

6 September 2019

Review of the Minor Injury Definition Consultation
State Insurance Regulatory Authority (SIRA)
Level 6, McKell Building
2-24 Rawson Place
Sydney NSW 2001

Via Email: MAIRstakeholder@sira.nsw.gov.au

Dear Sir/Madam,

First review of the minor injury definition – *Motor Accident Injuries Act 2017 (NSW)*

Suncorp welcomes the opportunity to contribute to SIRA's first review of the minor injury definition. We have been a strong supporter of the reformed *Motor Accident Injuries Act 2017* ('MAIA') scheme and a proponent for many years of no-fault CTP coverage for NSW motorists. We maintain that the best customer outcomes are achieved through defined benefits that encourages rehabilitation, rather than a legally adversarial scheme that discourages recovery.

For this review, we make the following recommendations:

- the minor injury definition is predominantly retained in its current form
- the terms "minor" and "non-minor" are changed to improve customer experience.
- annular tears and lacerations are defined more explicitly
- minor psychological injuries are defined more explicitly
- customer care after 26-weeks is given greater clarity

Appropriateness of the minor injury definition

Since the introduction of the MAIA scheme, injured people and NSW motorists have received substantial benefit from a scheme a focussed on recovery, not monetary compensation. Injured people have received early treatment and ongoing financial support serving to enhance recovery. NSW motorists have access to more affordable CTP premiums and a greater confidence that their CTP scheme will look after them if they get injured. The 2017 reforms also provided a clear framework of customer rights of review, the requirement for insurers to assist customers in understanding their rights and the intent for a non-adversarial dispute resolution system.

A crucial element of the MAIA scheme's effectiveness is the minor injury definition. Suncorp's experience to-date is that the minor injury definition in its current form delivers the desired objectives of the Act. Over ninety percent of not-at-fault customers with minor injuries have not needed benefits beyond the 26-week mark, indicating that the minor injury definition is broadly appropriate. It is therefore recommended that the **definition is predominantly retained in its current form.**

Review of the terms “minor” and “non-minor”

There is an opportunity to adopt language when describing an injury that provides a better customer experience. Many customers object to the term “minor” as a downgrading, since it doesn’t usually match the impact the injury has had on the customer’s life.

The term is often the source of significant friction between the customer and their claims officer. Before a customer learns the term is defined in the MAIA scheme and NSW legislation, their response is typically: *“How dare you suggest that this a minor injury!”*

Suncorp **recommends a change to the terminology**, potentially to less judgemental language such as “Category A” and “Category B”. A description of the distinction between these two categories could be provided with illustrations: Category A injuries being soft tissue damage and lacerations, Category B being high-severity injuries such as broken bones and amputations. This would avoid any disparaging inference being interpreted by the customer.

Annular tears and lacerations

The minor injury definition is effective to the extent that it gives clear direction to customers and insurers about entitlements relevant for an injury. The current definition provides a relatively high level of clarity with respect to physical injuries, underpinning the value of the definition in its current form. There are opportunities to provide greater clarity, which would enhance the operational efficiency of the scheme and improve customer outcomes.

Annular tears

Annular tears are generally caused by degeneration in the lower back and are common in most people over 30 years old. While annular tear claims are predominantly being defined as a minor injury, Suncorp’s experience has been that there have been some discrepancies of classification at the Dispute Resolution Service (DRS) level.

In circumstances where low impact motor accidents occur, it is difficult to classify an annular tear as a non-minor injury. At an industry level, as annular tears are generally being assessed as minor injuries, for consistency of decisions in both Internal Review (IR) and DRS stage, we **recommend that annular tears be classed as a minor injury unless radiculopathy is evident**. Further, Suncorp recommends a clearer definition be provided at Part 5.8 to 5.10 of the Motor Accident Guidelines, which will reduce the propensity for disputes between insurers and customers.

Skin lacerations

Due to inconsistencies in classifications of skin lacerations, injuries which – based on the medical evidence provided – appear to be superficial lacerations are being presented by some customers as constituting non-minor injuries. In Suncorp’s experience, there is currently no clear set of pre-determined criteria as to how to differentiate minor and non-minor lacerations.

To-date DRS decisions have not provided clear guidance and accordingly the issue of skin lacerations remains a contentious area for disputes. In one example, a customer was of the view that a relatively small cut to his finger constituted a non-minor injury, resulting in a dispute. A **clearer definition of lacerations and a set of pre-determined criteria for what constitutes non-minor lacerations** would assist both the customer and insurer in achieving an earlier resolution of claims.

Psychological injuries

Whilst the minor injury definition for physical injuries has a high degree of clarity, there remains significant ambiguity for psychological injuries. This ambiguity has already contributed to disputes and sub-optimal customer experiences.

Diagnosis and treatment of psychological injuries has inherent complexities. Assessing the degree to which a discrete motor accident has impacted a customer's mental health, as distinct from the impact of other factors on that customer's current state of mental health. These issues are not restricted to the NSW CTP scheme and reflect the broader societal challenge of how best to diagnose and effectively treat psychological injuries.

We suggest that the customer experience would improve if **the definition of minor psychological injuries is more explicit**. For example, whether minor psychological or psychiatric injury as defined by CI 4 of the *Motor Accident Injury Regulation 2017* (NSW) intends to be exhaustive and excludes any other disorder would be useful guidance.

Suncorp has observed that some general practitioners (GPs) have diagnosed post-traumatic stress disorder (PTSD) without demonstrating the necessary evidence-based reasoning or methodology used to diagnose how patients met the assessment criteria for PTSD under the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), as per the Motor Accident Guidelines. Whilst the onus is on the insurer to evaluate the diagnosis and its accuracy, once the GP has assigned this diagnosis, it typically impacts the customer's expectations and may result in a dispute and sub-optimal customer experience.

To date, the DRS process has not greatly enhanced the level of clarity with respect to the definition of minor psychological injuries.¹ Suncorp is of the view that the accident circumstances – including the speed of impact and physical damage that resulted – and pre-existing psychological conditions of the customer are relevant when assessing if a determination of a minor or non-minor injury is appropriate.

Whilst the current frequency of minor injury psychological claims is broadly in line with expectations, ongoing ambiguity with respect to the minor injury definition has the potential to result, over time, in frequency that is significantly above expectations. As the majority of common law claims' costs to the scheme remain unclear, it is important that this continues to be watched.

Customer care after 26 weeks

Currently insurers have the discretion to provide appropriate treatment and care to customers with minor injuries post 26 weeks. Scheme data indicates that all insurers are providing treatment and care post 26 weeks. Given that approximately 37 per cent of customers with minor injuries are receiving treatment and care at the 26-week mark, Suncorp believes the provision of this treatment and care post 26 weeks is in alignment with the intention and aims of the Act.

It is Suncorp's understanding that not all insurers are equivalent in their discretionary treatment and care post 26 weeks. There is an opportunity for **greater clarity with respect to the circumstances in which it is appropriate for insurers to provide treatment post 26 weeks**.

An option for consideration is to extend the entitlement to all customers for reasonable and necessary treatment from 26 weeks to 52 weeks, whilst retaining a weekly benefit entitlement to 26 weeks. Whilst this would potentially increase the scheme's claims costs and result in a corresponding impact on premiums, it would provide clarity for customers and insurers.

In addition, extending treatment and care to 52 weeks could potentially mitigate the current challenges pertaining to the determination of psychological injuries as minor or non-minor, given that some psychological injuries require symptoms to be present for 26 weeks to make a correct diagnosis.

¹ An option for consideration is requiring DRS assessors to provide reasoning for their decision relating to the minor/non-minor status of a psychological or psychiatric injury, including specific reference to the various elements of the DSM-5 criteria.

Conclusion

The minor injury definition is an critical feature of the MAIA scheme and has been effective in the realisation of the objectives of the 2017 reform. With some refinement it can further enhance customer experience and support the long-term sustainability of the scheme. If you would like further information or discuss any of the proposals in our submission, please feel free to contact [REDACTED]
[REDACTED]

Regards

A handwritten signature in black ink, appearing to read 'Matthew Kayrooz', with a stylized, cursive script.

Matthew Kayrooz
Head of CTP
Suncorp Group