Guidance Note

Internal Review

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This guidance note relates to the *Motor Accident Injuries Act 2017* (the Act) and the Motor Accident Guidelines (the Guidelines) made under that Act published by the State Insurance Regulatory Authority (SIRA). It provides guidance on an internal review for insurers. This information is guidance only and cannot be used for legal advice.

Internal review

If a person disagrees with a reviewable decision made by the insurer, they may request the insurer to conduct an internal review. A list of reviewable decisions can be found in Schedule 2 of the Act.

The person must request an internal review within 28 days of receiving the insurer's reviewable decision.

The insurer may exercise a discretion to accept a late internal review request if the insurer believes this would best promote the objects of the Act in all circumstances of the claim, including any reasons provided for the late request.

The internal review will be conducted by a person with the required skills, experience, knowledge and training, who did not have a role in making the reviewable decision.

An internal review can result in the reviewable decision being changed, a new decision being made or the reviewable decision remaining the same. The outcome could be the same, better or worse for the person and any impact on the person's entitlements will be clearly outlined in the internal review decision.

It is important to note that for most reviewable decisions, an internal review must be requested before an application to the Personal Injury Commission can be lodged. Reviewable decisions that do not require internal review are listed in Part 7 of the Guidelines.

Requesting an internal review

An internal review is requested when an insurer has received an internal review request that contains all relevant information as set out in Part 7 of the Guidelines.

A request for an internal review may be made by providing the insurer with a request by letter, email, telephone, fax or in person.

The request must include all requirements specified in the internal review request form, including:

- the reviewable decision that is being referred for internal review, and
- the alternative decision that is being sought, and
- the issues under review, and
- the reasons the person believes the reviewable decision should be changed, and
- any additional documents, information or material the person considers relevant to the review.

The person may withdraw a request for an internal review at any time before the insurer sends notification of the internal review decision. The insurer will confirm the withdrawal of the request in writing to the person.

Next steps by the insurer

Requesting an internal review does not stop the outcome of the reviewable decision becoming effective.

The insurer must acknowledge receipt of a request for internal review **within two working days** as per Part 7 of the Guidelines. The acknowledgement must include:

- whether or not the insurer accepts that it can undertake an internal review, and
- the date the internal review request was received, and
- the date that the insurer is due to complete and advise the outcome of the internal review.

If the insurer **accepts** the request to undertake an internal review, it must advise the person within **7 days of receiving the request,** which elements of the reviewable decision are under review, and:

- who will be conducting the internal review (known as the 'internal reviewer'), and
- any additional information required from the person, and
- any additional information that the insurer has on file which is relevant to the internal review and has not previously been provided to the person, and
- how the person can contact the insurer about the internal review, and
- how the person can contact SIRA's CTP Assist.

If the request to undertake an internal review is **rejected**, the insurer must provide its reasons for rejection **within 7 days of receiving the request**. The insurer must also advise the person of their right to apply to SIRA's DRS and the time limits for lodging a dispute.

Information the insurer will consider

The insurer must consider and have regard to all relevant documents and information when conducting an internal review to ensure the most up to date, accurate, and fair decision is made. This may include considering additional information that was not provided before the reviewable decision was made.

The person or the insurer may provide additional information to be considered by the internal reviewer. If the insurer has received additional information, a copy must be provided to the person (unless previously provided).

The person must also be provided with the opportunity to consider the additional information and provide a response.

Internal review procedure

The internal reviewer must:

- consider how best to undertake the review given the individual issues in the request for internal review. This may include a review of the documentation, holding a teleconference or video conference if appropriate, and
- determine the internal review procedure, and
- review the matter on its merits, and
- make their decision based on relevant factual material and applicable law, and
- undertake the internal review in a way that best supports the objects of the Act.

The internal reviewer may:

- inquire into any matter relevant to the issues under review, and
- consider information that was not provided before the reviewable decision was made, and
- request further information.

Insurer timeframes

For most internal reviews, the insurer must provide their internal review decision within 14 days of receiving the request for internal review. This timeframe is extended under Part 7 of the Guidelines to 21 days for internal reviews about the following reviewable decisions:

- whether the person's injury is a threshold injury
- the degree of permanent impairment that resulted from an injury caused by a motor accident
- whether the motor accident was caused wholly or mostly by the fault of the person
- whether the insurer is entitled to reduce the statutory benefits payable due to contributory negligence
- whether the statutory benefits are not payable because the person had been charged with or convicted of a serious driving offence.

Additional information

Additional information may be provided by the person or requested from the person by the insurer. To allow the insurer time to consider this additional information, the insurer is allowed an additional period of up to four days from the date the additional information is received to issue their internal review decision.

The maximum period for providing an internal review decision in all cases is 28 days after the request is received.

Decision not provided in time

If the insurer fails to comply with the above timeframes, the person can lodge an application to Personal Injury Commission.

When a decision is made

When the insurer makes the internal review decision, it must provide the person with an internal review certificate including brief reasons for the decision and supporting documents.

The internal review certificate provides the outcome of the internal review, supported by the statement of reasons.

The reasons should be written in plain English and provide a clear path of reasoning that the person can understand.

All certificates and reasons should set out the following information:

Content	Details
Outcome of the internal review	This is the overall outcome of the internal review and must be stated at the beginning of the statement of reasons.
The internal reviewer	The name of the internal reviewer should be clearly identified.
Date of the decision	The date of the internal review decision is important due to the time restrictions set out in Part 7 of the Guidelines.
Brief background to the matter	This should provide a summary of the reviewable decision.
Matters in dispute	A clear statement of the reasons why the person believes the decision should be reviewed, including the issues raised in the request.
Information considered	A list of the documents that were considered as part of the review should be included either as part of the statement of reasons or in an annexure.
Relevant legislation	Relevant legislation considered should be set out to the extent necessary to understand the reasons for the decision.

Content	Details
	Specific reference should be made to provisions of any legislation relevant to the issues raised in the request.
The facts in the matter	The internal reviewer should set out the facts as they have found them and the information that they have relied on in making these findings of fact.
An explanation as to why some information has been given more weight than other information	Where the internal reviewer has relied on information from one source in preference to information from a different source, the reviewer should set out the reasons why they have given more weight to their preferred source of information.
Reasoning for the application of the law to the facts	Set out the interpretation of law in relation to the relevant factual findings.
The impact of the internal review decision on the claim	The reasons should clearly set out the impact of the internal review decision on the person's claim. This should include the date when any changes will come into effect with an explanation.
Details of any rights to further reviews	Details for how to lodge a dispute application with SIRA's DRS must be included in the decision including the time limits.
How a person can access further assistance	There should be clear information about who the person can contact at the insurer to discuss the matter further as well as the contact information for legal services and SIRA's CTP Assist.

Internal review outcomes

There are three possible outcomes of an internal review.

1. **Affirm the reviewable decision.** This means that the internal reviewer concludes that the reviewable decision should remain in place, even if the internal review decision is based on different information or may be for different reasons.
2. **Vary the reviewable decision.** This means that the internal reviewer has found that part of the reviewable decision should be changed.
3. **Substitute a new decision.** This means that the internal reviewer has found that the reviewable decision should be set aside and substituted with a new decision.

Note: The internal review decision may result in an outcome and impact that is less favourable than the reviewable decision was for the person.

Giving effect to a new or varied decision

If the internal review results in a new decision or a decision being varied, any benefit or entitlement that the person receives from the new or varied decision will usually be backdated to be effective from the date of the reviewable decision.

For example, if the internal review outcome means that the person is entitled to a higher amount of weekly statutory benefits, the person will receive back payment of the difference between the higher amount and the amount already received from the date of the reviewable decision. This will be explained in the internal review decision.

The insurer has a duty to ensure that the new internal review decision is actioned as soon as possible and in accordance with their duties under the Act.