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

IAG welcomes the opportunity to provide a submission to the State Insurance Regulatory Authority (SIRA) in response to the '*Insurer claims handling and dispute resolution in compulsory third party (CTP) motor accident insurance*' Discussion Paper (the Discussion Paper).

Insurer claims handling and dispute resolution are key factors in the success of any personal injury scheme. IAG is committed to working with the Government and other stakeholders to ensure the delivery of a fairer and more sustainable CTP scheme for NSW.

### **Question 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?**

IAG recognises that the introduction of defined benefits to the NSW CTP scheme will require significant cultural change for all CTP stakeholders. These stakeholders include not only insurers but health care providers, legal practitioners and more broadly, all NSW residents. At their heart, the changes proposed for the NSW CTP scheme require stakeholders to shift their expectations away from the provision/attainment of lump sum compensation for loss, to an expectation of receiving timely support to assist return to health and social and economic participation. IAG believes that a broad education piece from SIRA around this change will be essential to contribute to culture change.

From an insurer perspective, one of the key issues for moving to a defined benefits model is that claims management staff will need additional training to learn how to effectively support and empower

customers receiving defined benefits. Claims managers will need to play a more active role in educating stakeholders about the positive benefits work has on health and be proactively engaged with customers, employers and treating healthcare professionals to develop injury management and/or return to work/stay at work plans.

While development of injury management plans is undertaken by claims managers working within the NSW Workers Compensation scheme, claims managers within the CTP scheme are likely to have some challenges in developing similar plans. This is because there is no mandate for employers of people who have been injured in a motor vehicle accident, to support an injured person's return to work. CTP claims managers will need to be able to persuade injured people and their employers of the benefits of early, appropriate return to work. This claims management approach will be time intensive and will impact on claims management workloads. Although these are significant challenges, IAG is committed to working with the Government to implement change and strongly supports the scheme prioritising return to health and activity for injured people.

A further issue to consider in transitioning to a defined benefits scheme design is the interplay with current stakeholder fee for service payment models. These models currently support quantity of service provision over quality. IAG believes that there may be potential opportunities to offer incentives within the defined benefits design for reimbursement for activities that promote timely return to work and activity. For example, reimbursement of education sessions which focus on the health benefits of good work.

## **Question 2: What do you believe are the key considerations in establishing the support and advocacy service?**

The establishment of a support and advocacy service as part of the CTP scheme is welcomed by IAG. An effective and independent service should reduce disputes, reduce the need for legal representation and overall, contribute to a fairer, more affordable scheme.

IAG recommends that SIRA consider the following in establishing the support and advocacy service:

- **Focus on empowering the injured person** – To improve health outcomes and reduce the likelihood of this service being overused, this service should aim to provide support whilst empowering the injured person to take an active role in managing their claim and returning to pre injury function.
- **Meeting the needs of injured people with a culturally and linguistically diverse (CALD) background** – In IAG's experience, a high proportion of injured people from CALD

backgrounds seek legal representation due to language and other cultural barriers. This service could provide an alternative that is more cost effective for the scheme.

- **Appropriate training and skill level of staff** – A successful support and advocacy service must ensure staff have the appropriate level of skill to clarify issues, mediate any potential disputes and to identify when the injured person is in need of services or assistance beyond what the service can offer.
- **Clearly defined roles and responsibilities** – The boundaries of support and advocacy services can easily become blurred. Caution must be taken to ensure all parties understand the boundaries of the service.

### **Question 3: Which support and advocacy service option do you think would deliver the best outcomes for claimants and why?**

IAG supports Option 1, a SIRA delivered or managed service. We believe establishing this service as part of SIRA would be the best option for providing advocacy without adding significant costs and complexity to the scheme.

However, SIRA must ensure this service remains independent and fair to all parties. Accordingly, IAG recommends that mediation be a priority for this service. An advocate should seek to clarify issues with all parties prior to assisting the injured person to lodge a dispute. This approach would limit unnecessary disputes, resulting in better and more timely outcomes for the injured person.

IAG also recommends that SIRA establish a mechanism for receiving feedback in relation to the support and advocacy service. This would allow all stakeholders to report any friction points as they arise and for the service to address concerns in a timely manner.

### **Question 4: What do you believe should be the powers of the Claimant Advocate?**

The Claimant Advocate requires the authority to acquire information from all parties verbally, for example, by teleconference with all parties. We also submit that the Advocate would require the power to obtain documents necessary to quickly identify issues in dispute and mediate a positive and timely outcome for both parties. This should not translate to an unfettered power to obtain voluminous medical records or entire claim files as this would be contrary to the objective of the service to be efficient, cost effective and timely. Further, the role of the Claimant Advocate should be clearly distinguishable from the role of SIRA Dispute Resolution Service assessors.

**Question 5: What involvement should SIRA have in the lodgement and management of claims? Should there be early intervention or outreach for newly injured people?**

IAG has consistently endorsed the development of an online claims lodgement portal, similar to that used in Western Australia. An online portal, hosted by SIRA, would provide a simple and easy mechanism for an injured person to make a CTP claim. Claims could then be automatically forwarded to the insurer in real time, allowing insurers to make early contact and provide early intervention as required. IAG acknowledges that development of such a portal would require significant IT investment as the portal will need to interact with the differing systems used by CTP insurers.

IAG also advocates SIRA's role in working with insurers to set high claims handling standards (through the Claims Handling Guidelines) and for SIRA's monitoring of these standards to ensure a consistent claims management approach for all injured people. This would be supported by the development of industry-wide training materials which clearly define the expectations of insurers.

Additional powers for SIRA to intervene directly with claims or to direct insurers on how to manage a claim, are not needed and may compromise the efficiency of the scheme. SIRA already has substantial powers of intervention, including the ability to issue penalties for non-compliance with the Claims Handling Guidelines. We also submit that the provision of additional powers to SIRA would not be consistent with the principle of creating a claims management culture which promotes transparency, trust and respect.

IAG supports SIRA in continuing its important role of commissioning and disseminating research on best practice approaches to injury prevention, injury management and optimising recovery following injury in a motor vehicle accident. SIRA, as the scheme regulator, is also well placed to collaborate and share learnings with other personal injury compensation schemes. This collaboration will ultimately result in benefits not only for injured people but more broadly, for Australia.

**Question 6: What are your views on introducing term licences, rather than perpetual licences?**

IAG supports the retention of perpetual licences for CTP insurers. The introduction of term licences would be administratively burdensome for insurers and SIRA. We consider that the current regulatory powers of SIRA, in addition to the planned development of dashboards and data linkages will allow SIRA to monitor insurer performance and address any performance issues with the relevant insurer, as they arise.

In particular, we note that pursuant to the *Motor Accidents Compensation Act 1999* (the Act), SIRA has the power to:

- impose a civil penalty of up to \$50,000 on the insurer;<sup>1</sup>
- issue a letter of censure to the insurer;<sup>2</sup> or
- suspend an insurer's licence.<sup>3</sup>

We consider that these powers are sufficient to enable SIRA to deal with any significant under-performance or breach of licence conditions by insurers and that additional powers are not necessary.

We also submit that it may be somewhat flawed to link licence conditions only to claims handling performance. This approach does not take into account the entire value chain of insurance which insurers are licenced to undertake, including underwriting and distribution.

Additionally, the long tail nature of CTP makes term licences inappropriate for insurers as they would significantly inhibit insurers' ability to undertake long term planning.

We also consider that the introduction of term licences would reduce opportunities for increased competition within the scheme. The capital requirements of insurers within the NSW CTP scheme are significant. The Australian Prudential Regulation Authority (APRA) requires the industry to hold three billion dollars<sup>4</sup> of capital for CTP in NSW. This requirement, coupled with the introduction of term licences may deter insurers from participating in the NSW CTP market and deter additional insurers from entering the market.

It is noted in the Discussion Paper<sup>5</sup> that some stakeholders have suggested that SIRA has been too lenient with insurers in the past. If this is an issue which the Government seeks to address, we do not consider that a transition to term licences is necessary for the resolution of this issue. We submit that this issue has not arisen as a result of a lack of regulatory powers.

**Question 7: What are your views on the dispute resolution model, particularly the type of disputes dealt with at each tier?**

IAG supports the dispute resolution model proposed in the Discussion Paper. In addition to the three tiers identified, we also note the importance of early internal dispute resolution. This process facilitates the identification of complaints, as distinct from disputes.

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<sup>1</sup> Section 166(1)(a)

<sup>2</sup> Section 166(1)(b)

<sup>3</sup> Section 165

<sup>4</sup> APRA Prudential Standard 110 – section 20

<sup>5</sup> p11

A complaint is defined as any expression of dissatisfaction with a product or service offered or provided, including issues of claims handling. Complaints should be managed in accordance with the insurer's internal complaints handling process.

A dispute is a disagreement about the acceptance of or benefits following a claim.

When a dispute is initiated by an injured person, the relevant claims manager should, in conjunction with their manager and/or a technical expert, review the dispute to determine whether it can be resolved in the first instance.

If the claims manager is unable to resolve the dispute with the injured person in the first instance, then the dispute would proceed to Tier 1 and would be referred for independent internal review.

To ensure the efficacy of the dispute resolution model and the attainment of scheme objectives, particularly timeliness and affordability, we also suggest that:

- SIRA use its regulatory power, under section 56 of the Act to set provider fees within the scheme. Fees for allied health services as well as investigations such as MRIs are a significant source of friction within the scheme. Introducing set fees would remove this friction and control medical expenses;
- Section 183 of the Act be amended to prescribe fixed levels of contributory negligence for certain offences;
- Section 61 of the Act be amended so that both the Certificate and the accompanying Statement of Reasons from a medical assessor are binding. Currently, a claims assessor and the parties to a claim cannot rely upon the Statement of Reasons to resolve other disputes;
- Section 95(2) of the Act be amended to make assessments of claims assessors binding on both parties. The practical consequence of this amendment is that insurers will no longer have the right to appeal any issue of liability and the injured person is bound by the determination and assessment of damages; and
- A statutory limitation period for the assessment of common law claims be introduced.

Assuming the amendment of section 95(2) as recommended above, we submit that Tier 3 (court) should only be available where an assessor (or panel of assessors) has made an error and one of the parties seeks an administrative review of the determination.

**Question 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?**

IAG does not support the establishment of an independent tribunal. We submit that this is unnecessary and would add cost and complexity to the NSW CTP scheme.

It is noted that Option 2 outlined in the Discussion Paper, allows for legal advice for merit disputes at Tier 2 and legal representation for liability disputes at Tier 2, as well as appeal rights. We consider that the legal interests and rights of all parties are sufficiently protected and the introduction of an independent tribunal, in addition to the SIRA Dispute Resolution Service and court would be extraneous.

**Question 9: Given each dispute resolution option has advantages and disadvantages, what do you see as the best option in a hybrid scheme and why?**

IAG considers Option 2 to be the best option in a hybrid scheme. Having a single external dispute resolution service for all types of disputes means that injured people have the certainty of knowing where to go if they have dispute.

This model also allows for effective case management and for injured people to receive assistance and guidance in resolving disputes. A single external dispute resolution service also removes complexity in relation to jurisdiction for particular disputes.

IAG also supports the appointment of appropriately qualified and trained assessors to SIRA staff. We agree that this counters perceptions of conflicts of interest and lack of independence. We also submit that appointing assessors to SIRA staff would contribute to improved timeliness in the resolution of disputes. Currently, most Claims Assessment and Resolution Service (CARS) assessors have their own private practices or are members of the bar. This dual role hinders their ability to hear and resolve disputes within a short timeframe.

**Question 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?**

We consider that all assessors should be given the power to compel the attendance of parties to a dispute at assessment conferences. Currently, section 102 of the Act only confers this power on the Principal Claims Assessor. We recommend the expansion of section 102 to include all assessors.

We also submit that the Act should be amended to define a concept of 'fundamental dishonesty', which would have a lower evidentiary burden than fraud, and that SIRA Dispute Resolution Service assessors be given power to make findings of any injured person, medical provider or legal practitioner which may result in a claim being dismissed and/or legal costs orders being made against the offending party. Assessors should also be provided with discretionary power to refer any person found to have engaged in 'fundamental dishonesty' to police or the relevant independent body (for example, the NSW Health Care Complaints Commission or Office of the Legal Services Commissioner).

**Question 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?**

IAG prioritises good claims management and customer experience, and incentivises and rewards good behaviour for all our claims staff. The proposed scheme reform enables a shift to more desirable claims management behaviours as claims managers will shift from the adversarial process of negotiating compensation to assisting the injured person return to function. Similarly, the revised Claims Handling Guidelines clearly outline the behaviours claims managers are expected to demonstrate.

IAG would welcome the opportunity to work with SIRA to develop further positive incentives, including:

- Publication of key performance indicators (KPIs) including customer assessment of service standards;
- Based on KPIs, insurers are given a ranking or star rating and receive public acknowledgement for this rating;
- Supporting research on good claims management practices including claims management models, measuring/incentivising good health outcomes and treatment pathways for injured people with psychosocial risk factors; and
- Creation of a specialist CTP Claims Manager category in the Personal Injury Education Foundation (PIEF) Awards with encouragement to insurers to nominate exemplary staff.

IAG is agreeable to working with the Government to ensure that information and data that will inform customers of each insurer's performance and assist their decision about which insurer to purchase their Green Slip from, is made available and easily accessible for consumers. Provision of this information will provide an incentive for insurers to aim for continuous improvement in the way they support injured people to achieve recovery in the CTP scheme, which will be critical for the success of the new scheme.



Transparency around insurer performance would also assist in any future scheme review. Such information should include operational performance elements such as customer assessment of service standards.

In circumstances where insurers KPIs were to be published, IAG would welcome the opportunity to collaborate with SIRA to set the performance indicators for insurers. The Discussion Paper notes that as part of improving transparency, mandatory reporting may include claims handling performance measures such as claims denied.<sup>6</sup> We suggest that this is not the most appropriate measure to be published. For example, in a scheme where unmeritorious claims are at unprecedented levels, it may be appropriate for insurers to deny a higher number of claims as part of an ongoing strategy to investigate and defend against unscrupulous behaviour and unmeritorious claims. A measure that relates to the health outcomes of injured people would be preferable.

IAG notes that it is also important that other key stakeholders within the scheme are incentivised to exhibit good behaviour. This may include implementing an accreditation or qualification process for service providers or legal practitioners to work within the scheme and/or the implementation of a code of conduct.

Whilst not positive incentives, IAG considers there are opportunities for SIRA to provide further education to ensure ongoing high levels of claim handling and overall scheme performance. Opportunities include:

- The creation of case studies which demonstrate good case management. These could be shared across the industry;
- Claims manager education sessions, forums and webinars, where education on latest practices and research can be shared amongst claims managers; and
- Flexible, easily accessible education for General Practitioners relating to the importance of a safe return to work for injured people as well as general scheme information and requirements.

IAG notes that there will be a significant period of run-off of current scheme claims following the commencement of scheme reforms. As a result, insurers will be managing two claims models simultaneously for some time. Accordingly, we would welcome the opportunity to work with SIRA to apply and as necessary, modify any positive incentives and educational initiatives to ensure ongoing scheme performance under both claims models during the run-off period.

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<sup>6</sup> p15

## Question 12: Any other item of relevance or importance requiring comment?

### **Independent medico-legal providers as single experts**

IAG supports the accreditation of all medico-legal providers by SIRA as well as the practice of insurers and claimants using a single medical expert. This process would reduce costs within the scheme by limiting the number of medical reports obtained by the parties to a dispute and would also facilitate earlier settlement of claims.

A similar process exists in the United Kingdom and is facilitated through the MedCo<sup>7</sup> portal. MedCo is an independent panel which randomly allocates a doctor to prepare a medical report. MedCo was established to facilitate operational changes<sup>8</sup> following a number of reviews of the UK personal injury motor accident scheme, to curtail the trend of fraud occurring in minor motor vehicle accidents.

The UK process requires that all medical reports for soft tissue injury claims be issued through MedCo. To be eligible for MedCo, a doctor must have undertaken the accreditation scheme for medical professionals. The accreditation scheme controls professional standards and attempts to prevent doctors from writing favourable opinions for the company or individual who has requested the report.

A panel and portal similar to MedCo could be utilised in NSW to allocate single experts from a panel accredited by SIRA. This would also allow SIRA to exercise control over which providers may operate within the CTP scheme and would eradicate ongoing relationships between lawyers, insurers and medico-legal providers.

### **Transparency and disclosure of documents**

IAG recommends the implementation of an automatic disclosure regime to promote transparency and to facilitate a collaborative approach to claims resolution between parties.

Such regimes currently operate in Queensland and the ACT. The regime works successfully in Queensland, however, its success has been somewhat compromised in the ACT. In *Leanne Best v Matthew Bardsley & Anor*<sup>9</sup>, the ACT Supreme Court determined that the requirement to provide specified documents by way of disclosure did not extend to those protected by legal professional privilege. As a consequence of this determination, some legal practitioners redact large segments of material (and in some instances, entire reports), which negates the process of open disclosure.

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<sup>7</sup> [www.medco.org.uk](http://www.medco.org.uk)

<sup>8</sup> Ministry of Justice – *Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents*

<sup>9</sup> [2012] ACTSC 144

If open disclosure provisions were to be enacted in NSW, the legislation must make clear whether it is the intent of the Government to abrogate legal professional privilege, and if so, to what extent.

**Publication of assessor awards**

IAG recommends that the decisions and awards of SIRA Dispute Resolution Service assessors be published. We submit that publishing decisions would guide better, more consistent decision-making by assessors and facilitate more predictability within the scheme. The collection of decisions would also provide further insights into the performance of the scheme against stated objectives.

Additionally, this practice would serve as a deterrent for unmeritorious claim practices and would reduce friction points between insurers and claimants by influencing their respective approaches to settlement. This, in turn, would improve the timeliness of claim resolution and over time, reduce the disputes which require assessment.

IAG would be pleased to share our knowledge and expertise and discuss aspects of this submission with SIRA in greater detail. Should you wish to discuss this submission, please contact:

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We look forward to participating in the next phase of this review.

Yours sincerely

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