25 November 2016

CTP Review
State Insurance Regulatory Authority
580 George Street
Sydney NSW 2000

Submitted by email: ctp_review@sira.nsw.gov.au

Dear Sir/Madam

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

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. This includes the four licensed insurers who currently underwrite the NSW compulsory third party (CTP) motor accidents compensation scheme.

The ICA welcomes the opportunity to respond to this Discussion Paper. We consider effective claims handling and dispute resolution to be of upmost importance. We recognise the crucial role these processes will play in the successful operation of a reformed CTP scheme.

Our submission provides the collective feedback of NSW CTP insurers on the issues raised in this Discussion Paper.

Claims handling practices and standards

The ICA agrees that scheme reform will necessitate a cultural shift. It is a shift we wholly welcome and are confident that NSW CTP insurers will deliver.

We have continually been supportive of scheme reform that prioritises the return to health and quality of life of the injured road user. Insurers, as a matter of course, will be required to implement new claims handling procedures that are aligned with the overarching objectives of the new scheme design. In addition to this, proactive measures must also be taken to ensure that high standards are maintained.

In this regard, we welcome the revised Claims Handling Guidelines that provide all insurers with principles and standards that must be met in their claims handling practices. We support SIRA working closely with each insurer to monitor compliance.

The ICA supports a principle-based approach to claims handling standards. This will provide a common set of standards across insurers, yet allow individual insurers the scope and flexibility to meet the provisions according to their business models. The ability to compete on claims management, within certain parameters, promotes innovation and is one of the advantages of competitive underwriting.

We believe that the role of SIRA as a regulator in relation to the management of claims should be to set appropriate standards through the Claims Handling Guidelines, work closely with insurers and monitor compliance. We do not believe SIRA should have the powers to

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intervene in a claim lifecycle and have direct contact with claimants outside of any dispute resolution process. Direct intervention into a specific claim could create a confusing customer experience. The preferred option is to require insurers to meet the robust standards in relation to all claims, and if this does not occur, for SIRA to take appropriate action against the insurer. This should result in an improved experience for *all* customers.

With regards to fostering a cultural shift, the ICA believes that SIRA can also play an important role through their direct engagement with NSW motorists. For example, SIRA should seek to educate NSW road users about scheme changes. Communication materials and forms available on SIRA's website should as far as possible be in plain English and assistance easily available to claimants from culturally and linguistically diverse backgrounds. This should contribute to a reduced need for legal representation and ensure claimants can easily understand the benefits available to them.

The ICA suggests that data driven claims management and regulation has long been a feature of the NSW scheme, however, incremental improvement can always be delivered. Effective data analysis can be useful to identify and quickly respond to emerging trends. We note that SIRA currently collects a significant amount of data from insurers, however the means by which this is collected, such as the Personal Injury Register, has not been revised for a number of years. As a result, the collection of even more data would not necessarily produce better results. We recommend that SIRA establish clear objectives from which the level and frequency of data exchange is determined. SIRA will then be in a position to consider how data analysis can effectively support injured people. For example, effective claims data collection could facilitate longitudinal research, the results of which could over time inform SIRA policies and procedures.

Regarding insurer performance with claims handling standards, we agree that SIRA must closely monitor compliance. However, we question the need to introduce individually tailored term licences based on performance. Given the capital requirements associated with CTP motor vehicle insurance, short-term licences could be a source of instability and the uncertainty could make the scheme less attractive to market entrants. SIRA already has the powers to suspend or cancel licences and issue penalties. Proactive monitoring of insurer performance, combined with acting on these existing powers, should be sufficient. To drive higher performance outcomes, SIRA could share on a confidential basis with each insurer where they 'rank' in comparison to their competitors and provide insurers with an opportunity to discuss their performance results.

Establishment of a support and advocacy service

The ICA welcomes the establishment of a service to help claimants navigate the defined benefit process and provide administrative assistance. How this service is delivered warrants much further consideration. We would be happy to meet with SIRA to discuss this further.

If an entirely new organisation is established it will create another layer of bureaucracy and increase costs for NSW motorists. It is also unclear what ethical and professional standards should be met and who would ultimately be responsible for ensuring compliance. However, if this service was delivered through SIRA, there will be challenges with regards to maintaining independence and minimising conflicts of interest.

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Dispute resolution

The ICA supports the implementation of a streamlined and non-adversarial dispute resolution model for defined benefit matters, with changes to the existing dispute resolution service for common law damages.

We understand that the implementation of a new dispute resolution model will need to be worked through in much further detail, with revised guidelines, protocols and processes established. Insurers and SIRA will need to work together closely on these matters.

Care will be needed to ensure that an adversarial common law based approach is not replaced with a model that imposes a new set of administrative issues with a different set of challenges and unintended consequences. Ideally, the new dispute resolution process would strike an appropriate balance between simplicity and robustness. Whilst it is anticipated that the vast majority of claims will not require dispute resolution, for those that will, simplicity should provide a process that is easily navigated and understood by the claimant. Robustness will ensure unmeritorious claims can be challenged and not encouraged due to the lack of scrutiny in the process.

As a starting point, we have outlined below some general principles that should be considered under each tier of the dispute resolution model.

<u>Tier 1 - Internal insurer review</u>

It is important that the dispute resolution process deals only with ‘disputes’ - a disagreement about the acceptance of, or benefits available following, a claim; and not with a ‘complaint’ – a consumer being dissatisfied with the way they were treated or an insurer’s behaviour.

To keep the process sustainable and manageable the types of disputes eligible for resolution must also be sensibly defined. The disputes listed in the appendix to the Discussion Paper provide a useful starting point.

We agree that the first stage of the process should provide insurers with the opportunity to resolve the dispute themselves. An independent team within the insurer should be responsible for this stage of the process. They should be staffed with people with the appropriate experience, knowledge and authority to deal with the dispute. This gives insurers the opportunity to work directly with their customers and, to the best of their ability, attempt to resolve the matter. Whilst it is acknowledged that some claimants may require the assistance of an advocacy service, where appropriate, claimants should be encouraged to work directly with their insurer.

Whilst SIRA should provide guidelines and service standards, insurers should be given operational flexibility to deliver the internal review according to their business models. SIRA should also hold meetings with insurers’ internal review teams. This should achieve a level of consistency and quality assurance across insurers. It may also help give claimants confidence that their complaints are being considered in-line with SIRA’s standards and training.

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Tier 2 – Alternative to court dispute resolution

An external review body could subsume the functions currently undertaken by CARS and MAS. We consider that there may be advantages to having a single body that is able to determine most disputes with limited exceptions. The benefits include; simplicity, ease of customer journey and reducing the time it takes to resolve separate disputes.

Disputes that fall within the jurisdiction of this single body could include all defined benefit disputes, common law quantum disputes, common law contributory negligence disputes and approval for commutation. SIRA should also consider giving this body the ability to resolve simple and non-complex 151Z disputes.

Under this arrangement an effective triage system is paramount, and will be key to keeping the process simple yet robust. Based on factors such as complexity, suspicion of fraud or monetary value, the triage system should allocate disputes to the most appropriate form of dispute resolution.

In this regard this second tier would operate similar to a multi-door court house approach, where a proportional and suitable dispute resolution process is adopted according to the nature of the dispute.

Types of resolution could be:
- A paper based/administrative process
- Conciliation
- Arbitration, or
- Mediation

For example, a paper based/administrative process could be used for simple treatment/reimbursement disputes and weekly payment disputes. Whereas complex disputes concerning liability could be allocated to mediation as an alternative or prerequisite to court proceedings.

We also recommend that the second tier contains the following features:

- Decisions made should be binding on both parties;
- There should be mandatory disclosure of all documents and evidence throughout the claim (limited exception for fraud);
- The dispute must have gone through an insurer's internal review. The triage process should automatically refer disputes back to the relevant insurer if this has not taken place;
- Mainly full-time assessors, with suitable subject matter expertise whose decisions are peer reviewed on a recurring basis to ensure consistency and objectivity;
- Decisions published; and
- To keep dispute resolution cost effective there should only be a limited number of circumstances where legal representation is allowed for defined benefit disputes. These should be tightly prescribed and permitted only when value will clearly be added.

We do not agree with the statement on page 12 of the Discussion Paper that if a dispute progresses to the second tier, the onus for establishing the decision was correct should rest

with the insurer. We believe the onus should remain the civil onus which is customary practice and ensures the scheme remains robust.

With regards to medical disputes, SIRA should consider the types of disputes that may not necessarily require a medical practitioner to resolve. For those that do require a medical practitioner, the system should encourage claimants and insurers to use a single medical expert through the necessary parts of the claim. There is an innovation opportunity to use a process similar to the UK's MedCo portal, where a suitable medical expert can be chosen from an established panel without the insurer making any recommendation.

If the insurer and claimant have used a single medical expert, then that expert will be the main source of information. The objective is to eliminate those costly situations where numerous medical reports are provided and accordingly there will be restrictions on the number of reports that may be obtained by each party.

Tier 3 – A right of appeal to the courts

The second tier should provide a fair and robust dispute mechanism without allowing dissatisfied claimants the unfettered right to take their case to court. Nevertheless, there will be complex cases (for example on liability, fraud, contributory negligence) or novel situations that are best resolved in court. The dispute resolution body may refer a matter to court of its own volition. If a party wishes to take a matter to court it will need the agreement of the dispute resolution body and some form of mediation or arbitration should take place before this is permitted.

Alternative pathway for suspected fraud

One of the Government's objectives for scheme reform is to reduce the instances of unmeritorious and fraudulent claims. Whilst a reformed scheme will assist with this, fraud can still exist in defined benefits schemes and must be actively managed.

Exceptions to the insurer requirements should be available if the insurer suspects fraud and has initiated appropriate fraud detection action. For example, mandatory disclosure of documents will have exceptions.

System-wide oversight

While SIRA should have no role in individual claim decisions, we consider that it should play a vital overall role in managing the efficiency, effectiveness, timeliness and sustainability of the dispute resolution process. This should involve:

- The ability to oversee the internal dispute resolution process at each insurer on a 'whole of insurer' basis;
- Establishing KPIs and performance expectations for various aspects of the second tier
- process;
- Regular review of the second tier against performance expectations and other inputs; and
- Regulatory authority to make changes to keep the key metrics for the scheme in line with expectations.

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Use of data and opportunities for innovation

There is a great deal of data (carefully de-identified) that can assist in managing the dispute resolution process. Innovative collection and use of data is one of the tools available to SIRA in managing the contribution of the dispute resolution system to overall scheme efficiency, effectiveness and timeliness.

A single dispute resolution body is ideally placed to maximise these opportunities. Examples include:

- Collection, storage and sharing of information
- Communications, including electronic, telephonic and video-link
- Scheduling, including the use of portals to engage experts and obtain reports.

We look forward to working with the NSW Government and SIRA on the new claims handling and dispute resolution processes under a reformed CTP scheme. If you have any questions in relation to this submission please do not hesitate to contact Tola Ogudipe, Senior Policy Advisor, Consumer Directorate on [redacted] or [redacted]

Yours sincerely

[redacted]

Robert Whelan
Executive Director and CEO