

**Submission
No 7**

INQUIRY INTO 2025 REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME

Organisation: Australian Lawyers Alliance

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2025 Review of the Compulsory Third Party Insurance Scheme & 2025 Review of the Lifetime Care & Support Scheme

Submission to the Standing Committee of Law and
Justice

17 October 2025

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

- 1) The ALA has been participating in the Standing Committee's inquiries into the CTP and LTCS schemes for well over two decades. The ALA very much appreciates the opportunity to participate in the 2025 review.
- 2) The whole point of having CTP and LTCS schemes is to provide, as best as the premium collected allows, for the care and compensation of those affected by injury on the roads.
- 3) Unfortunately, the CTP and LTCS schemes are extraordinarily complex. They are worthy of occasional parliamentary scrutiny. The ALA views the periodic reviews undertaken by the SCLJ as an important opportunity for the consideration of possible improvements in the operation of these schemes.

Consultation and Collaboration

- 4) The ALA wishes to acknowledge that it has a close and collaborative relationship with the Motor Accident Division of SIRA. There are regular scheduled meetings where the senior staff at SIRA meet with the ALA, The Law Society and the Bar Association. Comment is invariably sought from these peak legal bodies in relation to legislative and regulatory developments. The ALA is a frequent and engaged participant in those discussions.
- 5) It is a credit to Ms. Lauren Sayer, the Acting Executive Director of the Motor Accident Division and her team that they are prepared to make themselves available for discussion around issues of concern to ALA members and their clients, the injured.
- 6) Unfortunately, the same cannot be said in relation to the LTCS Authority. The LTCS Authority does still occasionally consult with legal stakeholders over changes to Guidelines. However, there are no other regular or even occasional consultations or communications between the LTCS Authority and the ALA as a representative body.

- 7) The ALA urges that the SCLJ recommend that the LTCS Authority re-engage with peak legal bodies and conduct occasional meetings/discussions/forums with them to discuss issues of concern.

Question and Recommendations

- 8) As addressed above, the ALA views the SCLJ as having a critical role in parliamentary oversight of the CTP scheme. The SCLJ hearing process provides the opportunity for questions to be asked and recommendations to be made.
- 9) To provide maximal assistance to the SCLJ in its deliberations, these submissions take the liberty of both suggesting recommendations for the Committee to consider, as well as listing questions that the SCLJ could direct to the statutory bodies in order to garner better quality information about the operation of the CTP and LTCS schemes.

A. INCREASING THE MAXIMUM PAYABLE FOR PAIN AND SUFFERING

- 10) Under the *Motor Accident Injuries Act 2017* (“the MAI Act”), the current indexed maximum figure payable for pain and suffering is \$691,000. This is what is awarded to a quadriplegic, a paraplegic, someone with a severe traumatic brain injury and possibly, someone with multiple limb amputations or blindness.
- 11) On any proper application of tortious principles this sum is grossly inadequate. As the High Court has recently reaffirmed, the role of compensation is to put someone in the position they would have been (to the extent that the money can) had they not been tortiously injured.
- 12) No one in their right mind would volunteer to become a paraplegic or quadriplegic or giving up their mobility or eyesight in exchange for \$691,000.
- 13) It is acknowledged that increasing the amount payable for pain and suffering may have modest premium consequences, depending upon the size of the increase.

- 14) Currently the maximum payable for pain and suffering under Section 16 of the *Civil Liability Act* is \$804,000.
- 15) There is no principled reason why someone injured in a motor vehicle accident should receive less for pain and suffering when rendered paraplegic or quadriplegic than someone with identical injuries sustained through medical malpractice or defective premises.
- 16) There is no logical reason for the different maximum figures in the two legislative regimes. Indeed, the only reason the distinction exists is that when the CLA provisions were introduced in 2002, they were given a round of indexing that the motor accidents regime did not receive.
- 17) The different regimes exist purely because of an historical enactment glitch rather than as a result of any considered policy decision.

Questions:

- 18) The ALA suggests the following questions for the SCLJ to direct to SIRA:
 - a) What is the historical basis, if any, for having a different maximum figure in the motor accidents scheme as compared to under the *Civil Liability Act*? Is there any principled policy reason for it?
 - b) What would it cost in terms of additional impact on premium to increase the maximum recoverable for pain and suffering under the MAI Act to match the *Civil Liability Act*?

Recommendations:

- i. That the MAI Act be amended to provide that the maximum recoverable for pain and suffering is consistent with the maximum recoverable under the *Civil Liability Act*.

B. THE COMPLAINTS SYSTEM

- 19) The motor accidents scheme now has a bifurcated complaints mechanism. Complaints in individual matters are directed to IRO. SIRA, the regulator, only addresses systemic complaints.
- 20) There is something to be said for having a body independent from SIRA reviewing issues and making recommendations. However, where this bifurcated complaints system appears to break down is that IRO has no real power at either an individual or systemic level.
- 21) What follows is a recent response from IRO to a complaint lodged by an ALA member on behalf of an individual client. It relevantly reads:

“Please note that [IRO] cannot compel [insurer] to change their [decision]. IRO resolves complaints by putting issues to the insurer’s attention, asking for clarification and then – if required – and trying to persuade them to act on it. [sic] In many cases, insurers have taken action to respond to the complaints that have seen injured people receive benefits and/or prevented injured people in the future from being victims of mistakes we have raised. However, if an insurer declines to take a certain position, the legislation is clear that we cannot force them or sanction them. We can only act within the bounds of the legislation that empowers us. While IRO can deal with complaints about the conduct of an insurer, IRO does not have the power to adjudicate in disputed matters or order the reinstatement of compensation benefits.”

- 22) The ALA appreciates that there are formal dispute mechanisms in place. Disputes over wages, treatment and damages can be lodged with the Personal Injury Commission (PIC). At the fastest, a medical dispute might be resolved within 3 to 4 months. With the PIC’s commonly experienced delays, the dispute may take upwards of 12 months to resolve, especially if there is a review of the initial decision.

- 23) A regulator should provide a meaningful complaints system. However, any complainant reading the above response from IRO would realise just what an entirely powerless body IRO is.
- 24) It is said that IRO do report occasions of more egregious insurer conduct on to SIRA so that SIRA can then consider regulatory action. However, there is little to no public disclosure of just what IRO is reporting to SIRA, how frequently it is being reported, how vigorously it is being reported or what SIRA is doing in response.
- 25) ALA members remain frustrated by a perceived lack of muscle in the SIRA regulatory regime. It is acknowledged that there have been improvements over time. SIRA has become a more vigorous regulator. However, the view from the outside is that there is a reluctance to identify clearly and publicly the nature and extent of issues that arise within the CTP scheme in relation to insurer conduct.
- 26) SIRA does publish the outcome of its regulatory actions. It will say that correction notices have been issued to insurers. However, the correction notices themselves are all kept secret. Communications between IRO and SIRA are kept secret. There is little to no encouragement to make complaints about inappropriate insurer conduct. Anyone receiving a note from IRO such as the one extracted above, frankly acknowledging just how toothless IRO will be, is unlikely to be motivated to ever complain again.
- 27) Why on earth would anyone want to complain to a body whose sole power appears to be to say to the insurer, nothing other than *“Please think again”* and then, *“Pretty please, think again”* and finally *“Oh well, if that’s how you feel, we’re done now.”*
- 28) It is worth noting that the ALA has had no formal engagement with the Motor Accident Complaints Division of IRO since it took over responsibility for motor accident complaints. There does not appear to be any interest on the part of IRO in regular consultation with the legal profession to discuss whether issues that IRO have identified are systemic issues worthy of elevation to SIRA for regulatory action.

- 29) ALA members have had experience of seeking to raise issues with SIRA with a view to encouraging SIRA to take regulatory/enforcement action, only to be told that the complaint has to go through IRO first because the issue is based on an insurer's misconduct in a specific matter. This is despite the fact that IRO have no power to address the complaint and in circumstances where the specific issue has been resolved and the complaint is being made to ensure that the same problem does not arise again.
- 30) The ALA encourages the SCLJ to ask questions and make recommendations to ensure a more robust and productive complaints system.

Questions:

- 31) The ALA suggests the following questions for the SCLJ to direct to SIRA:
- a) Does SIRA believe that the current complaints model is working at maximum efficiency? If not, what could be done to improve it?
 - b) What is SIRA's response to the communication identified by the ALA from IRO stating its complete lack of power to take any meaningful action in relation to a complaint other than asking the insurer to reconsider? Is this a robust or even relevant complaints model? If so, how?
 - c) Are communications from IRO to SIRA identifying issues in relation to insurer conduct made public? If not, why not?
 - d) What, if anything, could SIRA do to ensure better transparency around IRO's identification of insurer conduct issues to SIRA? Should these communications be made public? Should there be some reporting on the frequency of these communications and their effectiveness? If not, then why not?
 - e) What examples can SIRA give of regulatory actions successfully pursued as a consequence of misconduct issues identified to SIRA by IRO? What was the outcome of their regulatory actions?

- f) Does SIRA currently refuse to deal with complaints in individual matters, even where those complaints may give rise to an insurer conduct issue worthy of regulatory consideration? Is the complainant forced to go through IRO first in order to try and get the subject of the complaint brought to SIRA's attention? Is this an efficient system?
- g) How many fines has SIRA issued to CTP insurers in the last two years? What is the dollar amount of the fines?

Recommendations:

- i. That SIRA and IRO separately report on whether the bifurcated complaints system is genuinely working. Is the system effective in dealing with low level complaints, such as a miscalculation of someone's weekly wages? Is the system effective in terms of broader insurer conduct concerns?
- ii. A recommendation that IRO engage in regular structured discussions with legal stakeholders to discuss mutual issues of concern.

C. THE 6 YEAR REVIEW

- 32) An independent review was conducted 3 years after the introduction of the MAI Act by Clayton Utz and Deloitte. It was an extraordinarily useful process.
- 33) Independent consultants were retained to look at the operation of the scheme. Extensive recommendations were made. A good number of those recommendations have been adopted.
- 34) There are a number of outstanding recommendations which have not been adopted. With a number of them it appears that the can has been kicked down the road with some further review of some of the outstanding recommendations to possibly occur during the 6 year review process.
- 35) The ALA has already ventilated with SIRA concerns around the timing of the 6-year review process. SIRA have not yet announced who will be conducting the 6-year review. They have not yet announced any timelines for the review.

- 36) It appears that whoever is going to conduct the review is not going to start work until 2026. On the assumption that the review runs somewhere between 4 or 6 months (as did the 3-year review), then the conclusion of the review is unlikely to be much before mid-2026.
- 37) Even if the review recommendations were promptly published (which is never guaranteed), it is difficult to see that any recommendations would have high governmental priority in the final sitting months of 2026. Given that the next State election is scheduled for March 2027, parliament is often prorogued at the end of the preceding year (i.e. Christmas 2026).
- 38) The reality is that any CTP scheme reform involving legislative change has to work to the timing of the election cycle. This is an unfortunate, but ever-present reality. All too often elections see new Ministers, even where there is no change of government. It takes time for Ministers to get across a portfolio and in particular, issues as detailed as the complexities of the motor accidents scheme.
- 39) The ALA is deeply concerned that after the success of the 3-year review, the 6-year review is running to a timetable that will make it extraordinarily difficult for any detailed recommendations to be considered and implemented inside the life of the current parliament. By the time a new parliament is up and running in mid-2027, there may be the temptation to roll further consideration of the recommendations of the 6-year review into a 9-year review!

Questions:

- 40) The ALA suggests the following questions for the SCLJ to direct to SIRA:
- a) Is SIRA proposing that the 6-year review be conducted independently of SIRA? If not, then why not?
 - b) Where is SIRA up to with processes for conduct of the 6-year review?
 - c) Have reviewers been appointed? If not, then why not?

- d) Have stakeholders been given any timeline for the provision of submissions? If not, then why not?
- e) Does SIRA have any concerns about the timeline for this review and the life of the current parliament, in terms of implementing recommendations coming out of the 6-year review?
- f) Does SIRA have a list of subjects for consideration by the 6-year review? If so, is SIRA willing to share that list now? If not, then why not?

Recommendations:

- i. That SIRA publicly report on its processes and timing for the 6 year statutory review of the motor accidents scheme.

D. JOINT MEDICO-LEGAL EXAMINATIONS

- 41) One of the most stressful aspects of pursuing a motor accident claim is the process of medical investigations. Having joint examinations reduces conflict and stress for the injured.
- 42) For many years, the ALA has been bringing to the attention of both SIRA and the SCLJ the appalling low rate of joint medico-legal examinations in NSW. The SCLJ has made previous recommendations that the issue be addressed. SIRA's modest efforts have been largely ineffective.
- 43) In Victoria (where it is acknowledged there is only one CTP insurer, the state-owned Transport Accident Commission), the joint medico-legal rate is over 70%. In NSW, SIRA has no reliable data as to rates of joint medico-legal examination, but readily acknowledges that the figure is likely under 10%. Simply pointing out that there is only one insurer in Victoria and multiple insurers in NSW is no real explanation for the difference.
- 44) SIRA has imposed guidelines that require CTP insurers to address relevant questions to treating doctors rather than resorting to medico-legal examination. This

requirement is largely ignored and does not appear to be in any way enforced by SIRA.

- 45) The reality is that CTP insurers have little to no interest in seeking opinions from treating GPs or specialists. The pervasive view amongst the CTP insurers remains that treating GPs are nothing more than advocates for their patients (claimants) who will put forward as a need whatever the patient/claimant wants. The view of treating specialists is much the same. It would appear that there are at least some parts of the CTP insurer group taking the view that treating specialists are more interested in recommended continuing treatment for their own financial gain, than in clearly identifying what a patient needs and their best path to recovery.
- 46) CTP insurers do not ask questions of treating practitioners because they are afraid that the answers they will receive will cost them money. CTP insurers view it as far more effective to go to a select group of reliable medico-legal opinion providers who will examine the claimant's injuries and needs and make the predictable recommendations that come at the lowest cost to the CTP insurer.
- 47) Recommendation 6 from the Clayton Utz report (the 3 year review) was as follows:

"The legislature consider amending the Act to provide that treatment or care recommended in writing by a treating practitioner is, subject to evidence to the contrary:

(a) Presumed to be reasonable and necessary in the circumstances; and

(b) If certified by the treating practitioner, presumed to relate to the injury resulting from the motor accident concerned.

The amendment should provide for SIRA to specify in the Guidelines circumstances in which one or both of the presumptions do not apply."

Unfortunately, SIRA did not see fit to proceed with this legislative amendment, instead leaving an ignored and unenforced Guideline provision in place. It is suspected that there was intense lobbying by the CTP insurers against any suggestion

that they have to listen to or act in accordance with the recommendations of treating medical practitioners.

- 48) The CTP insurers maintain lists of preferred medico-legal providers. The experience of ALA members is that it is almost, if not completely, impossible to persuade a CTP insurer to go "*off-piste*" and use any doctor who is not on the insurer's approved list.
- 49) It is believed that the primary criteria for being on the insurer's list involves writing reports that are not too damaging to the insurance industry interests.
- 50) Any requests for a CTP insurer to disclose its private list is entirely ignored. As to which doctors are on the insurers' private list is a closely guarded secret.
- 51) If the SCLJ were interested in just one example of the sort of doctor that ends up on a CTP insurer's panel, it is the one who recommends a "*self-guided home exercise program*" [which comes at no cost to a CTP insurer] rather than physiotherapy or other active supervised treatment. The CTP insurers gravitate towards using the doctors who cost them the least.
- 52) Whilst the Guidelines require parties to use their best endeavours to agree to joint medico-legal examinations, the reality is that insurers (and some claimant's solicitors) remain wedded to only using experts off their private lists of "*reliable*" medico-legal opinion providers.
- 53) Under the 1999 Act, insurers were required to offer a choice of three medico-legal examiners to the claimant (in the hope of agreeing one) prior to arranging a medico-legal examination. That more stringent requirement has been removed under the 2017 Act in favour of the much more ephemeral "*best endeavours*" provision. The parties are to use "*best endeavours*" to agree to joint medico-legal assessments. There is no prescription of what constitutes an endeavour, let alone a best endeavour. There is little to no regulatory enforcement.
- 54) Quite how or why the change was made between the 1999 and 2017 Acts to this less satisfactory and less meaningful obligation remains a mystery. The ALA has

repeatedly addressed the question to SIRA of who authorised and approved the change and what was their reasoning. No answer has ever been provided.

- 55) The ALA has consistently urged for a return to the previous system of mandating that insurers offer a choice of three before resorting to unilateral medico-legal opinion. SIRA has been unmoved.
- 56) It is anticipated that SIRA's response to any questions on this subject will be to advise that it is to be the subject of yet another review and possibly be incorporated into the 6-year review.
- 57) There must come a moment at which SIRA say "*enough is enough*" on the endless reviews and actually commit to set some KPIs for CTP insurers on joint medico-legal examinations. SIRA could and should be measuring the degree of engagement in joint medico-legal assessments and should start applying some disciplinary measures to CTP insurers who continue to have a woeful joint medico-legal rate. Even publishing performance data for each CTP insurer on joint examinations would be a start.
- 58) SIRA should be invited to offer some compelling reasons why NSW cannot achieve what Victoria achieve in terms of a joint medico-legal rate well in excess of 50%.
- 59) Joint medico-legal reports reduce the number of examinations that a claimant has to attend. This in turn reduces stress and anxiety for the claimant. It reduces disagreement between the parties if there is just the one opinion rather than two competing opinions at the respective extremes.
- 60) Joint medico-legal opinions reduce delays because there is not so much demand on limited medico-legal appointment times.
- 61) It is anticipated that the ALA and SIRA are in furious agreement that joint medico-legal examinations are desirable. The ALA and SIRA are also in furious agreement that there should be less reliance on any medico-legal examinations and a greater reliance on the opinion of treatment providers. The area of disagreement is the continuing failure to achieve either outcome.

Questions:

62) The ALA suggests the following questions for the SCLJ to direct to SIRA:

- a) Does SIRA believe that its guideline requirements that CTP insurers consult with treating practitioners before resorting to medico-legal examination are working? If so, what does SIRA offer as the measure of success? Is it a declining use of medico-legal examinations or something else? If the Guidelines directing reliance on treating opinions are not working, then why not? What steps is SIRA taking to address the issue?
- b) Has SIRA taken any enforcement action against any NSW CTP insurer in the last three years over a breach of guideline provisions in failing to consult treating medical practitioners before the insurer resorts to medico-legal examination? If so, what was the outcome? If not, why are these guideline provisions not being enforced?
- c) Does SIRA believe that joint medico-legal examinations are generally desirable? Why or why not?
- d) Does SIRA have any accurate data on the rate of joint CTP examinations in the NSW CTP scheme? If not, then why not? How does SIRA propose to regulate and enforce that which it does not or cannot measure?
- e) Can SIRA explain why the mandatory “choice of 3” regime was not carried forward from the 1999 Act into the 2017 Act? Whose idea was it to remove this provision? Did SIRA support the change? Has it worked?
- f) Does SIRA believe that the current provisions to use “best endeavours” to arrange joint medico-legal examinations are working? If not, then what reasons does SIRA have as to why they are not working?
- g) Has SIRA sent any benchmarks for improved rates of joint medico-legal examination in the NSW CTP scheme? If not, then why not? Why is SIRA not setting goals and taking steps to measure the achievement of those goals?

- h) What enforcement action has SIRA taken against any NSW CTP insurers for failure to use best endeavours to agree joint medico-legal examinations? If there has been no regulatory enforcement action, then why does SIRA believe insurers will change their conduct?
- i) Is SIRA aware that CTP insurers maintain their own lists of approved medico-legal opinion providers? Is SIRA aware and does SIRA agree that CTP insurers are reluctant to use doctors who are not on the approved list? What does SIRA believe is the basis for doctors being put on these lists? If SIRA was advising an injured claimant, would SIRA want to sue a choice from an insurers secret list given what is suspected to be the criteria for being on the list?

Recommendations:

- i. Rather than announcing any further reviews into medico-legal processes, SIRA instead develop and implement an actual plan to compel CTP insurers to place greater reliance upon the opinions of treating practitioners, to reduce the number of medico-legal examinations and to increase the number of joint medico-legal examinations where such examination is required.

E. PSYCHIATRIC INJURY IN THE CTP SCHEME

- 63) The evaluation of psychiatric injury is a major friction point and source of delay within the CTP scheme.
- 64) Serious injury can cause significant consequential psychiatric harm. Having a loved one seriously injured or killed or observing the horror of road trauma can also cause major psychiatric injury.
- 65) In order to recover compensation for pain and suffering, it is necessary that the psychiatric injury be assessed as exceeding 10% WPI. The vast majority of those with psychiatric injury do not clear this threshold.

- 66) As with the Workers Compensation scheme, WPI for psychiatric injury is measured using the PIRS (Psychiatric Impairment Rating Scale). This is a crude instrument, the nature of which actually generates and prolongs disputes.
- 67) To get over 10% WPI on the PIRS, it is necessary to have three Class 3 scores (moderate impairment) across six available categories:
- i) Self-care and personal hygiene.
 - ii) Travel.
 - iii) Social functioning.
 - iv) Social relations.
 - v) Concentration, persistence and pace.
 - vi) Adaptation (employability).
- 68) The reality is that very few claimants score a moderate level of impairment for personal hygiene or travel. The three Class 3 scores usually come from one of the other four categories.
- 69) A claimant who gets over 10% WPI is likely to recover upwards of \$200,000 for pain and suffering. There is thus often \$200,000 plus in damages riding on a finding as to the third Class 3 score.
- 70) Unsurprisingly, claimants and well-resourced insurers fight furiously over the third Class 3 score.
- 71) For a claimant with a psychiatric injury, their progress through the CTP scheme, where WPI is contested, all too often goes as follows:
- a) The opinion of treating mental health professionals is never accepted by a CTP insurer for an assessment of WPI. A CTP insurer rarely, if ever, concedes the WPI threshold for psychiatric injury without a medico-legal report compelling it to do so.

- b) The parties try and often fail to agree on a joint medico-legal examination.
- c) The parties each have unilateral examinations. The claimant's report comes in over 10% WPI. The CTP insurer's report usually does not. The doctors used by each side are well aware of the significance of three Class 3 scores, and who pays their bills.
- d) On occasions where the insurer's medico-legal expert puts the claimant over 10% WPI, by finding three Class 3 scores, there is often a request from the insurer for their own doctor to provide a supplementary report. The insurer will draw their own doctor's attention to a series of allegedly salient facts which the insurer will suggest warrants revision of the scoring. Unsurprisingly, all too often this results in a supplementary report, with the insurer's doctor amazingly coming up with a revised score under 10% WPI. This badgering of doctors to revise their opinions occurs across physical and psychiatric assessments and also with joint assessments.
- e) The parties being unable to agree on WPI, the matter proceeds to a PIC medical assessment.
- f) If the PIC medical assessor puts injuries over 10% WPI, then there is all too often an application for review by the insurer, arguing over the critical third Class 3 score and how it was not warranted.
- g) If a review is granted, the claimant can wait up to 12 months for the PIC review panel to determine the case.
- h) If the PIC review panel still puts the claimant over 10% WPI, the insurer might then try covert surveillance that it is hoped will generate justification for a further review, so the process at the PIC can start all over again.

- 72) It is not unknown for medical disputes over WPI on psychiatric grounds to take upwards of 3 years and multiple rounds of medico-legal and PIC assessments to determine WPI.
- 73) No doubt, the CTP insurers would justify all of the foregoing on the basis that they have an obligation under the Act to properly defend claims and deter fraud. Sometimes, the boundaries between a proper defence of the claim and adamant resistance can be difficult to distinguish.
- 74) A fundamental part of the problem is that there is no interest in listening to the opinion of treating practitioners. Further, there is little to no regulatory oversight of unduly aggressive insurer conduct in contesting psychiatric injury assessments.
- 75) Further compounding the extent of the problem, is the absence of reliable data on medical assessments at the PIC.
- 76) Fifteen years ago, the Motor Accidents Authority (SIRA's predecessor) ran the Medical Assessment Service (the PIC's predecessor). There was extensive data as to the frequency of applications for review of medical assessments and the rate at which original decisions were overturned on review.
- 77) The data could be divided between physical and psychiatric injury. There was measurement of who was bringing the reviews (claimants or insurers) and their relative success with the applications. In short, there was comprehensive data that allowed review rates and overturned rate to be measured.
- 78) As best as the ALA understands, there is no such data now being maintained by the PIC. The regulator of insurer conduct (SIRA) is hamstrung in its regulatory role in the absence of data that would help detect and analyse any problems with insurer conduct around PIC medical assessments or review rates.

Questions:

- 79) The ALA suggests the following questions for the SCLJ to direct to SIRA:

- a) Does SIRA have any concerns as to the operation of the PIRS in relation to psychiatric injury? Is it a blunt tool? Does the “*third Class 3 cliff*” encourage disputation?
- b) Does SIRA have any evidence that CTP insurers place any reliance on the opinions of treating mental health experts when it comes to assessing WPI? Are Guideline obligations in this regard widely and routinely ignored? What monitoring does SIRA perform?
- c) Does SIRA have any data as to the level of disputation around the assessment of WPI for psychiatric injury? Does the adamant resistance asserted by the ALA actually occur? If so, to what extent? What is the basis for SIRA’s response? Is it based on any detailed analysis of the performance of CTP insurers in psychiatric injury claims? Does SIRA accept that clarification can cross over in to bullying? What if anything does SIRA do to monitor such communications?
- d) Is SIRA aware of CTP insurers requiring supplementary reports from the own medico-legal opinion providers seeking ‘clarification of reports’?
- e) Does SIRA have any data available from the PIC or elsewhere as to the frequency with which insurers lodge applications for review in relation to unfavourable assessments of WPI at the PIC?
- f) Do insurers lodge more review applications than claimants? What are the respective success rates of claimants and insurers? Is the disputation level over WPI a source of delay in the resolution of psychiatric injury claims?
- g) What data does SIRA seek and receive from the PIC as to review rates for psychiatric assessments?
- h) Is SIRA hampered in its regulatory efforts of insurer conduct by the lack of data as to review rates by insurers at the PIC? If there is not data available, has SIRA

said or done anything to try and have such data made available? Is SIRA content with the level of analysis as to review rates made available by the PIC?

Recommendations:

- 80) That SIRA address processes for determination of WPI in psychiatric injury claims, including:
- i. Whether the PIRS remains an effective and relevant tool for determining WPI?
 - ii. Whether there are appropriate levels of reliance on the opinions of treating practitioners?
 - iii. Whether there is a high level of medico-legal disputation over WPI and psychiatric injury claims?
 - iv. Whether there is an unreasonably high level of reviews of PIC assessments in psychiatric injury claims?
 - v. If issues are identified, SIRA should identify steps being taken to address those issues.

F. CTP/LTCS AND EBA

- 81) Under the CTP scheme, the CTP insurer of the vehicle at fault pays treatment expenses as a statutory benefit for the first 5 years following the accident. Thereafter, payment of treatment expenses is transferred to CTP Care, part of the LTCS scheme.
- 82) It is possible for an insurer to ask CTP Care to take over funding treatment earlier with an arrangement known as EBA (Early by Agreement). This allows the claimant to settle in with what will be their long-term treatment and care funder.
- 83) The exception to the usual CTP/LTCS after 5-year arrangement occurs where the injured road user is also a worker. In that case, the workers compensation insurer pays treatment expenses until the CTP damages claim is resolved. If that occurs

inside of 5 years, funding of treatment reverts to the CTP insurer up until 5 years, at which point, the file is again shifted, this time to CTP Care.

- 84) It makes little to no sense for a claimant resolving their damages claim at 4 years post-accident to switch from the WC insurer funding treatment over to a CTP insurer, when there is a further change only twelve months away. However, there is nothing that the claimant can do in such circumstances to compel the CTP insurer and CTP Care to come to an EBA arrangement. Only a CTP insurer can request an EBA.
- 85) Any system that compels an injured person to have three separate treatment management organisations in the space of less than twelve months can fairly be described as nuts. Yet, that is the system currently in place.

Questions:

- 86) The ALA suggests the following questions for the SCLJ to direct to SIRA and the LTCS Authority:
- a) How many EBA are currently in place? Is this the appropriate number or should there be more?
 - b) What, if any, auditing is SIRA doing to ensure that insurers appropriately seek to enter into EBA arrangements?
 - c) Is the LTCS Authority readily accepting insurer requests for EBA arrangements? If not, then why not?
 - d) Why is there no capacity for a claimant in an appropriate case to request an EBA arrangement so that the claimant can settle in with their long-term treatment and care provider?
 - e) What, if any, steps has SIRA taken to ensure that claimants coming off workers compensation payments at the resolution of a CTP damages claim are not being put through three separate treatment management organisations (WC,

CTP, CTP Care), possibly in the space of less than twelve months? Does SIRA have in place any rules, guidelines or Practice Notes that compels a CTP insurer to seek an EBA arrangement in such circumstances?

- f) Is the current EBA arrangement working smoothly and well? Do SIRA or the LTCS Authority have any recommendations for how it could be made to work better? Does SIRA need to put more regulatory muscle behind the appropriate use of EBAs?

G. MEMBERSHIP IN THE LTCS SCHEME

- 87) Section 11A of the *Motor Accidents (Lifetime Care and Support) Act 2006* provides that the Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person “*while the person is a participant in the scheme*”.
- 88) The reality is that the Authority breaches this statutory provision every day of the week in paying the treatment expenses of people who are not member of the scheme.
- 89) The ALA supports this approach.
- 90) The reality is that it takes several weeks for paperwork to be processed to admit someone as an interim member into the LTCS scheme.
 - a) No one is a member of the LTCS scheme as they lie broken and bleeding by the side of the road and are collected by an ambulance or put into a Careflight helicopter. However, thankfully, the LTCS Authority pays the ambulance bills.
 - b) No one is a member of the LTCS scheme on their first night in hospital. However, thankfully, the LTCS Authority usually pays the hospital bills.
 - c) No one is a member of the LTCS scheme as they undergo emergency surgery within hours of the accident. However, the LTCS Authority usually pays the bills for this surgical treatment.

- 91) In short, the LTCS Authority ignores the clearly worded statutory provisions in 99.9% of cases and pays for initial treatment before the injured person becomes a member of the LTCS scheme.
- 92) There are no provisions within the LTCS legislation or associated Regulations or Guidelines that provide for the backdating of membership to the moment of injury
- 93) The reason this issue is being ventilated is that there is the odd case where the LTCS Authority refuses to cover initial treatment expenses for somebody who has become an LTCS scheme member. Most recently, this has arisen where initial treatment expenses were met under the Comcare scheme. When the employer sought to recover expenses paid from the accident victim, the Authority refused to cover the initial expenses, relying on the statutory provision that it otherwise never seeks to enforce or apply. This issue also arises when the injured person has no access to Medicare (e.g. foreign residents).
- 94) The difficulty is that there are seemingly no Guidelines or Practice Notes or policies that determine when the LTCS Authority will cover expenses for someone who is not yet a scheme member and when they will not. This can result in uncertainty and inconsistent decision making.
- 95) A public authority, spending public funds, ought to have a consistent policy and, arguably, ought not to be in breach of its legislative obligations on a daily basis. The obvious solution is to backdate the LTCS' obligation to pay relevant treatment expenses to the moment of the accident for someone who subsequently becomes an interim member. This would remove the uncertainty.

Questions:

- 96) The ALA suggests the following questions for the SCLJ to direct to the LTCS Authority:
 - a) Does the Authority regularly pay initial treatment expenses for persons who, at the time the expenses were incurred, were not yet a member of the LTCS scheme? Is this technically in breach of the legislation?

- b) Is it the universal policy of the LTCS Authority that it will meet initial treatment expenses for persons who ultimately become a member of the LTCS scheme? Or is there some inconsistency in the application of policy? If so, what is the basis for the inconsistency?
- c) If the LTCS Authority is paying some pre-scheme membership treatment expenses and not others, where does the LTCS Authority set out the basis for its decision making? Which document encapsulates the LTCS Authority approach? If there is not a document, then why is there no document setting out the policy?
- d) Does the relevant legislation require amendment to compel the LTCS Authority to pay treatment expenses backdated to the moment of the accident to avoid confusion and inconsistent decision making? If not, then why not?

Recommendations:

- i. That the LTCS Legislation be amended to backdate eligibility to the moment of accident for someone who subsequently becomes an interim member of the LTCS Scheme.

H. MINOR INJURY AND ADJUSTMENT DISORDERS

- 97) The ALA addressed this subject in detail in its 2020 submissions to the SCLJ. It was again addressed in the 2022 submissions to the SCLJ. Between those two sets of submissions, the Clayton Utz report recommended that the diagnosis of adjustment disorder be removed from the definition of minor injury [Recommendation 34]. For reasons that have not been disclosed, SIRA has elected not to progress this recommendation. The SCLJ is invited to ask SIRA why this recommendation has not been actioned.
- 98) For the reasons previously addressed with the SCLJ, it is not appropriate to treat a protracted adjustment disorder as a minor injury. The amendments as recommended by the 3-year statutory review should be made.

I. THRESHOLD INJURIES OVER 10% WPI

99) Recommendation 36 from the Clayton Utz report was:

“The legislature consider amending the Act to provide that all injured persons may claim damages if the injuries caused by the motor accident result in a degree of permanent impairment greater than 10% WPI.”

100) This was a sensible recommendation. Someone with an undisplaced hairline fracture of a rib or a chipped tooth gets over the threshold injury barrier and is entitled to claim damages. Conversely, someone with permanent and restrictive soft tissue injuries to the cervical, thoracic and lumbar spines and both shoulders, with a WPI well in excess of 10%, would be entitled to a substantial award for pain and suffering, but does not get to make the claim, on the basis that they have nothing more than threshold injuries.

101) The ALA continues to endorse the statutory review recommendation that a person with injuries over 10% WPI, even if soft tissue injuries, be entitled to recover damages.

J. SERIOUS DRIVING OFFENCES

102) Recommendation 43 from the Clayton Utz report was:

“The legislature considers amending Section 3.37 of the Act to provide that statutory benefits are not payable to an injured person after the person has been charged with or convicted of a serious driving offence that caused or contributed to the motor accident.”

103) The issue here is that someone with a BAC of 0.512 is excluded from recovering statutory benefits, even where their low range PCA in no way contributed to the circumstances of accident and their injury.

- 104) Take the hypothetical examine of a motorcyclist who thought he or she had slept off the previous night's alcohol consumption and was heading out the following morning for breakfast. Whilst pulling up outside a café, the motorcyclist is rear-ended and knocked off their motorbike. The reckless driver runs over the motorcyclist's leg, resulting in traumatic amputation below the knee. The young motorcyclist is looking at a lifetime of prosthetic costs.
- 105) However, if the motorcyclist subsequently returns a breath analysis of 0.512, then they are barred from recovering any statutory benefits for treatment and care.
- 106) The motorcyclist will face a criminal penalty for the low range PCA. However, they are also having imposed on them a multi-million-dollar civil penalty, in terms of the loss of their treatment entitlements. This is disproportionate and wrong. It is unsurprising that Clayton Utz recommended reform. Far more difficult to understand is why SIRA is unwilling to progress the statutory review recommendation.

K. NO FAULT FUNERAL EXPENSES

- 107) The CTP scheme provides for payment of the funeral expenses of those killed in a motor accident as a no-fault statutory benefit.
- 108) However, the benefit is not genuinely no fault.
- 109) In some circumstances, the deceased's dependants can end up paying back part of the funeral expenses to the insurer concerned.
- 110) The reason the no fault funeral expenses are not genuinely 'no fault' is that the MAI Act provides that the funeral expenses are claimable in a damages claim, but then refundable to the insurer who paid the statutory benefit. It is not always the same insurer paying damages as has paid the statutory benefit.
- 111) In some Compensation to Relatives claims, there is an element of fault on the part of the deceased. The contributory negligence of the deceased is applied to the

dependants. That includes applying the contributory negligence to the recovery of the funeral expenses.

- 112) If \$15,000 has been paid as a statutory benefit for funeral expenses, then that same \$15,000 is claimed (so it can be reimbursed) in the CTR claim. If there is 50% contributory negligence, then the deceased's dependants only recover \$7,500. Nonetheless, they still have to refund the full \$15,000. All of a sudden, the no fault benefit is not so no fault.
- 113) The easiest solution is to amend the MAI Act to remove the capacity to claim or the obligation to refund funeral expenses in the CTR claim. Leave it as a pure statutory benefit. Otherwise, stop calling in a no fault benefit when it isn't related, it's a contingent no-fault benefit.

L. TEST CASE RESOURCES AND SIRA AS A NIMBLE REGULATOR

- 114) The MAI Act and its numerous complexities generates a significant number of statutory construction disputes. Two relevant issues arise for consideration by the SCLJ.
- 115) Firstly, the parties are disproportionately resourced when it comes to pursuing test cases over construction of the legislation. Few claimants have the time, energy or funds to pursue test case litigation. On the other hand, CTP insurers have no limits on their resources and will pursue test cases. This can lead to imbalance in the legislation when it is only one party adequately resourced to challenge statutory construction issues.
- 116) To their credit, on occasions, CTP insurers have agreed to fund the claimant's costs of being a contradictor on test case litigation. However, there are no formal mechanisms in place to ensure that this occurs. There is certainly no funding for claimants who want to run a test case challenging a statutory construction.

- 117) The system is lopsided in its resourcing and SIRA has not taken any steps to address this imbalance. There is no insistence that CTP insurers engaged in test case litigation fund the costs of a contradictor. There is no funding made available for claimants to run test case litigation.
- 118) The second issue arising is why some of these test cases in fact need to proceed.
- 119) For example, there was recently Court of Appeal litigation in a case of *Abawi* over whether modest injury to the skin was a threshold injury. The reason the case got as far as the Court of Appeal is that there were a series of inconsistent decisions from PIC medical assessments on point.
- 120) The ALA had raised these potential inconsistencies with SIRA some years ago. The ALA concerns were dismissed by SIRA, who boldly stated in a report that the suggested confusion was unlikely to arise. SIRA's unwillingness to listen and respond to stakeholder concerns about ambiguity in the statutory and regulatory definitions ended up spawning a good deal of unnecessary medical examinations litigation and confusion.
- 121) The ALA is concerned that the complexity and confusion in relation to what degree of injury to the skin will clear the threshold injury test has still not been definitively resolved.
- 122) Following the Court of Appeal decision in *Abawi*² the position is that injury to the skin will be more than a threshold injury if it involves damage to a nerve. However, just how much damage or just what constitutes damage to a nerve is going to be left to be decided by PIC medical assessors on a case-by-case basis.
- 123) It is anticipated that there will again be inconsistent and confusing decisions.

² *Allianz Australia Insurance Limited v Estate of the Late Summer Abawi* [2025] NSWCA 85

- 124) The ALA would be delighted if SIRA stepped up and provided clear and definitive guidelines (based on medical input) as to what is to be considered injury to a nerve. The absence of clear guidelines from SIRA will give rise to the next round of definitional litigation.
- 125) Similarly, enormous confusion has been caused over the last twelve months as a consequence of the *McTye v Ching Yu Chang* litigation.³ This issue arises because years ago the NSW Government decided to give itself the protection of the limited damages regime under the *Motor Accidents Compensation Act 1999* (NSW) (“The MAC Act”) in relation to other public transport accidents involving ferries and trains. The relevant provisions are contained in the *Transport Administration Act*, applying *Motor Accidents Compensation Act* damages to public transport accidents.
- 126) There is capacity within the *Transport Administration Act* to vary the operation of the relevant provisions by regulation.
- 127) There was no issue with the *Transport Administration Act* provisions as long as all motor accidents were being dealt with under the MAC Act. However, with the introduction of the MAI Act, there was no amendment to the *Transport Administration Act* and no new Regulations made.
- 128) That left the question as to whether an accident involving a government bus would be treated as a MAC Act accident (a public transport accident) or an MAI Act accident (a motor vehicle accident). Different damages regimes apply under the MAI and MAC Acts.
- 129) Despite the issue having gone to the Court of Appeal, there is still a good deal of uncertainty as to how the respective regulatory regimes are to be applied.
- 130) The entire issue could have been fixed by a straightforward, one paragraph regulation under the *Transport Administration Act* back in 2017. However, it has

³ *McTye v Ching Yu Chang* by his tutor Leo Alexander Birch [2025] NSWCA 3

been over six months since the *McTye v Ching Yu Chang* decision in the Court of Appeal and still no regulation has been made to address the inconsistency.

- 131) The SCLJ is invited to explore why SIRA has not been a proactive regulator seeking to fix the problem before it arose and why once the problem has been clearly established by the Court of Appeal, it is now taking so long to address.

Questions:

- 132) The ALA suggests the following questions for the SCLJ to direct to SIRA:

- a) Does SIRA agree that insurers are much better resolved to run test case litigation? If so, what, if anything, does SIRA to level the playing field?
- b) Following the introduction of the 2017 Act, when did SIRA first become aware that there might be confusion as to the damages regime to be applied to accidents caused by government buses? If the issue first came to SIRA's attention in 2017/18, why were no steps taken at that time to introduce a relevant regulation under the *Transport Administration Act*?
- c) Prior to the Court of Appeal decision in *McTye v Ching Yu Chang* what steps did SIRA take to prepare for an adverse decision that might create confusion as to the applicable damages regime following a motor accident involving a Government bus?
- d) Since the Court of Appeal decision in *McTye v Ching Yu Chang*, exactly what steps have been taken to address the confusion arising? When were these steps taken? What is the timeline for a resolution of the issue? Is there a regulation coming under the *Transport Administration Act* and if so, when is it going to come?

Recommendations

- i. That SIRA report on what steps can be taken to ensure fairness in statutory construction test case litigation.

M. TEPL: PROFITS, PREMIUMS AND PERCENTAGES

- 133) The MAI Act introduced a new excess profit clawback mechanism for the motor accidents scheme. It is called TEPL (referencing transitional excess profits and losses).
- 134) Under TEPL, extensive insurer super-profits have been clawed back across the first few years of operation of the scheme.
- 135) It is understood that SIRA is in the process of removing TEPL on the basis that the T stood for "*transitional*" and was not intended to be a permanent arrangement. It is understood that SIRA is looking to replace TEPL with a permanent super-profit clawback mechanism. The ALA supports having some form of permanent super-profit clawback mechanism and strongly recommends that the SCLJ endorse a permanent super-profit clawback mechanism.
- 136) There is an exception to the cap on insurer profits. CTP insurers are entitled to keep extra percentage points of profit for "*innovation*". It is understood that this permits CTP insurers to retain up to an additional 3% of premium written for approved innovations.
- 137) The ALA has been pressing SIRA to try and obtain more details about these innovations in order to establish whether they are genuinely innovative. It is worth bearing in mind that the total value of the CTP premium written each year well exceeds \$2 billion. A CTP insurer with 20% market share would be collecting over \$400 million in premium each year. Even 1% of that figure is \$4 million.
- 138) Permitting a CTP insurer to keep \$12 million for innovation (representing 3% innovation allowance on 20% market share) is a significant exercise in regulatory power that ought to be the subject of careful auditing and, ideally, public scrutiny.
- 139) However, the "*innovation*" process and its outcomes are a closely guarded commercial-in-confidence secret between individual insurers and SIRA.

- 140) SIRA did produce an innovation report on 30 June 2025. It runs to less than 2.5 pages and only reaches that length with some fairly large print graphs. Some percentage figures are given as to broad categories in which the applications are being made. It is asserted that the benefit-cost ratio of the proposed or implemented innovations is substantial.
- 141) However, there is not a single shred of detail about any of these innovative applications and whether they have genuinely proven to be innovative. Nor is there any indication in either percentage or dollar terms of just how much super-profit the CTP insurers have been allowed to retain as a consequence of these innovation applications.
- 142) The ALA has pressed SIRA to make a commitment to both better short term and long-term release of data around the innovation profit retention bonuses.
- 143) In the short term, there should at least be reporting on a de-identified basis as to the dollar amount of profits that the CTP insurers are collectively being permitted to retain as a consequence of purportedly innovative steps. Further, there should be a clear identification as to how long the various innovation uplifts are to run.
- 144) The ALA and the public do not know whether an innovation profit uplift is permitted to run for 1 year or 5 years or indefinitely.
- 145) In the longer term, the ALA has sought a commitment that there will be eventual full disclosure of the innovation applications, all of SIRA's documentation in relation to the applications, SIRA's determinations of whether to permit an uplift and the outcomes of monitoring and auditing as to whether the uplift was warranted.
- 146) By far the best way to ensure that the commercial-in-confidence secret dealings are genuinely in the interests of the injured is to have a regime for eventual full disclosure.
- 147) For example, if the innovation uplift for a project is to be permitted for 5 years, then once the innovation uplift lapses, SIRA should be committing to publishing the application, the documents in support of the application, the work done by SIRA on

the application and all work performed by SIRA in monitoring the outcome of the innovation.

- 148) If the insurers and SIRA know that the totality of this documentation will ultimately be published once the commercial in confidence period has lapsed, then that is at least some element of belated transparency over multi-million dollar arrangements.

Questions:

149) The ALA suggests the following questions for the SCLJ to direct to SIRA:

- a) How many successful innovation applications have been made to date?
- b) Have any insurers retained further profit on the basis of an innovation uplift? If so, in aggregate, how much extra profit has been retained to date under the 2017 Act (putting a dollar figure on the amount)?
- c) What, if any, time limits are to be imposed upon innovation uplifts? Are insurers seeking and is SIRA granting open-ended profit uplift or time limited profit uplift?
- d) Has SIRA in place any mechanisms for the ultimate disclosure of the innovation applications and SIRA's response to them? If not, why not?
- e) What is SIRA's response to the ALA suggestion that once the profit uplift ceases to operate, the totality of the documents involved be published by SIRA to allow better transparency and public scrutiny of the profit uplift application and SIRA's response to it? Why cannot such a program of disclosure be implemented?
- f) Is SIRA satisfied that a 2.5 page report (with a number of large print graphs) is adequate public accountability and transparency for the innovation profit

uplift arrangements? Is it possible for SIRA to provide any more information?
If not, then why not? If so, then why is it not being provided?

Recommendations:

- i. That SIRA consider and report on what mechanisms can be implemented to ensure the maximum possible transparency around innovation profit uplifts and in due course, full disclosure of applications, the SIRA response to them and profit uplifts recovered.

Conclusion

150) The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Standing Committee for Law and Justice on 2025 Review of the Compulsory Third Party Insurance Scheme & 2025 Review of the Lifetime Care & Support Scheme.

151) The ALA is available to provide further assistance to Standing Committee for Law & Justice on the issues raised in this submission.

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