

SIRA's response to independent report on internal review

*Internal review requested
under Motor Accident Injuries
Act 2017*

March 2021

Contents

| | |
|---|----------|
| 1. Introduction..... | 3 |
| 1.1. Background | 3 |
| 1.2. Engagement of independent expert..... | 3 |
| 1.3. Claims Cohort | 4 |
| 2. Internal Review | 4 |
| 3. SIRA's Response and Findings..... | 4 |
| 3.1. SIRA Response to Independent report on internal review | 5 |
| 3.2. Year vs Year findings..... | 6 |
| 3.3. Application of Guidelines the time of review | 7 |
| 4. Summary of SIRA's Actions..... | 7 |
| 5. Further Help and Information..... | 7 |
| 5.1. Legislation and Guidelines | 7 |

1. Introduction

A key objective under the *Motor Accident Injuries Act 2017* (the Act) is to encourage the early resolution of motor accident claims and the quick, cost effective and just resolution of disputes.

SIRA requested an independent review of insurers claims files conducted by independent expert Mr John Watts (LL.M) in November 2020. The review focused on insurer management of the internal review process in accordance with the Act and the Motor Accident Guidelines Version 5.1 (the Guidelines).

Following the submission of this report to SIRA, the following response and actions has been undertaken.

1.1. Background

As a proactive regulator, SIRA maintains oversight of the CTP Scheme to identify matters which can potentially impact scheme performance and the delivery of positive claimant outcomes.

The [CTP Claims and Injury Management Program \(CAP\)](#), is a key element of SIRA'S approach to supervising the NSW Compulsory Third Party Insurance (CTP) scheme. The CAP targets components of the scheme, ensuring that each licenced CTP insurer remains committed to providing early and ongoing support to people who claim.

From scheme inception, an appetite has been expressed from external stakeholders for assurance on the performance of the internal review process to ensure appropriate outcomes are delivered to injured persons in the claims cycle, specifically in this instance when a dispute is raised.

1.2. Engagement of independent expert

Mr John Watts (LL.M) has been engaged by SIRA to provide an independent, legal, and impartial review on the performance of the licensed CTP insurers under section 1.3 and 7.9 of *the Act*. Within the powers of section 10.27 of *the Act*, Mr Watts was authorised by SIRA to examine the insurers claims files as an independent expert.

As an accredited Personal Injury Law specialist and having significant experience in the New South Wales CTP scheme, Mr Watts has the experience to provide independent expert opinion on the operation of internal review.

The review was undertaken by exploratory claims file review targeting both compliance and performance aspects for a cohort of claims provided by SIRA. Questions were posed to the insurers, and where appropriate, additional evidence was sought specific to the claim including claims letters, correspondence and file notes.

Providing an expert opinion on compliance and performance, SIRA confirms that the required evidence was sought by Mr Watts prior to making these determinations and findings. Alongside claims compliance, Mr Watts was to provide independent commentary on overall scheme performance, and commentary on the quality of these decisions.

1.3. Claims Cohort

To provide an accurate indication on scheme performance for the licensed insurers obligations under *the Act*, SIRA provided a claims cohort with specific claim attributes. These attributes are listed below:

- Claims that are either finalised or open, and
- Claims that have a determined internal review outcome, and
- Claims where a person had requested multiple internal reviews, and
- Claims where determined outcomes varied including affirmation of the original decision or a change in the decision, and
- Claims that varied types of internal review disputes including Minor injury, Is the injured person mostly at fault, Treatment and care, and
- Claims that varied over an accident date period from 01 January 2019 to 30 September 2020.

A total of fifty (50) claims were provided to Mr Watts, with application to the current market share. The market share division for the insurers is at the time of this review is: Allianz (19.4%), AAMI & GIO (25.1%), NRMA (31.6%), QBE (23.6%).

2. Internal Review

An internal review allows a person who disagrees with a decision of the insurer, to request that insurer conduct an internal review of the original decision. A list of reviewable decision can be found in Schedule 2 of the Act. These decisions include:

- Merit review matters
- Medical assessment matters
- Miscellaneous claims assessment matters

An internal review decision can result in the reviewable decision being changed, a new decision being made or the decision remaining the same. The outcome could be the same, better, or worse for the person.

The insurer must consider additional information and the internal review must be conducted by a person who has the required skills, experience, knowledge, and training and who did not have a role within in making the original reviewable decision.

3. SIRA's Response and Findings

From the independent report it was identified that all insurers are demonstrating sound processes and an adequate approach to the internal review process. The findings highlight that each insurer appears to be independent in the decision-making process and insurer staff are competent and demonstrate the required skills to make fair and just determinations.

The independent report also identified some non-compliance with legislative requirements including:

1. The requirement of acknowledgement of receipt to be sent within two business days of receiving the request as per clause 7.47 of the Guidelines. Throughout the report, there were instances of non-compliance with these time frames.
2. Insurer confirmation of appropriate jurisdiction to conduct an internal review as per clause 7.49 of the Guidelines is found to be poor or not included at all within some insurer letters.
3. The insurer is required to provide the internal review determination alongside the internal review certificate within designated timeframes as per clause 7.63 of the Guidelines. It is noted that several claims did not meet these specific timeframes in decision making.
4. The internal review determination must be accompanied with the internal reviewer's certificate including brief reasons for the decision. It was found that not all insurers are providing 'brief reasons' as required under clause 7.67 of the Guidelines.

Where instances of non-compliance were found, SIRA has required a remediation plan to be provided by each insurer. The remediation plan will include an analysis of the root cause(s) for each non-compliance and strategies to mitigate risk of reoccurrence in the future. As a regulatory action, the remediation plan will include how the insurer will monitor and measure the effectiveness of the plan once implemented.

SIRA will continue to monitor the compliance obligations of all insurers in managing claims under the Act.

3.1. SIRA Response to Independent report on internal review

Within the independent report, there is commentary on specific areas of scheme performance. SIRA has provided response to each of these areas as below:

Compliance with the Act and Guidelines

"My Impression is that each of the insurers is taking seriously their obligations to conduct internal reviews in an independent and professional way. However, it is also clear that there has been significant breaches of the guidelines, particularly of the guidelines 7.47, 7.50 and 7.63" Independent report, page 19

Throughout the independent report non-compliance with several clauses of the Guidelines including clauses 7.47, 7.50 7.63 have been found. SIRA acknowledges the importance of these time frames and the requirement around these guidelines for the quick, cost effective and just resolution of disputes, for the person and scheme.

Where a non-compliance specific to a claim was found, a regulatory notice, one for each of the five insurers encompassing all non-compliances for that insurer, has been sent. The notice also requests a remediation plan to address an analysis of the root cause(s) for non-compliance, strategies to mitigate risk of recurrence in the future and an outline of how each insurer will monitor and measure the effectiveness of the plan once implemented.

Review Officer Decision Writing

"In the body of the report, I made several comments about the good or otherwise standard of decision writing. The standard of the decision writing in the files I reviewed was quite variable. The guidelines only require brief reasons, but in some instances the reasons contained long quotes from various documents which in my view were completely unnecessary" Independent report, page 20

SIRA acknowledges the importance of clear and concise communication to a person in the internal review decision process. Clause 7.67(a) of the Guidelines require that reasons for an internal review decision be 'brief'.

SIRA has provided insurers with examples of decision writing that was found to not meet this requirement. SIRA considers the feedback provided and has requested that insurers take this an opportunity to review their processes and training in relation to decision writing.

Minor Injury

"I gather that there is no provision in the Guidelines relating to the forwarding of the factsheet, but that the insurers have agreed informally to send it to claimants where there is a minor injury decision. I did not check whether this is being done, but in my view, it is important that claimants are properly informed about the meaning of the term as it used in the Act and Guidelines. I would suggest that consideration be given to including an appropriate provision in the guidelines." Independent report, page 21

Communication about Minor injury decisions is important within the claims process including at internal review. SIRA acknowledges the feedback and confirms that insurers currently provide the SIRA produced 'Minor Injury Fact Sheet' with all minor injury decision correspondence with the 'Liability Notice – benefits after 26 weeks'.

SIRA will consider whether there is a formal need to require the 'Minor Injury Fact Sheet' be provided in future Motor Accident Guideline amendments.

SIRA will consider amendment of the 'Minor Injury Fact Sheet' as required to ensure people understand the terms used.

3.2. Year vs Year findings

SIRA review of the independent report finds that the decision quality and competency remained consistent over the claims sample cohort period. No notable scheme changes in quality of these decisions over the claims sample period were noted.

However, non-compliance to timeliness of decision making was prevalent in some of reviews conducted earlier in the cohort. SIRA remains committed to monitoring these insurer obligations as outlined in clause 7.50 of the Guidelines. Internal review decision making timeliness is reported by SIRA publicly via the [SIRA CTP open data portal](#).

SIRA will continue regulatory monitoring of any insurer breaches of non-compliance with internal review timeliness.

3.3. Application of Guidelines the time of review

The independent report makes reference to specific clauses of the Guidelines. The numbering of the clauses is a reference to v5.1 of the Guidelines effective 17 April 2020. The Guidelines are amended by SIRA on a regular basis, attention should be paid to the Guidelines in place at the time of the review.

4. Summary of SIRA's Actions

Based on the report provided by independent expert Mr Watts, SIRA will take the next regulatory actions:

- SIRA has provided individual feedback to each insurer to consider the findings, identify areas for improvement and specific areas of non-compliance.
- A regulatory notice has been issued to each insurer, five in total, highlighting individual claims breaches and the request for a remediation plan detailing how the insurer will rectify the identified areas of non-compliance.
- A remediation plan has been required from each insurer, five in total, to investigate the cause of such breaches, monitoring, and future improvement activities.
- SIRA will continue to monitor the compliance obligations of all insurers in managing claims under the Act and may consider further regulatory action.
- SIRA to consider revision of 'Minor Injury Fact Sheet'.

5. Further Help and Information

5.1. Legislation and Guidelines

[Motor Accident Injuries Act 2017 No 10](#)

[Motor Accident Guidelines 2021](#)

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory 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 legislation.nsw.gov.au

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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