always*<sup>#</sup> provided advice in a timely manner. Where applicable (three respondents), all confirmed the panel solicitor promptly informed them of relevant timeframes to lodge a dispute or internal review.

With respect to whether the advice received from the panel solicitor was helpful and met their needs, three respondents (75%) replied *a great deal*<sup>#</sup> and one respondent *a lot*<sup>##</sup> (comment below):

*'The advice was very helpful; however, I believe that my own submission was far more detailed than the advice he gave. I followed most of his advice, but not all and my instincts were rewarded with a favourable outcome from the independent assessor.'*

### **Satisfaction with the Service & Net Promotor Score**

All respondents were *very satisfied*<sup>#</sup> with the service and would recommend the service to another person.

### **Suggestions raised for improvement to the service**

Two respondents provided commentary with respect to the suggestions for improvement to the service. One respondent expressed frustration with respect to the calculation basis of Pre-Injury Average Weekly Earnings and associated communication with the managing insurer:

*Only that the Insurer has the power to bully the claimant now. This has not been an easy [or] pleasant experience and the insurer just digs their heels in and does not communicate with you at all. I have found that if you are self-employed like myself then they just do not know how to handle your claim in regard to PIAWE and how to calculate it correctly. This is even after the legislation clearly states gross profit of the company. They want to pay you on your net income. So, with that theory in mind... if you are running at a loss do you have to pay the insurer weekly? This just make[s] life harder and they do not try to help you at all.*

**[Respondent 2]**

*I have found [this a] very good and professional service from them . I hope it will [be] to others also. **[Respondent 3]***

## CHAPTER 4: DISCUSSION AND RECOMMENDATIONS

The Legal Advisory Service (“the service”) commenced as a pilot operation in mid-December 2017 with the express purpose of providing access to legal advice relating to statutory benefits claims, for select eligible matters where access to legal advice may be restricted, because of fee constraints imposed by the *Motor Accident Injuries Act 2017* and supporting regulations.

The intent, when SIRA launched the Legal Advisory Service pilot was that the program be reviewed when sufficient experience emerged, potentially in the order of 100 referrals (see Donnelly 2018). At the commencement of the pilot it was anticipated that the first referrals would not start to emerge until the second quarter of 2018 (SIRA 2018(a), p.5).

To date, the number of referrals to the Legal Advisory Service is relatively small. At the end of February 2019, there have been a total of ten referrals (on average about one per month since the first referral was made in May 2018). *Prima facie*, this is intuitively lower than what many stakeholders would have expected.

In this context, it needs to be acknowledged there are several factors that act to dampen the demand for the service. These include:

- Specification of a limited number of matters that may be referred to the Legal Advisory Service (refer SIRA n.d.(d) for a list of matters that can be referred)
- The existence of a two-stage dispute resolution mechanism with no charge to the claimant to access: insurer internal review and the Dispute Resolution Service. Legal cost recovery is allowed for the review of key *right defining* decisions that progress to the Dispute Resolution Service (e.g. matters pertaining to liability/degree at fault, minor injury determination, reasonableness of no-fault benefits and continuing treatment by exception beyond statutory time limits)
- A proportion of claimants are legally represented within the first six months of accident, who potentially may be receiving advice on a *pro-bono* basis (for example, in the Quarter ended September 2018, of the 2,589 new scheme claims lodged, 30% were legally represented (SIRA 2018(c), p.9))
- The focus on improved navigational information about the claims and dispute resolution process: a service that CTP Assist fulfills, independent of the insurer.

Stakeholder feedback shows strong support that the service is meritorious (refer introduction below) and to improve the effectiveness of the Legal Advisory Service, the highest priorities are to better promote service, educate stakeholders and improve operational processes to proactively identify claimants who may benefit from referral to the service.

## The Legal Advisory Service should be retained

Given the current scheme design with respect to cost restrictions on the recovery legal fees, there is broad stakeholder consensus in the merit of a 'safety net' to support people in need of legal advice regarding their statutory benefits, who are unable to obtain advice due to legal cost constraint impediments. There is also recognition that although many decisions regarding statutory benefits can be relatively straightforward, many can be quite complex due to a person's individual circumstances and type of matter. Thus, the provision of a 'safety net' is meritorious and beneficial.

There is also a strong argument in ensuring claimants can navigate the system to gain access to benefits that will assist their recovery and to exercise their rights in circumstances where they disagree with decisions by an insurer. There is accountability upon insurers to ensure claimants are fully informed on their rights and obligations and the basis of claims decisions. This will remain an essential core service offering, particularly in circumstances where lawyers cannot be paid for, or recover costs for providing advice on certain matters related to obtaining statutory benefits.

There is already a well-established program of independent information and navigation support provided by SIRA's CTP Assist service, which uniquely places CTP Assist to identify claimants whose circumstances warrant referral for additional professional legal support to help claimants understand decisions made on their claim and to equip claimants to pursue their rights to review decisions. Accordingly, SIRA's CTP Assist unit is best positioned to act as the gatekeeper (reference point) for access to the Legal Advisory Service.

### Recommendation 1

SIRA's Legal Advisory Service be retained and transition from a pilot operation to a recognised service offering; SIRA's CTP Assist unit continuing to act as the point of reference for access to the service.

While stakeholders interviewed as part of this review have indicated that there is a recognised need for access to legal advice in areas of the statutory benefit regime to ensure claimants receive their benefit entitlements, there was not broad consensus on the scope of the Legal Advisory Service (i.e. circumstances/matters that may be eligible). Some stakeholders considered the scope of the service was overly narrow in that only certain matters can be referred (e.g. does not provide for general advice on a claim or allow for investigation and claimant representation) and could be opened-up to assist claimants who have difficulty in engaging a lawyer, or would have otherwise benefited from legal advice. These views are noted (refer **Appendix 3** for a summary). Much of this argument falls outside the scope of this review to resolve, however it is prudent that SIRA note these views and consider enhancing the circumstances/matters that may be referred to the Legal Advisory Service to ensure appropriate access to legal supports.

**Recommendation 2**

SIRA should consider enhancing the circumstances/matters that may be referred to the Legal Advisory Service to ensure appropriate access to legal supports.

## Recommendations for Improvement of the Legal Advisory Service

### CTP Legal Advisory Service: Policy/Procedural Governance

Under the 2017 Act and supporting regulation, SIRA has the administrative power to define the scope of what matters may be referred (and funded) by the Legal Advisory Service, and the gateway for how such matters are referred.

In this review, several suggestions have been made by stakeholders on the need to clarify the scope and application of the Legal Advisory Service. Examples include whether the service is available in circumstances such as: general claims strategy advice; where a claimant is legally represented but the solicitor representing the claimant does not prepared to provide advice on matters where costs are not recoverable; and what should happen if a request is close to the statutory limit of 28 days to lodge an insurer internal review (such that advice is received during the internal review process).

In responding to the above areas requiring clarification, SIRA has clarified its policy and procedural practice (refer **Appendix 3**), which are codified in the following documents:

**Policy** regarding the scope (inclusions and exclusions) of the Legal Advisory Service is codified on the SIRA website and downloadable Fact Sheet, written for a claimant target audience, and made publicly available (refer SIRA n.d.(c); SIRA n.d.(d)).

**Procedure Guides** guidance documented in various training guides, as from February 2019, has been consolidated and is codified into a single document for internal use: '*Legal Advisory Service Process Guide*' (refer SIRA. n.d.(g)).

**Practice Notes:** are issued from time to time for use by CTP Assist staff in the form of '*knowledge articles*' issued by the CTP Assist Training and Knowledge Manager. This serves to clarify practice with respect to issues where there may be uncertainty that may arise from time to time to ensure transparency and consistency of practice. For example, a recent knowledge article clarifies that the Legal Advisory Service is available to a claimant on more than one occasion if there are multiple matters that arise from time to time.

From a governance perspective, accountability for the *Policy* (scope of service) vests with SIRA's Executive Director, Motor Accidents Insurance Regulation. Accountability for *Procedure* (to effect the policy intent) vests with SIRA's Director CTP Claims and Customer Outcomes. With the Legal Advisory Service transitioning out of pilot phase, standard practice of referencing documents (version control and date stamped) and authorisation of changes by the accountable officer should continue to be promptly addressed.

**Recommendation 3**

SIRA continue to promptly address matters requiring policy or operational procedure clarification, with formal sign-off and version control protocols maintained to govern any changes to the codified Policy and Procedure Guides.

It is prudent that use of existing stakeholders forums (i.e. covering insurers, legal practitioners/peak bodies and internal management meetings, etc.) should be used to log and respond to such matters raised that require policy or procedural clarification and/or response.

**Recommendation 4**

Existing stakeholder engagement forums should continue to be utilised to formally log and respond to matters raised that require policy or procedural clarification and/or response.

**Promotion of the Legal Advisory Service**

At the launch of the Legal Advisory Service, there was no publicly available information to alert claimants and many stakeholders of the service, other than reference in the *Green Slip scheme quarterly insights* publications (refer SIRA 2018(a)). The principal reliance to execute the service was for CTP Assist staff to identify the need for the service when on the telephone with the claimants.

The launch of the dedicated page on the SIRA website for the Legal Advisory Service occurred in late September 2018. This has not yet had a material effect on increasing the utilisation of the service, despite receiving about 150 views per month.

SIRA is presently in the process of reviewing its communication materials covering the Legal Advisory Service. This includes the development of visual animations for the Legal Advisory Service, also considering leveraging new channels such as social media channels and publicity (such as editorial content within external stakeholder communication materials to promote the service). A key challenge is balancing the need for a technical description of the service and assisting claimants identify the need for the service and benefit(s) it affords.

The above represents a significant body of work, with a range of communication messages that need to be designed (and tested) to ensure it is accessible and relevant to the target audience. This work should continue as a matter of priority.

**Recommendation 5**

Current work in reviewing the SIRA's CTP website content relating to the Legal Advisory Service (descriptive and visual) should continue as a matter of priority.

A key challenge in this Review of the Legal Advisory Service is the absence of quantitative or qualitative data to dimension the extent that people may have benefited from legal advice with respect to their statutory benefits but did not receive it (either from a Solicitor or the Legal Advisory Service). There is benefit in understanding this better (other than anecdotal evidence received) to identify material barriers in accessing the service. This requires careful design of a suitable research methodology given the scope of the Legal Advisory Service is not applicable

to all claimants (i.e. it acts as a 'safety net') and the potential need for the service occurs at varied points in time during the claims process. Potential research approaches could include collation of feedback from Dispute Resolution Service reviews, insights from SIRA's ongoing sample-based audit regime of insurer files regarding the quality of decision making, and specifically targeted claimant surveys.

To help ensure relevant information is available and accessible to claimants that may have a likely need to utilise the service, periodic sample-based research/surveying should be employed to identify opportunities to improve the effectiveness of communication artifacts.

#### **Recommendation 6**

To identify opportunities to continually improve the effectiveness of communication artefacts, periodic sample-based research/surveying should be undertaken.

### **Stakeholder Education**

Since the launch of the Legal Advisory Service pilot in mid-December 2017, there has been limited targeted engagement with scheme stakeholders on the operation and performance of the service. Principally this was on the basis the service was in pilot phase, and more expansive promotion and education regarding the service would commence after the pilot program was evaluated and refined accordingly.

This 'soft launch' approach has meant stakeholder feedback, specifically with respect to opportunities for improvement has been limited. Despite periodic engagement with stakeholders regarding the service (see earlier discussion), due to the service being restricted to a select cohort of eligible claimants, and CTP Assist being gatekeeper to access the service, there is a material risk that attentiveness to the service could be 'crowded-out' by broader education and structuring demands associated with the 2017 Act reforms. On this basis, there is merit in SIRA maintaining a program of periodic updates to key stakeholder groups on the operation of the service. Such periodic updates (and feedback) should be facilitated through existing stakeholder forums (refer also Recommendation 2).

#### **Recommendation 7**

SIRA maintain periodic update-briefings for key stakeholders, principally insurers and legal practitioners, on the operation of the Legal Advisory Service facilitated through existing stakeholder forums (refer also Recommendation 2).

### **Monitoring and Reporting of Activity & Performance**

The monitoring of activity for the Legal Advisory Service is manual (principally via diary notes in Salesforce), with no automated work-flow task management. Statistical or management reporting pertaining to the Legal Advisory Service includes periodic reporting of the number of referrals and ad-hoc data requests.

In SIRA's launch planning documentation, automation of manual tracking and reporting was envisaged once the service demand and requirements were better understood following the Pilot phase. Whilst manual tracking and ad-hoc reporting is

appropriate while there is a small number of referrals, it is not practicable should there be a significant increase in the number of referrals.

**Recommendation 8**

SIRA maintain its current project planning for future integration of work-flow, task and diary management associated with the Legal Advisory Service into the Salesforce system, also enabling automated management reporting of key activity and outcomes.

**Continuous Improvement**

It is prudent that formal feed-back loops be established to gauge the delivery and effectiveness of the Legal Advisory Service. Such feedback is important to judge the efficacy (value) of the service, assess the claimant experience and identify issues/opportunities for future improvement. Moreover, there is the ability to gain early insights of emerging deficiencies in the claims administration process that require attention.

In addition to Recommendations 5 above, feed-back can be obtained from claimants using the service and from Legal Advisory Service Panel solicitors on the quality of referral (i.e. whether the referral was appropriate).

SIRA's first survey of claimants utilising the Legal Advisory Service was planned to be first undertaken as part of this Review (refer earlier discussion), to serve as a basis of establishing a framework to base future periodic surveys.

**Recommendation 9**

The experience/satisfaction of claimants using the Legal Advisory Service should continue to be routinely conducted to gain feedback and insight to improve/refine the service.

**Recommendation 10**

Panel solicitors should be requested to provide feed-back to SIRA on the quality of referrals (i.e. whether the referral was appropriate), and insight to any relevant issues in the claims administration process that could/should have been mitigated.

### CTP Assist Activity

The timing of outbound calls to claimants by CTP Assist at defined points of 10/23-weeks post-date of accident does not, in many cases correlate with the timing of insurer decisions that may concern claimants; that either they don't agree, don't understand or have uncertainty of the efficacy of the decision.

At present, SIRA is reviewing the timing of outbound calls across all claimants. In this review, an area that SIRA should consider is identifying risk flags to either adjust the timing of the outbound calls or initiate an additional outbound call at a time where it is likely that there may be crystallization of a perceived need for the Legal Advisory Service. For example, a potential target a cohort may be self-employed or part-time casual workers with respect to the calculation of PIAWE.

#### **Recommendation 11**

The timing of proactive outbound calls by the CTP Assist service as it may relate to potential users of the Legal Advisory Service should continue to be captured within the scope of the review of outbound call timing currently being undertaken by SIRA.

It is noted that the 'CTP Assist Outbound Call Discussion Guides' are currently under revision. It is recommended that the Guides continue to make explicit reference to the Legal Advisory Service and reflected in CTP Assist staff Call-Coaching feedback (where appropriate).

#### **Recommendation 12**

The pending revision of CTP Assist Outbound Call Discussion Guides continue to make explicit reference to the Legal Advisory Service and reflected in CTP Assist staff Call-Coaching feedback (where appropriate).

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<sup>14</sup> Note: **Recommendation 1** - that the State Insurance Regulatory Authority publish its evaluation of the Legal Advisory Service as soon as possible (refer pp. 29-30).

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## APPENDIX 1

### NSW 2017 CTP Scheme: Benefit Regime (thematic overview at glance)

Benefits/damages type	At fault	Not at fault (benefits and/or damages may be adjusted for part fault)		
	All	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			
Weekly benefits payments for loss of earnings	Up to 6 months	Up to 6 months	Up to 3 years	Up to 5 years
Damages for future economic loss	No	No	Yes (after 20 months)	Yes
Damages for non-economic loss (e.g. pain and suffering)	No	No	No	Yes
Treatment and care benefits	Up to 6 months	Up to 6 months	Lifetime (LTCS <sup>3</sup> after 5 years)	Lifetime (LTCS after 5 years)
Funeral expenses <sup>4</sup>	Available whether at fault or not at fault			
Legal and other expenses	Available as prescribed under the 2017 Act and Regulations			

1. Minor injuries: soft tissue and/or minor psychological or psychiatric injuries
2. WPI: whole person impairment
3. LTCS is the Lifetime Care and Support scheme.
4. In addition to claiming funeral expenses, dependents of persons killed in motor accidents may also be able to make compensation to relatives claims aimed at compensating immediate family members who were financially dependent on the income of the deceased, or who relied on them to provide services.

**Note:** This is a simplified explanation of the scheme's benefits and people injured or their family members' ability to claim damages under the Act. It does not reflect every person's circumstances.

CTP Customer Experience Principles



### CTP Assist Customer Experience Principles: Mapping to Motor Accident Guidelines and Objects of Act

Objects of the Act (s1.3) Extract relating to Claims	Objects of Dispute Resolution Service (s7.3 of the Act)	Motor Accident Guidelines 2017 Claims: Principles	Motor Accident Guidelines 2017 Earning Capacity: Principles	CTP Assist Customer Experience Principles
<p>For that purpose, the objects of this Act are as follows:</p> <p>(a) to encourage early and appropriate treatment and care to achieve optimum recovery of persons from injuries sustained in motor accidents and to maximise their return to work or other activities,</p> <p>(b) to provide early and ongoing financial support for persons injured in motor accidents,</p> <p>(f) to deter fraud in connection with compulsory third-party insurance,</p> <p>(g) to encourage the early resolution of motor accident claims and the quick, cost effective and just resolution of disputes,</p> <p>(h) to ensure the collection and use of data to facilitate the effective management of the compulsory third-party insurance scheme.</p>	<p>The objects of the Dispute Resolution Service in dealing with claims and disputes are as follows:</p> <p>(a) to provide a timely, independent, fair and cost-effective system for the resolution of disputes that is accessible, transparent and professional,</p> <p>(b) to assess claims and disputes fairly and according to the substantial merits of the matter with as little formality and technicality as is practicable and to minimise the cost to the parties,</p> <p>(c) to ensure the quality and consistency of decision making by decision-makers,</p> <p>(d) to make appropriate use of the knowledge and experience of decision-makers,</p> <p>(e) to establish and maintain effective communication and liaison with stakeholders concerning the role of the Service,</p> <p>(f) to publicise and disseminate information concerning the dispute resolution system and the role of the Service.</p>	<p>Insurers and those acting on their behalf are to deal with claims in a manner consistent with the principles set out in the objects of the Act, the below principles and the general duties under Division 6.2 of the Act. These principles apply across all claims management aspects for the life of a claim:</p> <ol style="list-style-type: none"> <li>1. <b>Proactively</b> support the claimant to optimise their recovery and return to work or other activities</li> <li>2. Make decisions <b>justly and expeditiously</b></li> <li>3. Act <b>objectively with honesty and professionalism</b> at all time Detect and deter fraud</li> <li>4. Communicate with the claimant and <b>keep them informed.</b></li> </ol>	<p>An insurer may follow its own procedures in connection with an earning capacity decision, but the procedures must align with the following principles:</p> <ol style="list-style-type: none"> <li>1. Insurers <b>comply with</b> statutory <b>duties</b></li> <li>2. Claimants are given <b>procedural fairness</b></li> <li>3. Claimants are <b>given information in plain language</b></li> <li>4. Insurers <b>fix errors promptly.</b></li> </ol>	<p>Road to Recovery</p> <ol style="list-style-type: none"> <li>1. We act with <b>integrity</b> so that the scheme acts in the best interests of injured people</li> <li>2. <b>Empower</b> We empower people by ensuring people know what they are doing and how to do it</li> <li>3. We are <b>proactive</b> in supporting recovery</li> <li>4. We keep it <b>simple</b> to make the experience easier so that the focus is on recovery</li> <li>5. We are <b>respectful</b> of people’s circumstances and needs and support them accordingly.</li> </ol>

### APPENDIX 3

#### Register of Legal Advisory Service scope extension suggestions and ‘grey areas’ raised by stakeholders

The following areas were noted as raised by stakeholders during the conduct of the Review. Reference to these areas is made within the body of this report. It is included here as a summary for the purpose of completeness.

Scope Extension	Comments
<b>Global Extension</b>	
<ul style="list-style-type: none"> <li>General advice: [e.g. claims strategy]</li> </ul>	Mentioned in regard to individual circumstances where navigation of the claims and dispute process may be inherently complex (e.g. overseas visitors)
<ul style="list-style-type: none"> <li>Full Investigation of matters</li> <li>Claimant advocacy &amp; representation</li> </ul>	Mentioned in regard to statutory benefits only. This would require an extension to the billable hours allowed, which may cause inequity with respect to matters where costs are recoverable (regulated).
<b>Specific Extension</b>	
<ul style="list-style-type: none"> <li>Matters where cost recovery may be recoverable at DRS, but where LAS advice can be sought prior to an insurer internal review.</li> </ul>	Mentioned in regard matters that may define future rights. There is a risk/hazard of “double dipping” that needs to be considered (whether to allow cost recovery twice on the same matter). This is a matter that should be considered as part of a broader structural review of legal cost regulation.
<b>Access Gateway</b>	
<ul style="list-style-type: none"> <li>DRS able to refer claimants directly to the service.</li> </ul>	DRS refer claimants to contact CTP Assist directly. An alternative approach is for the DRS to provide a guided ‘warm-handover’ to CTP Assist.

‘Grey Areas’ benefiting from Procedural Clarification	Comments
<ul style="list-style-type: none"> <li>Guidance on pathways on whether to guide a claimant towards insurer internal review or the LAS (or both) when close to the 28 day cut-off period.</li> </ul>	To ensure consistency of expectations, practice could be stated as <i>‘the Legal Advisory Service is available at any time before an insurer internal review is lodged’</i> . Note: this recommendation has been adopted in the course of this review.
<ul style="list-style-type: none"> <li>Access to the LAS where a clamant is legally represented but the representing solicitor is not prepared to provide advice on matters where costs cannot be recovered.</li> </ul>	SIRA policy allows access to the service even if the claimant is legally represented (noting the current procedure is to directed claimants towards the solicitor representing them in the first instance).

## ANNEXURE A

### Matters that may be referred to the Legal Advisory Service

Reason for referral	Example of when information or advice may be required
Funeral expenses	What is a 'reasonable' funeral expense?
Amount of weekly payments	Pre-accident weekly earning, post-accident earning capacity and calculations.
Cessation of a pending damages claim	Whether the cessation of weekly payments after the maximum weekly payments period is subject to a pending claim for damages.
Suspension due to work fitness evidence	Insurer disputes 'special reasons' for a certificate of fitness for work covering a period that exceeds 28 days.
Suspension due to non-rehabilitation/treatment/training	Do you have a 'reasonable excuse' not to comply in undertaking rehabilitation, treatment or vocational training?
Insurer notice periods	Has the insurer complied with the relevant notice periods?
Recoverable statutory benefits	Is there a right to recover and if so, what amount?
Gratuitous services	Do you have a loss of capacity to provide gratuitous services, and if so, what is the amount payable?
Retirement age termination	Termination of weekly payments on retiring age.
Suspension re medical evidence	Have you provided the insurer with a medical certificate certifying your fitness for work?

Reason for referral	Example of when information or advice may be required
Weekly benefits outside Australia	Are you residing outside of Australia and want to claim ongoing weekly payments and your loss is likely to be permanent?
Variation of weekly payments	Your weekly payments been varied and you do not agree (e.g. have they been indexed correctly?)
Cost of treatment and care	Is the cost of treatment and care reasonable?
Verification of expenses	Have expenses been properly verified in accordance with the Act?
Treatment and care within time	Have expenses been incurred within the 26-week period for at fault or minor injury claims?
Treatment and care authorised	Are treatment expenses incurred more than 26 weeks after the date of the accident authorised to be paid?
Treatment and care compensated	Has the treatment and care already been paid under a damages claim or bulk billing arrangement?
Treatment and care limits	Does the cost of treatment or care exceed the limits imposed by the Motor Accident Guidelines?
Excluded treatment and care	Is the treatment and care covered by the Lifetime Care and Support Scheme?
Treatment and care outside Australia	Are you receiving treatment outside Australia (as a citizen or permanent resident)?

Source: CTP Legal Advisory Service. Webpage. Retrieved from <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/ctp-legal-advisory-service>

## ANNEXURE B

**Ability to claim 'Regulated Legal Costs' for disputes at DRS where the insurer decision is outside the scope of LAS.**

<b>Weekly benefits</b>	
Weekly benefits calculation – payment amount	LAS
Weekly benefits calculation – indexation	LAS
Weekly benefits backpay denied because claim not made within 28 days	LAS
Weekly benefits cease/reduce – earning capacity decision	<b>Regulated</b>
Weekly benefits cease – failure to provide authorities	LAS
Weekly benefits cease – failure to provide fitness for work evidence	LAS
Weekly benefits cease – failure to comply with treatment or rehabilitation	LAS
Weekly benefits cease/reduced – notice required by insurer	LAS
Weekly benefits cease – retirement age	LAS
Weekly benefits cease – overseas residents	LAS
Weekly benefits cease – death of claimant during claim	<b>Regulated</b>
<b>Treatment and care</b>	
Treatment denial – reasonable and necessary/caused by the accident	Regulated
Treatment denial – cost of treatment not reasonable (e.g. above AMA rates)	LAS
Treatment denial – expenses not verified (e.g. invalid or incomplete invoice)	LAS
Treatment denial – expenses covered by bulk billing or lifetime care	LAS
Treatment denial – overseas residents	LAS
Minor injury – whether treatment and care is payable beyond 26 weeks	<b>Regulated</b>
Minor injury/at fault - whether expenses incurred before 26 week cut off	LAS
Care denial – reasonable and necessary/caused by the accident	<b>Regulated</b>
Care denial – gratuitous care for dependants (e.g. 6 hours x 6 months)	LAS
<b>Liability</b>	
Liability denied – incorrect insurer (internal review not mandatory)	No costs
First 26 weeks – workers compensation, serious driving offence, fraud	<b>Regulated</b>
After 26 weeks – mostly at fault, contributory negligence, minor injury	<b>Regulated</b>
No-fault/blameless accidents	<b>Regulated</b>
Verification of accident – not reported to police, no additional evidence	<b>Regulated</b>
Claim form incomplete/dispute over lodgement date	<b>Regulated</b>
Nominal defendant (uninsured) – driver at fault	<b>Regulated</b>
Nominal defendant (unidentified) – due inquiry and search	<b>Regulated</b>
Late claim - full and satisfactory explanation	<b>Regulated</b>
Nervous shock restrictions (whether witness/close family member)	<b>Regulated</b>
Whether accident occurred in NSW	<b>Regulated</b>
<b>Miscellaneous</b>	
Funeral expenses denied – not reasonable	LAS
Whether request for information is reasonable OR claimant has reasonable excuse for failing to comply (internal review not mandatory)	<b>Regulated</b>

**Source:** SIRA: Legal Advisory Service Guide CTP Assist. Internal Training Document

## ANNEXURE C

## Legal Advisory Service Process

Process Step
1. CTP Assist identifies referral
2. CTP Assist updates Salesforce
3. CTP Assist sends to their CTP Assist Team Leader for approval
4. CTP Assist Team Leader confirms within scope
5. CTP Assist contacts the claimant and sends a Fact Sheet + <i>Terms of the SIRA Legal Advisory Service</i> document for review and signature
6. CTP Assist also request the claimant to send thru all relevant documentation (e.g. claim form, decline letter from the Insurer, internal review request / internal review letter from the Insurer, and any further supporting documentation) this depends when in the claims cycle is the matter being referred to the LAS – for example, if after Internal Review has been conducted, the internal review documentation is not required.
7. CTP Assist receive signed <i>Terms of the SIRA Legal Advisory Service</i> document
8. CTP Assist forwards to SIRA's Internal Legal Advisory Service (ILAS)
9. SIRA's LSR Team confirms with LAS Panel Solicitor capacity to undertake referral by telephone
10. SIRA's LSR Team sends Conflict of Interest email to the LAS panel solicitor
11. LAS panel solicitor confirms they can undertake LAS referral
12. LAS Team forwards referral, signed Terms and supporting documentation to LAS panel solicitor
13. SIRA's LSR Team forwards confirmation of the LAS panel solicitor's details to CTP Assist
14. CTP Assist updates Salesforce
15. CTP Assist forwards the LAS panel solicitor's details to the claimant
16. LAS panel solicitors will receive documentation
17. Claimant will either initiate call to LAS panel solicitor or receives call from Panel Solicitor
18. Relationship established; LAS panel solicitor will provide up to 4 hours of service including verbal and written correspondence
19. LAS panel solicitor will review telephone correspondence and supporting documentation
20. LAS panel solicitor will provide advice in both verbal and written communication to claimant
21. Claimant will review and make own decision to pursue matter further
22. LAS panel solicitor will send invoice to SIRA's LSR to pay.
23. SIRA's LSR authorizes payment of the invoice.

Source: SIRA: Internal Procedural Document

## ANNEXURE D

### Service Delivery Timelines: date of LAS referral to closure (overview)

Number of business days	Step in the claim process (referral through to completion)
<b>Day 1</b>	SIRA receives your signed 'Terms of the CTP Legal Advisory Service'.
<b>Within two (2) days of receiving the Terms</b>	<p>SIRA contacts the CTP Legal Advisory Service lawyer to confirm that they can accept the referral or seeks an alternative CTP Legal Advisory Service lawyer if required.</p> <p>Once accepted, SIRA forward the signed Terms and your information to the lawyer. You will be notified who the lawyer is.</p>
<b>Between 1 and 3 days of receipt of referral</b>	<p>Contact is made between you and the lawyer for an initial discussion.</p> <p>The CTP Legal Advisory Service lawyer initiates contact within one (1) day. You are required to initiate contact with the panel lawyer within three (3) days.</p>
<b>Five (5) days after receipt of referral</b>	The lawyer provides you with verbal advice.
<b>Two (2) days after verbal advice provided</b>	The lawyer provides you with written advice. End of services.

**Source:** CTP Legal Advisory Service. Webpage. <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/ctp-legal-advisory-service>

A more detailed Fact Sheet is available at: CTP Legal Advisory Service. *Timeframe expectations*. Fact Sheet. Catalogue no. SIRA08923. ISBN 978 0 7347 4573 6. [https://www.sira.nsw.gov.au/data/assets/pdf\\_file/0003/407226/injured-person-timeframe-expectations.pdf](https://www.sira.nsw.gov.au/data/assets/pdf_file/0003/407226/injured-person-timeframe-expectations.pdf)