

SIRA

Significant Matter Notification Requirements

March 2024

Contents

1.	Introduction	3
2.	Purpose.....	3
3.	Scheme Legislation	3
4.	Statutory power.....	4
5.	Commencement.....	4
6.	Significant matter definition	5
6.1.	Legal matter	5
6.2.	Privacy or information breach	5
6.3.	Regulated entities obligation breach	5
6.4.	Other	6
6.5.	Considerations.....	6
7.	Investigations.....	6
8.	Notification and information requirements	7
9.	Action taken by the Authority	7
10.	Failure to report.....	8
11.	Further information.....	8

1. Introduction

The State Insurance Regulatory Authority (the Authority) is the independent regulator of the workers compensation, compulsory third party (CTP) and home building compensation insurance schemes. These schemes provide an important social safety net for the people of NSW who may one day experience injury or loss.

To fulfil its objectives and functions under the *State Insurance and Care Governance Act 2015* and relevant scheme legislation, the Authority requires timely and transparent notification of significant matters from regulated entities.

2. Purpose

This document establishes and prescribes the obligations for regulated entities to notify the Authority of significant matters and provides clarity on the process to report significant matters. The notification requirements will enable the Authority to monitor and where necessary respond to, from an early stage, significant matters related to policies of insurance, claims and other related matters under the scheme legislation that may have already, or have the potential to:

- cause harm to scheme participants,
- impact the operation and/or reputation of the schemes,
- impact the ability for the regulated entity to comply with its legislative obligations under the relevant legislation.

The obligations outlined in this document are in addition to any statutory notification requirements in the relevant scheme legislation.

It is the regulated entities responsibility to ensure systems are in place to ensure compliance to notification requirements both under this document and the relevant scheme legislation.

3. Scheme Legislation

The relevant scheme legislation includes the following Acts and any subordinate Regulations, Guidelines or licence conditions made under them:

Scheme	Acts
Compulsory Third Party	<i>Motor Accident Injuries Act 2017</i> (2017 Act) <i>Motor Accidents Compensation Act 1999</i> (1999 Act)
Home Building	<i>Home Building Act 1989</i> (1989 Act)
Workers Compensation	<i>Workers Compensation Act 1987</i> (1987 Act) <i>Workplace Injury Management and Workers Compensation Act 1998</i> (1998 Act)

4. Statutory power

The regulated entities subject to the notification obligations detailed within this document are outlined below. The requirement for disclosure of information to the Authority in accordance with this document is made pursuant to the following statutory powers:

Scheme	Regulated entity	Statutory power
Compulsory Third Party	Licensed Insurers	Licence conditions
	Lifetime Care and Support Authority as the relevant insurer	Motor Accident Guidelines: CTP Care
Home Building	NSW Self Insurance Corporation	Licence conditions
Workers Compensation	Specialised Insurers	Licence conditions
	Self-Insurers	Licence conditions
	Nominal Insurer	Section 40C of the 1998 Act
	Treasury managed fund self-insurers	By agreement

5. Commencement

These *Significant Matter Reporting Requirements* commence from 1 March 2024. The requirements will apply until the Authority amends, revokes, or replaces them in whole or in part.

6. Significant matter definition

For the purposes of this document, a matter is a significant matter if it meets any of the criteria outlined in this section.

6.1. Legal matter

A matter is a significant matter if it arises in relation to a matter under the scheme legislation, including:

- novel or complex questions of law under the scheme legislation, including but not limited to where:
 - a cohort of scheme participants maybe significantly impacted,
 - the decision or outcome may cause future and/or ongoing procedural or operational change,
 - the decision or outcome may change how entitlements are calculated in the future or impact on past calculations,
 - proposed or adopted interpretation of provisions is not consistent with how the legislation is generally understood or was intended to operate,
 - issues raised question the validity of any aspect the legislation or guidelines,
- questions or submissions to a Court or the Personal Injury Commission (the Commission) that if accepted would lead to a substantial increase in compensation for similar future claims, or a substantial increase to the number of compensable claims, or otherwise potentially place pressure on the sustainability of the system
- a dispute about NSW state jurisdiction or a constitutional law issue
- an appeal or application for leave to appeal to the Court of Appeal or the High Court
- matters where a Court or the Commission has criticised the conduct of the regulated entity during the dispute resolution process and those criticisms form part of a published decision
- matters where a Court or the Commission has identified particular interpretative difficulties or anomalies in the legislation
- the litigated matter has attracted or is likely to attract significant media attention.

6.2. Privacy or information breach

A matter is a significant matter if it arises in the course of a regulated entities scheme related insurance business (in whole or part) and the entity:

- gives a statement to the Office of the Australian Information Commissioner (OAIC) under section 26WK of the Commonwealth *Privacy Act 1988* (Privacy Act)
- receives notice of a declaration by OAIC under section 26WQ of the Privacy Act
- receives notice of a direction by OAIC under section 26WR of the Privacy Act
- gives notice to the NSW Privacy Commissioner (NSWPC) under Part 6A of the *NSW Privacy and Personal Information Protection Act 1998* (PPIP Act)
- receives notice from the NSWPC under section 59Y of the PPIP Act
- makes a security breach notification in the event of a significant cyber incident to Cyber Security NSW in accordance with the NSW Cyber Security Policy.

6.3. Regulated entities obligation breach

A matter is a significant matter if it arises in the course of the regulated entities scheme related insurance business and involves a significant breach of the regulated entities obligations under the relevant scheme legislation.

6.4. Other

A matter is a significant matter if it arises in the course of the regulated entities scheme related insurance business and:

- involves an actual or alleged incidence of serious or systemic fraud against a scheme regulated by the Authority¹
- involves the regulated entity (or its employees or representatives) having engaged in conduct constituting gross negligence, intentionally misleading or deceptive conduct or fraud
- has potential to affect the ability of the regulated entity to carry out its obligations under the relevant scheme legislation.

6.5. Considerations

When determining whether a matter is a significant matter and must be reported to the Authority, regulated entities will have regard to:

- the number or frequency of breaches or potential breaches relative to the size of the business; and / or
- the number or frequency of similar previous breaches; and / or
- the impact, or potential impact of the breach or potential breach on the scheme or system participants of the scheme; and / or
- the extent to which the breach or likely breach indicates that the regulated entities internal controls to ensure compliance are inadequate.

Where the regulated entity is unclear on whether a matter meets the definition of a significant matter, the entity should engage with the Authority to discuss.

7. Investigations

An investigation into whether there is a significant breach or likely significant breach of a regulated entities' obligations is notifiable under these significant matter reporting requirements if the investigation continues for more than 30 days.

¹ This requirement does not apply where a fraud related Memorandum of Understanding is in effect between SIRA and the regulated entity.

8. Notification and information requirements

The regulated entity must notify the Authority of a significant matter within the following timeframes:

Significant matter	Timeframes
Legal matter	Within 5 business days of becoming aware of a significant matter.
Privacy or information breach	Within 1 business day of the statement, report or notice exchange with the relevant authority.
Regulated entities obligation breach	Within 5 business days of becoming aware of a significant matter.
Other	Within 5 business days of becoming aware of a significant matter.
Investigation	Within 10 business days of the 30-calendar day milestone from an investigation commencing.

The notification of the significant matter must be in writing and provided via the Significant Matter Reporting form.

The notification of the significant matter must, at a minimum, contain the following particulars:

- The name, role and contact details (email and phone number) of the responsible officer from the regulated entity
- Identification of the type of significant matter according to section 6 of this document
- Summary of the facts
- Date the regulated entity became aware of the significant matter
- Action taken by the regulated entity
- Recommendation or proposed actions.

In addition, for the below specific significant matters, the notification must also include:

Significant matter	Information requirements
Legal matters	• Name of claimant and claim number • Legal representatives of parties • Jurisdiction • Matter number
Privacy or information breach	• Attached any statement or notice provided to or from the relevant authority.
Regulated entities obligation breach	• Section of scheme legislation breached or suspected of breach • Extent of breach • Description as to why the possible or likely breach is significant

9. Action taken by the Authority

Once notified of a significant matter, the Authority will acknowledge the notification to the insurer within 2 business days.

The Authority will review the matter notified and respond in line with its regulatory framework.

10. Failure to report

Where an entity fails to report in line with the requirements established by this document, SIRA may take regulatory action in line with its statutory functions, powers and regulatory framework.

11. Further information

Should a regulated entity need any clarification of the obligations outlined in this document, they should contact the Authority.

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. 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.

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