



Discussion paper:
**Insurer claims handling
and dispute resolution in
compulsory third party (CTP)
motor accident insurance**



November 2016

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Minister's message



Over the past year, the NSW Government has undertaken extensive consultation on the proposed redesign of the CTP Green Slip scheme.

In addition to feedback on the new benefits regime, two

key themes emerged regarding the role of private insurers in the new CTP scheme.

First, insurer super-profits must be reined in.

An effective premium setting and risk rating system is required to prevent excessive profits and deliver cheaper premiums for vehicle owners.

Secondly, it was acknowledged that private insurers operate with a profit motive and the regulator must play a role in ensuring they balance this with fairly determining and delivering a claimant's entitlement to benefits.

New independent dispute resolution and advocacy services are required to better protect the rights of injured people.

Based on this important feedback, I have asked the SIRA Board to conduct further consultation and make recommendations to the Government.

The Government will ensure there are appropriate legislative safeguards to address the issues of insurer profits, claims handling and dispute resolution.

This discussion paper looks at the issue of claims handling procedures and independent dispute resolution services. A separate discussion paper has been released looking at insurer profits.

Central to the success of the new scheme is data collection. Better use and sharing of data, in real-time, will ensure the scheme operates effectively. It will encourage innovation, increase accountability and transparency, and drive greater competition between insurers.

I encourage stakeholders to provide feedback on this discussion paper to assist the NSW Government to deliver a fairer and more sustainable Green Slip scheme.

A handwritten signature in black ink, appearing to read 'Victor Dominello', followed by a period.

Victor Dominello MP
Minister for Innovation and Better Regulation

Introduction

Under the current NSW Motor Accidents Compulsory Third Party (CTP) Scheme over the last sixteen years only 45 cents of every Green Slip premium dollar ends up in the hands of injured road users, 15% goes towards insurer expenses, 19% towards insurer profit and 18% to legal and investigative expenses. The remainder is administrative expenses. In short, under the current scheme those involved in the claims process receive more of each dollar paid out than the injured people the scheme is designed to serve. Navigating the scheme is slow, difficult, and stressful for injured people with the majority of payments only being made between three and five years after the accident.

The NSW Government has been considering a broad range of options to reform the scheme, following extensive consultation with stakeholders. Specific consultation on the details and processes required to implement the Government's preferred reform model was facilitated by Nancy Milne and John Della Bosca earlier this year.

The results of these consultations strongly recommend a closer investigation of claims handling procedures and dispute resolution options. Among the questions raised during the consultations is how best to introduce and sustain a cultural shift among stakeholders so that the process works better for injured road users: with a focus on the best health, work, and quality of life outcomes. Feedback gained during this earlier process has informed the considerations and further questions in this paper.

This paper considers the cultural shift required of stakeholders and service providers in delivering and managing a defined benefit scheme that moves the focus from a lump sum negotiation towards quicker outcomes focussed on health, work, and quality of life.

It provides targeted questions for discussion and options for consideration. It also outlines some claims related issues under the current system and the actions that the State Insurance Regulatory Authority (SIRA) is taking to address them.

Currently SIRA operates a well-established dispute resolution service that deals with medical and claim related disputes in the CTP scheme. SIRA also operates an administrative review function that deals with disputes in the Workers Compensation system. This paper examines opportunities to improve the way in which disputes are resolved, especially as the scheme transitions to a proposed defined benefits system.

The Government would like to hear the views of all stakeholders on the issues and options raised in this paper as well other suggestions that would improve claims management and the resolution of disputes in the scheme.

A review of insurer profits is the subject of a separate discussion paper.

Context

The NSW Government is committed to the injured person being at the centre of the state's CTP scheme.

The proposed new scheme focuses on giving the injured person the right support at the right time – leading to better health and life outcomes (e.g. return to work or study, return to lifestyle, enjoyment of life, reduced burdens on families).

The new scheme is focussed on *what people can do* and how we can help them achieve this, rather than the current system which focusses on *what people can't do* and compensates them for that, with little regard for how they will live their life post-accident.

Although many people recover from their injuries, there are others where that may not always be possible and it is important that we support these people in particular to find the best possible way for them to contribute to society and lead a fulfilling life. The new scheme needs to create incentives for insurers, medical professionals and other stakeholders to think about how they can help achieve these objectives.

There are many schemes around Australia and the world that have successfully built strategies of early intervention and ongoing support for the injured person. This is a win-win outcome. There is ample evidence that schemes that focus on better health and life outcomes not only benefit the injured person and their families directly, but also usually results in a lower overall cost.

The NSW Government is concerned, however, that the biggest barrier to successfully achieving health and life outcomes for injured people is that the current culture and institutions in the scheme, which have developed in the context of an adversarial common law scheme, are not completely aligned towards this focus.

Against this backdrop, this discussion paper aims to start with the proposition that every person who has been impacted by a car crash needs the right level of support

for their recovery and return to life, health and work. The Government wants to know what we can do to get the culture and institutions aligned to the right outcomes, and that the injured person can get the appropriate level of support so they can justly and expeditiously receive the benefits and help to which they are entitled.

There is evidence through feedback received by the Government and SIRA, along with disputes being referred to SIRA's Medical Assessment Service (MAS) and Claims Assessment and Resolution Service (CARS) that some claims handling practices in the current scheme can be improved. Some of these issues include:

- different and inconsistent claims management approaches of each of the insurers
- general adversarial behaviours that arise in a common law scheme that can have the effect of either delaying or forcing settlement
- lack of transparency and information for claimants on the details of their claim settlement or award.

While plans are either in place or being developed to deal with the above mentioned issues, there are a number of aspects of proposed scheme reform that will require a different operating model from insurers and the legal profession. If health and return to life outcomes are to be achieved, the new scheme will require a customer centric approach, rather than the existing financial focus of negotiating and settling a claim as cheaply as possible.

Feedback is sought on the following issues and other ideas that stakeholders think are important to ensure the new scheme delivers the best outcomes for injured people and vehicle owners. The areas for consultation covered in this paper are:

- the change in approach and claims management culture required by CTP insurers to move from an adversarial common law scheme to a health outcomes and return to life focussed defined benefits scheme

- Innovative approaches to the management of motor accident injury claims and the claims process, that maximise the return to health, life and work of injured road users
- the establishment and operation of the support and advocacy service to assist injured people in making and managing their claim
- the role of SIRA as regulator and its role in the management of claims
- best utilisation of existing dispute resolution mechanisms and adapting these to the change in dispute types that will occur in a defined benefits scheme
- ensuring independence of dispute resolution services and decision makers.

CTP Scheme reform

The objectives of the Government's proposed reforms to the CTP Scheme reform are:

- increase the proportion of benefits provided to the most seriously injured road users
- reduce the time it takes to resolve a claim
- reduce the opportunities for claims fraud and exaggeration
- reduce the cost of Green Slip premiums.

The Government proposes a hybrid no-fault scheme that will introduce defined benefits for low to moderate severity injuries, retain common law for the most seriously injured and for the first time extend protection to at fault road users. The emphasis of the proposed system is on the early and quick payment of benefits, returning the injured person to optimal function and maximising their return to work and life sooner, which has the flow on effect of reducing overall scheme costs.

It is important to emphasise the fundamental shift involved in a defined benefits scheme.

For the approximately 90% of claimants covered by this part of the scheme, the intention is that they will receive reimbursement for lost income, medical expenses and other care/rehabilitation expenses in accordance with the legislation, as easily and as quickly as possible.

Research has shown that far better health outcomes are achieved by supporting claimants as soon as possible. Comparable data from the Victorian system shows that nearly all claimants fully recover within two to three years.

Rather than the current process of negotiating a lump sum, which is extremely costly¹ and time consuming, the Government believes it is realistic to suggest that the process for claimants should be no more difficult than lodging a claim for Medicare or private health insurance benefits.

To deliver the desired health and other outcomes required, claims must be dealt with expeditiously by insurers. Claimants must be able to seek a review of an adverse decision, from the regulator or dispute resolution body, as quickly and as simply as possible.

The options proposed in this paper are focussed on achieving these results.

The Government intends that the new scheme undergo a statutory review after three years to assess the impact of reforms on insurer profit margins, timeliness of benefits and the customer experience.

For further information, refer to *On the road to a better CTP scheme: CTP reform position paper* at:

<http://greenslipreforms.nsw.gov.au/resources/>

¹ Legal and investigation expenses make up 18% of the cost of a Green Slip. The average legal expenses on a claim that settles for less than \$50,000 is 40%, for claims between \$50,000 and \$100,000 it is 36 %, for claims between \$100,000 and \$200,000 it is 31% and for claims between \$200,000 and \$500,000 it is 23%. Figures from SIRA's claims cost disclosure database.

Enhanced data collection and use of technology

For the scheme to work as intended, it is vital that the government has access to timely and accurate information about the scheme, including the experience of injured road users and the efficiency of the claims process. Making data available to all stakeholders enables transparency and informed debate.

SIRA is moving to a more data driven regulatory approach that will allow it to be a more agile and responsive regulator. An enhanced data collection and reporting approach is being implemented. Among the essential data collected will be information on the cost and elapsed time for claims resolution, including but not limited to insurer expenses and their claims performance.

More frequent and in some cases real-time collection of relevant injury type, claims and CTP Green Slip policy data, and the development of dashboards and data linkages will improve SIRA's responsiveness to emerging scheme issues that impact price and claimant outcomes, such as fraud. More importantly, it will allow SIRA to quickly identify poor performance in claims management and resolution, to have transparent discussions with all stakeholders and take steps to improve insurer and other service provider behaviours.

Technological innovation in the insurance industry provides opportunities to enhance customer interaction and experience, and improve governance by the regulator.

SIRA will be working with insurers to ensure technology plays a greater role in allowing for online claim lodgements, comparing Green Slip prices and make purchasing or renewing a policy simpler and faster. Subject to privacy requirements, data will be linked between key organisations including police, hospitals, the Centre for Road Safety, SIRA, iCare and CTP insurers to ensure the Government has the full picture regarding motor accidents – how they can be prevented but also how their impact can be mitigated – which results in a win-win for all road users.

Apps and telematics are transforming the transport industry, particularly in the point-to-point transport industry (taxis, hire car, and rideshare). SIRA will investigate how these technologies can play a greater part in the CTP scheme. Digital technologies also provide new opportunities for insurers to function in a more effective and efficient manner in meeting regulatory requirements.

Several of the options provided in this discussion paper involve enhanced data collection and maximising the use of technology that will result in greater transparency and timelier reporting.

Considerations for the development of the new scheme

Cultural shift in a defined benefits scheme

The NSW CTP scheme is currently an adversarial modified common law system that creates a litigated claims handling culture. The Government has concerns that it will be difficult for some stakeholders and service providers to transition to a defined benefits scheme which is focussed on health outcomes and return to life .

A no-fault, defined benefit scheme focuses on improving health outcomes by encouraging faster resolution of claims and providing benefits regardless of fault. Insurance staff will need to adopt a new approach in dealing with their claimants, focused on assisting recovery rather than payment of benefits and claims settlement. Legal advice will still play a role in the new scheme, though it will predominantly be on process and procedure, rather than negotiating a lump sum.

Even when a defined benefit scheme commences, previous claims will continue to be managed under the current scheme for at least the next four to five years so there will not be an overnight change in culture for insurers, lawyers or the regulator. However, commencement of the defined benefits scheme will result in the need for training of existing staff and employment of personnel with a different experience and approach to claims management and finalisation.

Measures which will be implemented include:

- industry-wide training materials for consistent roll out of the new scheme
- the requirement for insurers to develop and provide SIRA with plans that demonstrate how they will address the required staff skills and capabilities
- insurers to redevelop their customer service charters in line with new legislation and service expectations

- place contact information for SIRA and the proposed support and advocacy service (see next point) on claimant liability letters as an independent source of further information and advice on claims processes and issues .

Importantly, the Government proposes that the new legislation will require all existing insurers to re-apply for a licence and SIRA will not be able to grant the licence unless it is satisfied that the insurer has the systems and processes in place to deliver the new scheme.

Establishment of a support and advocacy service

The NSW Government has proposed a support and advocacy service to help empower claimants and assist them with advice on their options and processes in managing their claim. SIRA's existing advisory service already provides basic information on pathways for claimants. It is proposed that this is expanded to:

- assisting claimants by working through their concerns to narrow down the key issues and options to resolve them
- assistance with administrative steps – form completion, contacting an insurer or other service provider on behalf of the injured person
- assistance if problems or disputes arise with preparation for a review or assessment by providing advice on what supporting documentation may be required or what questions may be asked.

It is envisaged that in addition to the core

support services outlined above, there will also be specialist services. The advocacy service will play a direct role in advocating for the injured road user through the internal review process by insurers and led by a Claimant Advocate.

The services role could include legal advice and assistance such as legal case appraisal and if a dispute arises, the actual

preparation of documentation for a merit review decision or medical assessment. The service will not replace the role of private legal advice for complex matters. Other specialist advice could include financial, medical, allied health or counselling. It is important that this service is clearly identified and its role defined.

Two options are being considered for the delivery of the specialist service.

Option 1

A SIRA delivered or managed service.

Under this model, a position of Claimant Advocate would be created within SIRA and provisions would be included to ensure the Claimant Advocate could act independently, and could not be directed by SIRA staff in the way it advocated for a claim. This option would require a modest investment from SIRA in staff and training and no change to scheme processes. This function could be delivered in-house or outsourced on a contract basis.

Option 2

A new independent service that is separate from SIRA and funded by an extension of the MCIS levy on Green Slips

While this option would be totally independent of the regulator, it would require the establishment of a new organisation and establishment of additional review procedures, potentially providing the power to direct insurers to review decisions. It may require its own legislation to ensure independence and powers separate from the regulator.

Aspects for consideration and feedback include:

- Which services should be provided and what skills or qualifications should be required?
- Which would best be provided by SIRA, as the regulator, and which services would be best provided by the Claimant Advocate?
- Should it operate as a separate, independent entity with no direct lines to the regulator, enabling it to clearly advocate for injured people and review

decisions? If so, would that enable SIRA to become more directly involved in dispute resolution, to avoid these being escalated?

- How is access determined? Is it only for specific issues or events? Is it means tested? Is it time limited?
- What are the most appropriate delivery methods and channels? As communication evolves are these services best delivered by one or a combination of phone, face-to-face, social media, on line or via a third party/agent?
- How is success measured?

The role of SIRA as a regulator and its role in the management of claims

SIRA has a clear role to ensure the delivery of outcomes through private sector insurers via the proposed new legislative scheme and supporting initiatives. Specifically, SIRA will be required under the new scheme to issue new claims handling guidelines that set clear standards for the handling of claims, including timeliness.

Claims and customer outcomes will be achieved by focussing on the prevention of problems, providing a route for resolution of problems or complaints when they occur, promoting recovery, scheme monitoring and continuous improvement.

The Government wants SIRA to play a key role in the collection and publication of timely data that monitors insurer performance and will use this to guide its regulatory activities, including intervention as required (e.g. compliance, enforcement, education, guidelines etc). SIRA will often provide services directly to claimants as the best way of ensuring their outcomes (e.g. nominal defendant claims, matching the injured to their insurer, complaints handling and advice).

The challenge is defining and distinguishing SIRA's role in improving the customer experience through its regulatory role, from the role of the Claimant Advocate and the dispute resolution structures (as discussed below).

Other aspects for consideration that intersect customer experience and customer service, relate to how active SIRA

is in the management of claims in the future. Some specific initiatives under consideration by the Government include:

- giving powers to SIRA to enable greater real time provision of data to SIRA, including data that mirrors insurer data as well as broader KPI reports that examine the performance of the insurer as well as the claim
 - promoting strategies for early intervention and support as soon as possible, and measures to promote health, return to work and life outcomes
 - establishing SIRA as the central point for an online claims lodgement portal (similar to Western Australia) and having initial visibility on all claims lodged, including establishing the master data set for all claims, thus supporting early intervention in claims to enable better outcomes for the injured
 - giving SIRA the power to intervene at certain points in a claim lifecycle to have direct contact with claimants and help progress their claim
 - giving more power to SIRA to direct insurers in the management of claims and disputes
 - giving more power to SIRA to direct other service providers involved in the management of a claim or treatment of a claimant
 - legislating for Codes of Practice for industry participants and the application of model litigant provisions on insurers.
- introducing term licences for insurers with core licence conditions and then tailored to an individual insurer where required (e.g. shorter term renewals of licences for poor performance, having conditions imposed on licences in the event of poor performance, powers of binding undertakings).
 - requiring all insurers to reapply for a licence at the commencement of the new scheme.
 - greater education of insurers, and other service providers, by SIRA on best practice initiatives.
 - powers to allow publication of league tables showing the relative performance of different insurers against claims metrics.
 - review and strengthen the regulatory enforcement policy, including increased penalties and the automatic application of penalties triggered by certain events such as late payments or failure to make decisions in required timeframes.
 - allowing SIRA to temporarily suspend an insurer's right to sell new policies.

Performance monitoring of insurers' claims handling and licence sanctions

In its role as regulator, SIRA currently has the power to issue penalties including letters of censure and letters of non-compliances (both major and minor) upon insurers for breaches and continues to regulate insurers. Some stakeholders have suggested that SIRA has been too lenient with insurers in the past, which is why some poor instances of behaviour in claims management continues.

Legislative measures currently being considered by the Government include:

Best dispute resolution mechanisms in a defined benefits scheme

SIRA's independent Dispute Resolution Service (DRS) division delivers alternative to court dispute resolution services to injured people and insurers, across a range of personal injury compensation schemes.

The range of independent dispute resolution services have expanded significantly since 1999 and now include:

- NSW CTP Motor Accidents Medical Assessment Service (MAS)
- NSW CTP Motor Accidents Claims Assessment and Resolution Service (CARS)
- NSW CTP Lifetime Care dispute reviews (plus ACT CTP Lifetime Care dispute reviews and ACT Workers Compensation Lifetime Care dispute reviews)
- NSW Workers Compensation Merit Reviews (MRS).

While the proposed scheme reform will result in a significantly lower level of disputation overall, new types of disputes will arise from the scheme redesign, providing an opportunity to consider alternative options for dispute resolution models. The Appendix to this document outlines the types of disputes anticipated under the new scheme and where these are dealt with.

The Government has proposed a streamlined and non-adversarial independent review process for defined benefits matters and adapting the existing dispute resolution services to resolve disputes over common law damages and certain defined benefits matters.

The proposed dispute resolution model is as follows (and shown below).

Tier 1: Internal review by insurers on the merit of the issue in dispute.

Claimants would be supported by the Claimant Advocate.

Tier 2: Alternative to court dispute resolution.

- For medical assessment disputes, independent assessment by a Medical Assessor, with a right of review by a Medical Appeal Panel. Claimants would be able to be advised by the Claimant Advocate or have legal representation.
- For defined benefits disputes (other than liability disputes), administrative review by a merit review type function, similar to that in workers compensation, to provide a fast administrative review of the insurer’s decision. Decisions would only be subject to judicial review. Claimants would be supported by the Claimant Advocate.

- For defined benefits liability disputes and common law claims, assessment by a service similar to the current Claims Assessment and Resolution Service (CARS). Claimants would be legally represented.

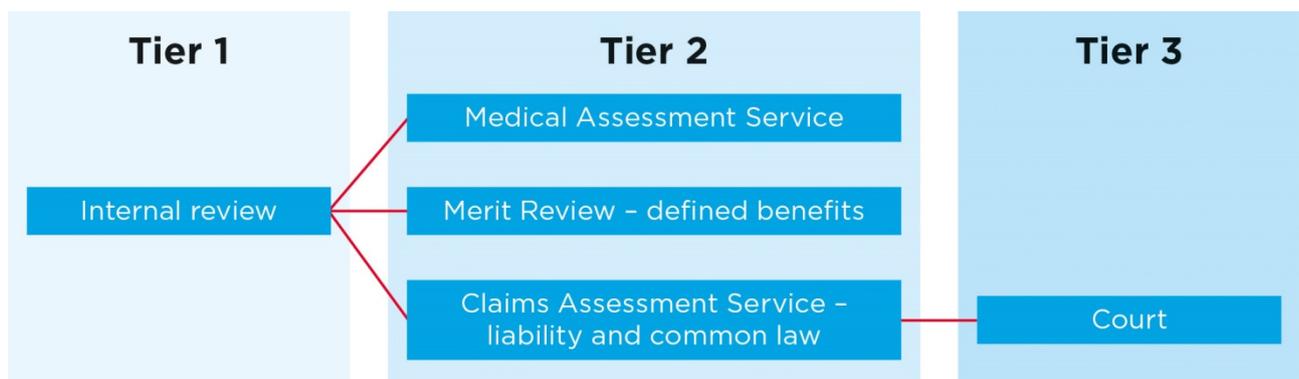
Tier 3: A right of appeal to the courts for the claimant only on defined benefits liability disputes and common law claims.

This model would see each of the separate review services at Tier 2 operating independently but within the Dispute Resolution Services division in SIRA

This will be different to the current adversarial system with a greater emphasis on alternative dispute resolution processes such as insurer internal reviews and independent administrative merit review at Tier 2. It would be expected that the vast majority of claims would continue to have no disputes at all and those that do are resolved at Tier 1 or 2, and very few claims disputes would need to proceed to court.

The Government sees the objective of dispute resolution in the new scheme as achieving fair, fast, independent, expert review resulting in an expeditious and less adversarial process, leading to the right outcome for claimants. As far as possible, starting a review at the second tier (particularly a merit review) should be as simple as possible for the injured road user, with the onus for establishing the decision was correct resting with the insurer. However, it is recognised that the right to ‘legal review’ needs to be maintained. It is recognised that the right to ‘legal review’ needs to be maintained.

Proposed dispute resolution model



Alternative options being considered by Government to enhance this system include the following:

Option 1: Allowing legal advice to be obtained and additional appeal rights to the CARS type service at Tier 3 for statutory benefits disputes (other than liability disputes). Liability disputes at Tier 2 will permit legal representation and appeal rights under the Government's proposals.

Option 2: Option 1 plus enhance the independence of the SIRA dispute service for resolving all new Scheme disputes by consolidating medical, claims and merit reviews into a single independent service, within SIRA, with enhanced statutory protections of independence for decision makers across all streams.

Option 3: Option 2 except that statutory benefits liability disputes, appeals from statutory benefits decisions and common law claims assessment would be transferred to a specialist independent tribunal which would operate at arm's length from SIRA.

Option 4: Option 2 with all Tier 2 disputes transferred to the independent tribunal and potential appeal to Court.

Each of these options has different advantages and disadvantages.

On the one hand, there are advantages in terms of expertise in housing all functions associated with achieving scheme outcomes in one group, provided the independence of decision makers is maintained or enhanced. The model operating currently in SIRA has proved to be relatively successful. However, it could be perceived as offering less protection compared to more formal tribunals.

On the other hand, while the options progressively increase protections for claimants from inappropriate insurer decision making, the more 'formal' the dispute resolution processes become, the greater the risk of delay and cost (which is ultimately borne by motorists through higher premiums), with a likely adverse outcome for claimant recovery. It is essential that these issues are carefully balanced

Ensuring independence of dispute resolution services and decision makers

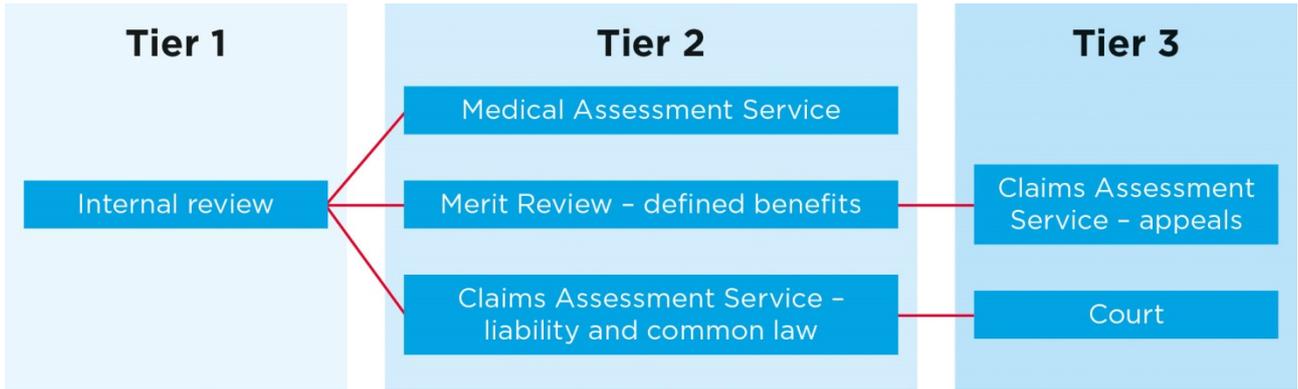
In the current scheme, dispute resolution services operate for medical and claim related disputes, predominantly utilising panels of externally contracted assessors.

Claims disputes are overseen by a Principal Claims Assessor who is a statutory officer with legislative responsibilities under the Act relating to the exemption and assessment of claims. In addition, three SIRA staff members are appointed as Claims Reviewers who conduct special assessments of procedural disputes relating to claims. They are supported by a panel of about 30 external contracted Claims Assessors who are all experienced lawyers in the field of CTP, working either with claimants or insurers.

There is a panel of about 150 external contracted Medical Assessors from over 25 different practice areas appointed to conduct assessments of injured claimants. In addition, about six SIRA staff members are appointed as Medical Assessors for the purpose of issuing combined impairment assessment certificates where more than one Medical Assessor is involved in a matter.

The key issue for consideration is whether having more assessors on staff, rather than relying on external assessors will be of benefit, particularly in countering perceptions of conflict of interest and a lack of true independence from the industry.

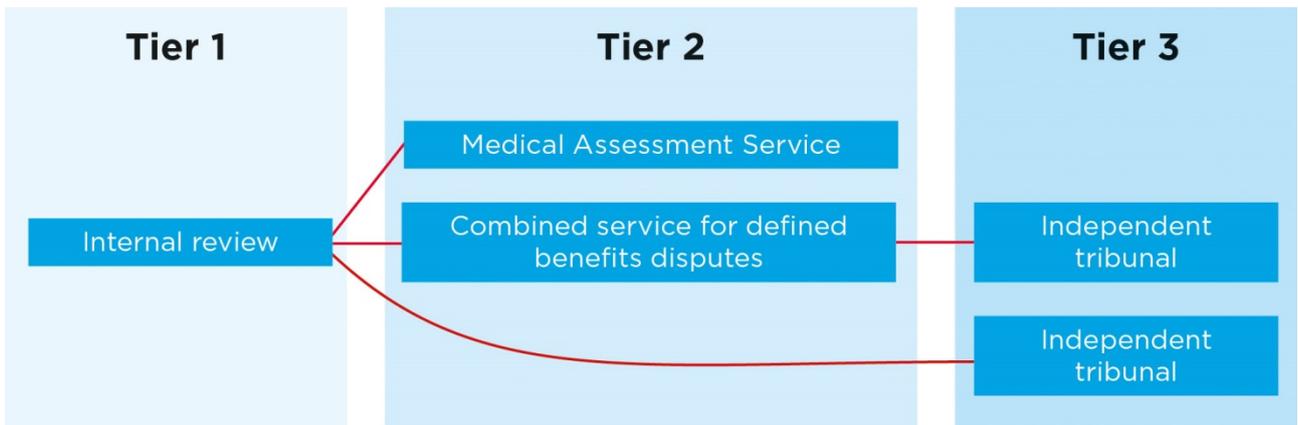
Option 1



Option 2



Option 3



Option 4



Responding to current claims related issues

As part of its enhanced risk based regulatory approach, SIRA has been working on new and improved measures to address the performance of claims management in the current scheme. These include commencement of a CTP Fraud taskforce and updated Claims Handling Guidelines to address issues including late claims and hardship payments.

SIRA is currently planning and implementing further initiatives that will improve the current scheme as it runs off over coming years and have relevance in the new scheme that will still have a common law component in addition to defined benefits.

Claims management approaches of insurers

While insurers are required to detect and deter fraud, sometimes the cost of paying out certain claims can be cheaper than investigating and challenging them. SIRA has been working with insurers on achieving the delicate balance between fairness and cost, though the challenge is the risk of legitimate claims being denied.

SIRA also proposes the following actions to encourage insurer vigilance against fraud and exaggeration without impacting on legitimate claimants:

- base line audit to examine the appropriateness of 'Liability Denied' claims and subsequent annual audits.
- publishing of audit findings.
- requiring insurers to regularly submit updated business plans detailing how they are tackling fraud and requesting confirmation on how they balance just and expeditious with deter and detect fraud.
- replicating nominal defendant Model Litigant principles across all insurers by introducing a code of conduct covering litigation within the NSW CTP scheme.

Improving transparency

The Government is considering improving transparency by mandating that insurers provide information on settlements directly to claimants, rather than solely relying on the claimant's solicitor to do so.

Consideration is also being given to the use of guidelines and licence conditions to collect and publish information on insurer performance, including claims handling and complaints.

Proposed actions include:

- amending the Claims Handling Guidelines to require the insurer to advise the claimant (directly) at the time of paying settlement monies of details including the date of settlement and total settlement figure and development of an industry wide agreement.
- SIRA establishing a number of mandatory reporting criteria to be published each year. This could include profit, complaints, and claims handling performance measures such as claims denied, administrative appeals and time to selected payments.
- introducing Codes of Practice for insurers and lawyers.

Current regulatory provisions

SIRA currently has a range of regulatory powers provided by legislation, regulation and guidelines. These are outlined below.

Legislation

Insurers are licensed under the *Motor Accidents Compensation Act 1999* (the Act) and must:

- act in good faith with all customers
- never unfairly discriminate against individual customers or groups of customers
- have clear and practical processes for issuing Green Slips to customers
- make sure their Green Slip insurance is readily accessible and available to all customers.

The Act is supported by the *Motor Accidents Compensation Regulation 2015* (the Regulation) which specifies, for example, maximum fees for medico legal costs.

Policy

The Regulatory and Enforcement Policy provides a framework for dealing with minor and major non-compliances by Compulsory Third Party insurers. The intent is to provide a fair and consistent regulatory response to legislative and statutory non-compliances by insurers. Minor non-compliances are generally of a technical or relatively inconsequential nature, and are unlikely to cause significant harm. Non-compliance is considered major if it has caused, or is likely to cause, the claimant or any stakeholder significant harm.

Penalty provisions

Compliance with the Guidelines issued under the Act is a condition of an insurer's licence and there are a number of penalty provisions under the Act that are administered by SIRA. Major non-compliances by an insurer may be subject to penalty provisions including imposition of additional licence conditions, suspension of licence or civil penalty or censure of licensed insurer.

Guidelines

There are a range of guidelines developed for claims management and dispute resolution:

- The Market Practice and Business Plan Guidelines provide insurers with an enforceable framework that underpins the services they provide to customers.
- The Claims Handling Guidelines aim to promote the just and expeditious handling of motor accident claims by CTP insurers.
- The Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines for licensed CTP insurers promote best practice and facilitate consistency in the rehabilitation of motor accident injuries within and between CTP insurers.
- The Medical Assessment Guidelines provide direction on the process for referring a dispute to MAS and the procedure for assessment of these disputes.
- The Claims Assessment Guidelines provide direction on the process for referring a dispute to CARS and the procedure for assessment of these disputes.

Questions for consideration

1. What do you believe are the major issues, cultural or otherwise, for insurers, and other service providers, in moving to a defined benefits scheme?
2. What do you believe are the key considerations in establishing the support and advocacy service?
3. Which support and advocacy service option do you think would deliver the best outcomes for claimants and why?
4. What do you believe should be the powers of the Claimant Advocate?
5. What involvement should SIRA have in the lodging and management of claims? Should there be early intervention or outreach for newly injured people?
6. What are your views on introducing term licences, rather than perpetual licences?
7. What are your views on the dispute resolution model, particularly the type of disputes dealt with at each tier?
8. What are your views on aspects of dispute resolution being provided by an independent tribunal and which types of disputes or appeals, if any, would be best dealt with by that tribunal?
9. Given each dispute resolution option has advantages and disadvantages, what do you see as the best option in a hybrid scheme and why?
10. Do you believe any further powers would be required for internal claims assessors than currently exist for the Principal Claims Assessor or other SIRA staff assessors?
11. Are there opportunities to pursue positive incentives for good claims management outcomes, along with the proposed actions already being taken by SIRA to address current claims management behaviours in the scheme?
12. Any other item of relevance or importance requiring comment?

How to make a submission

The NSW Government welcomes comment and feedback from all stakeholders. The preferred format response to this discussion paper is via a written submission.

Written submissions should be emailed to SIRA at ctp_review@sira.nsw.gov.au by COB Friday 25 November 2016. Written submissions may be published on the SIRA website. If you do not want your submission or any part of it published, you must clearly indicate this at the time of submission.

Next steps

The SIRA Board will facilitate stakeholder discussions around this paper and review submissions to prepare a summary of the feedback received. The information provided through this consultation process will be used to develop the legislative and regulatory options for consideration by government in the reform of the CTP Scheme.

Submissions, questions or enquiries relating to this discussion paper should be emailed to ctp_review@sira.nsw.gov.au

Appendix

Dispute types

Statutory Benefits Disputes

The introduction of statutory benefit entitlements is expected to generate a series of new types of disputes to be resolved including:

- eligibility disputes about accessing the statutory benefits scheme
- procedural claims disputes about statutory benefits entitlements generally (e.g. due search and inquiry, late claims, directing parties to comply with duties, directing repayments of overpayments, etc)
- claims handling disputes about weekly benefit entitlements (e.g. pre-injury earnings, current earning capacity, current weekly earnings, suitability of employment, statutory suspensions of benefits, timing of statutory step downs, variations, discontinuance, etc)
- claims handling disputes about whether the statutory requirements to ongoing weekly benefits (beyond any cut-off period) are satisfied
- medical disputes about whether treatment and care is reasonable and necessary
- claims handling disputes about whether the statutory requirements to ongoing treatment and care benefits (beyond any cut-off period) are satisfied.

Common Law Damages Disputes

The entitlement to common law damages is also expected to generate new types of disputes, though many will be similar to disputes which currently arise in the existing CTP scheme, including:

- medical disputes about whether permanent impairment is greater than the % whole person impairment threshold
- eligibility disputes about whether an injured person was 'at fault' or 'not at fault'

- procedural claims disputes about common law damages claims generally (e.g. due search & inquiry, reporting to police, late claims, interim hardship payments, reinstating claims, etc)
- damages disputes about the amount of common law damages (e.g. contributory negligence, non-economic loss, economic loss, interest, legal costs, etc).

Dispute resolution approaches

Internal Review

Insurer Internal Review required as a first step by a new decision maker, undertaking a fresh decision on the merits about previous insurer decisions in statutory benefits and/or common law claims. The Insurers Internal Reviewer will consider any new information that has become available and provide written reasons for their decision.

Merit Review

SIRA Merit Reviewers to undertake less-adversarial (usually on the papers) merit reviews of procedural claims disputes and claims handling disputes regarding statutory benefit claims, after an Internal Review has occurred. The Merit Reviewer will consider all relevant information available and provide written reasons for their decision.

Medical Assessments

SIRA Medical Assessors to determine medical disputes, requiring an assessment of the injured person, in person, about issues such as permanent impairment, and treatment and care.

Claims Assessments

SIRA Claims Assessors to determine damages assessment disputes (usually after appropriate dispute resolution and an assessment conference in-person with the parties), liability disputes about access to common law, and defined benefits scheme eligibility disputes after an Internal Review has occurred.

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers. However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the [NSW Legislation website](#).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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