



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ICC:JvdPsb180722

18 July 2022

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State Insurance Regulatory Authority
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By email: Bronwyn.Martin@sira.nsw.gov.au

Dear Ms Martin

Motor Accident Guidelines: CTP Care

Thank you for the opportunity to make a submission on the Motor Accident Guidelines: CTP Care (**the Guidelines**), which we understand are intended to support the delivery of the objects of the *Motor Accident Injuries Act 2017* (NSW) by ensuring a smooth transition for an injured person from the licensed insurer to CTP Care. The Law Society's Injury Compensation Committee has contributed to this submission.

Paragraph 2.6 of the Guidelines deals with the steps that an insurer must take before classifying a file as administratively 'inactive' and closing it in the system. We suggest that an additional bullet point be added under paragraph 2.6 (a) to require the insurer to make reasonable attempts to speak to the injured person to the effect of ensuring that the injured person is aware that closure of a claim pursuant to paragraph 2.7 does not affect their ongoing entitlement to claim future statutory benefits such as for treatment and care, should this be considered reasonable and necessary, and that their right to legal representation in respect of such future claims is also preserved. In addition, it would be desirable if administrative closure did not take place without the consent of the injured person.

The notification requirements set out at paragraph 2.9 of the Guidelines apply unless the claim is 'inactive' or 'active...for purposes other than treatment and care needs'. We recommend that the Guidelines define the meaning of 'inactive' for the purposes of this paragraph. As currently drafted, in our view it is unclear whether those claims closed for administrative purposes under paragraphs 2.6 and 2.7 are considered active or inactive. If those claims are considered inactive, we submit that notice under paragraph 2.9 should still be sent to these claimants. This is due to the fact that the rights of these claimants to claim for treatment and care remain very much open and the claimants should be informed of the organisation to whom any future contact be directed in the event that a need for future treatment arises.

Paragraph 3.1 of the Guidelines sets out that after the Lifetime Care and Support Authority of New South Wales (**LCSA**) is the relevant insurer, the licensed insurer must continue to provide LCSA with copies of any new data and information relevant to the payment of statutory benefits for treatment and care effectively within five business days of its receipt.

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We consider that this disclosure requirement should be confined to the data and information identified at paragraph 2.2 (a) – (j). In our view, the requirement under paragraph 3.1 is problematic as regards the receipt by the licensed insurer of surveillance or other material obtained for the purposes of a damages claim, where the insurer retains an interest in deciding the timing of the disclosure of that material to the claimant.

As regards communication with the injured person under paragraph 3.7, if the injured person is legally represented, copies of any communication should be sent to their legal representative as a matter of course, rather than by request under paragraph 3.7 (c). This is particularly important in circumstances where the injured person is a child, or in cases of a long-standing injury claim. We request that paragraph 3.7 be amended to reflect this revised approach.

Pursuant to paragraph 6.8, if LCSA is determining an injured person's request for treatment that will potentially alter the injured person's minor injury decision, LCSA must contact the licensed insurer related to the claim before the decision is made and within five business days of receiving the request. After the LCSA has contacted the licensed insurer, we consider that provision should be made for the insurer to have an adequate opportunity to respond (taking into account the need for timely treatment decisions).

Thank you for the opportunity to review the Guidelines. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at sophie.bathurst@lawsociety.com.au or (02) 9926 0285.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaat', written in a cursive style.

Joanne van der Plaat
President