

NSW CTP scheme performance report 2019-20

*Motor Accidents
Compensation Act 1999*

Issued 2021

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1. Executive Summary

The State Insurance Regulatory Authority's (SIRA) is pleased to publish the 2019-2020 performance report for the '1999' NSW Compulsory Third Party (CTP) Motor Accidents ('Green Slip') Scheme, for policies sold prior to 1 December 2017 under the *Motor Accidents Compensation Act 1999* (1999 Act).

This report covers the 1999 scheme experience from 1 July 2019 to 30 June 2020, which is the second full year that the scheme has been in run-off. From 1 December 2017 policies have been sold under the '2017 scheme', established under the *Motor Accident Injuries Act 2017* (2017 Act). SIRA regulates both schemes.

The regular lodgement of claims for people in the 1999 scheme ended on 31 May 2018, six months after the last accident. The 1999 scheme will continue to operate for many years until all claims for accidents before 1 December 2017 are finalised.

This and future 1999 scheme performance reports will focus on the settlement of outstanding claims as the number of new claims is expected to be minimal. Claims may still be accepted for policies sold under the 1999 scheme if an injured person can provide a satisfactory explanation for the delay.

All insurers that were licensed to underwrite the 1999 scheme as at 1 December 2017 transitioned to the 2017 scheme with new licences, however CIC Allianz no longer operates in the market.

SIRA cannot influence insurer profit margins under the 1999 scheme as policies are no longer being sold under that scheme.

A separate 2019-2020 performance report has been published for the 2017 CTP Scheme and is on the SIRA website at: <https://www.sira.nsw.gov.au/corporate-information/ctp-scheme-reports>. Premium information and the market share of licensed insurers is provided in that report.

Ernst & Young, the scheme actuary, has provided data for this report together with SIRA.

1.1. Key performance indicators for the 1999 scheme

- There were 8,087 open claims as at 30 June 2020. This is a 45 percent decrease since 30 June 2019.
- Finalisation rates were one percent higher than expected over the year. The average payment per claim was 18 percent lower than expected across all claim types and 15 percent lower in legally represented minor severity claims.
- The average payment on full claims finalised in 2019-2020 was \$172,047, an increase of about 20 percent compared to 2018-2019.
- Claim payments for 2019-2020 were 17 percent (or \$238 million) lower than expected. Of this, \$89 million represented the reduction in forecast payments for legally represented minor severity claims and \$90 million reduction on legally represented serious severity claims. There were also \$53 million less in payments for moderate severity claims.
- Scheme experience is that legal costs are 20 percent of the claim costs, with approximately half of this relating to contracting out legal costs.
- The number of new full claims reported between 1 July 2019 to 30 June 2020 was 221.
- There were 2,697 referrals to the Claims Assessment and Resolution Service (CARS) and 2,913 matters finalised in 2019-2020. There were 900 less referrals than 2018-2019.
- There were 3,587 referrals to the Medical Assessment Service (MAS) and 4,071 matters finalised in 2019-20. The decrease of 1,660 compared to 2018-2019 is expected due to the 1999 scheme being in run-off.

1.2. Outlook

The 1999 scheme has been in run-off since 1 December 2017, at which point, the 2017 scheme commenced selling policies.

Over the past 12 months, the number of claims in the 1999 scheme has reduced significantly as claims continue to finalise. As at 30 June 2020, there are 8,087 open claims. Out of these, based on estimated injury severity (EIS¹), 64 percent are minor severity claims, 21 percent are moderate severity claims and 12 percent are serious severity claims, and the remainder are recoveries under section 151Z of the *Workers Compensation Act 1987*² and Accident Notification Form claims.

Typically, claims for those with less severe injuries are finalised (or settled) earlier than claims for those people with more severe injuries (and more costly), this is apparent in the average settlement sizes which have increased over the past 12 months. This increasing trend is expected to continue as the scheme continues to run-off. As at 30 June 2020, 95 percent of total ultimate expected claim payments have been paid. A further four percent is expected to be paid over the next 10 years and then remainder over the next 10 to 20+ years.

SIRA continues to monitor the 1999 scheme to ensure injured people are treated fairly in accordance with the legislation and are assisted through the claims process. SIRA's support and information service, CTP Assist, will continue to answer telephone and digital inquiries from injured people and other stakeholders in both the 1999 and 2017 schemes.

2. Background

2.1. State Insurance Regulatory Authority

SIRA is a statutory body established under the *State Insurance and Care Governance Act 2015*. It regulates the CTP insurance scheme, or Green Slip insurance, for motor vehicles registered in NSW along with other mandatory state insurances.

CTP insurance covers drivers against liability for the injury or death of another person. Claims are managed by the CTP insurer of the vehicle at fault.

SIRA licenses and regulates private insurers that underwrite the 1999 and 2017 CTP schemes which provide benefits for pedestrians, passengers, cyclists, motorcyclists, drivers of other vehicles and, to a limited extent, the driver at fault. The 1999 scheme has been in run-off since 1 December 2017 when the 2017 replacement scheme commenced.

Benefits under the schemes are fully funded by premiums. The Nominal Defendant Fund ensures that people injured on NSW roads by an uninsured or unidentified vehicle can also claim scheme benefits.

A levy on CTP premiums included in each Green Slip covers initial ambulance and hospital expenses for people injured in a motor vehicle accident in NSW, regardless of fault and whether the person makes a CTP claim.

SIRA's functions are set out under section 206 of the 1999 Act, and section 10.1 of the 2017 Act.

2.2. SIRA's Dispute Resolution Service

SIRA's Dispute Resolution Service (DRS) provided an alternative to court for resolving disputes for the 1999 and 2017 CTP schemes until the Personal Injury Commission commenced on 1 March 2021.

¹ EIS is an estimate of the Abbreviated Injury Scale (see glossary for further definition).

² Section 151Z enables an employer or insurer who has paid compensation to take action to recover the compensation payments from negligent third parties.

For claims under the 1999 Act, it includes the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS). DRS services are delivered without charge to injured people. Services are funded through a levy on premiums.

SIRA's dispute resolution role, prior to the establishment of the Personal Injury Commission on 1 March 2021, was to encourage the early resolution of motor accident claims through the quick, cost effective and just resolution of disputes for people injured in motor accidents.

2.3. Overview of the 1999 scheme

The 1999 scheme was established on 5 October 1999 and is a modified common law scheme where lump sum payments are received by not-at-fault injured road users once their injuries have sufficiently recovered.

For accidents that occurred up to and including 30 November 2017, the 1999 scheme provides benefits for injured people where another driver was at fault. Children injured in an accident are also covered, regardless of who was at fault. The scheme provides up to \$5,000 worth of treatment and lost earnings, incurred within the first six months after an accident, regardless of fault. A claim for such benefits is termed an Accident Notification Form (ANF).

For those not-at-fault, medical treatment, rehabilitation, treatment and domestic assistance are paid by the insurer as they are incurred by the injured person.

The scheme also provides lump sum damages for:

- future treatment, rehabilitation and care
- past and future economic loss.

If the driver was not-at-fault, funeral expenses and compensation to relatives is available.

If injuries are assessed as exceeding 10 percent permanent impairment, lump sum damages can include an amount for non-economic loss (e.g. pain and suffering).

Lump sum settlements are negotiated by not-at-fault injured road users once they have sufficiently recovered from their injuries. These are settled by a single payment once the claim is finalised. Once paid, no further claim can be made on the insurer.

Settlement often takes three or more years after a claim, often causing financial and other stress to the injured person.

2.4. Scheme reform

Before the introduction of the 2017 scheme, NSW CTP insurance (under the '1999 scheme') was among the most expensive in Australia.

The 2017 scheme introduced on 1 December 2017 better supports people injured on our roads, has a focus on their optimal recovery and, for vehicle owners, reduces the cost of Green Slips.

SIRA now regulates two CTP insurance schemes for motor vehicles registered in NSW: the 1999 scheme and the 2017 scheme.

3. Claim numbers, payments and scheme efficiency

3.1. Background

As the 1999 scheme continues in run-off, SIRA is reporting on matters related to the remaining open claims in the scheme, for example, finalisation rates and average claim size. SIRA expects that the average claim size in each payment year will increase as more complex and higher cost claims usually settle later.

3.2. Key facts

Topic	Fact
New (ANFs and full claims)	221 injury notifications (ANFs and full claims).
Open claims	There are 8,087 open claims (including S151z and ANFs) under the 1999 Scheme at 30 June 2020. This is a 45 percent decrease compared since 30 June 2019.
Finalised claims	There were 6,908 finalised full claims in financial year 2019-2020.
Finalisation rates all claims	Finalisation rates were one percent higher than expected over the year. The average payment per claim was 18 percent lower than expected across all claim types.
Legally represented minor severity claims	The average payment for legally represented minor severity claims was lower than expected by approximately 15 percent.
Nominal defendant	35 nominal defendant claims compared to 73 claims during 2018-18.
Forecast payments	Claim payments for financial year 2019-2020 were 17 percent (or \$238 million) lower than expected. Of this amount, \$89 million represented lower than expected payments for legally represented minor severity claims and \$90 million represented the lower than expected payments for serious severity claims.
Benefits paid	The Scheme paid \$1.2 billion in benefits in financial year 2019-2020, for claims arising from accidents occurring up to 30 Nov 2017. This compares with a total of \$1.4 billion in benefits paid in financial year 2018-2019. This represents a reduction of \$194.5 million in total benefits over the 12 months as the Scheme continues to run-off.
Average payment – full claims	The average payment on full claims finalised in financial year 2019-2020 was \$172,047. This is an increase in average payment of about 20 percent compared to the financial year 2018-2019.
Outstanding estimates	As at 30 June 2020, the outstanding claims estimate is \$2.4 billion.
Legal and investigation costs per policy	Legal plaintiff and contracted out costs, as a percentage of claim size, remained consistent with previous years. Scheme experience is that legal plaintiff and contracted out costs are 20 percent of the claim costs, with approximately half of this relating to contracting out legal costs.
Superimposed inflation	At a Scheme level, superimposed inflation has been relatively benign since the 2010 payment year and generally negative. However, considering the result at a Scheme level masks the impact of changes in the claims mix that have occurred over this time. Superimposed inflation increased artificially for the 2019 and 2020 payment year. The increase is due to the changing mix of claims finalising as the Scheme develops further in the run-off phase and the higher cost claims remain outstanding.

Topic	Fact
Efficiency	The projected average efficiency for the latest five accident years to 2018, as well as over the lifetime of the Scheme, is estimated to be 44 percent. Non-legally represented claims have approximately 55 percent efficiency across all claim sizes, while efficiency for legally represented claims ranges from 34 percent (<\$100k) to 48 percent (>\$1m). Legally represented claims consistently have lower efficiency than non-legally represented claims.

4. Dispute Resolution Service

4.1. Background

As mentioned in section 2.2 of this report, SIRA provided a dispute resolution service as an alternative to court, for medical and claims disputes until Personal Injury Commission commenced on 1 March 2021.

The Medical Assessment Service (MAS) provides independent, binding, expert assessment of disputes about:

- Treatment: Whether the treatment provided, or to be provided, is reasonable and necessary in the circumstances, and whether it relates to an injury caused by the motor accident.
- Permanent impairment: Whether the degree of permanent impairment, due to the motor accident injury, is greater than 10 per cent. This threshold determines whether an injured person is entitled to claim damages for non-economic loss, such as, pain and suffering.

The Claims Assessment and Resolution Service (CARS) provides a simpler, more accessible and faster way of assessing claims than the courts for compensation and to resolve procedural disputes between an injured person and an insurer. There is no access to the courts unless a claim has either been assessed at CARS or exempted from a claims assessment (if, for example, fault is denied).

4.2. Key facts

The time to settle a claim may be affected by the time it takes for a person to sufficiently recover, enabling the parties to assess whether there may be an entitlement to damages for non-economic loss, and to resolve any disputes. It is not uncommon for claims to take three to five years to be resolved.

4.3. Medical Assessment Service

- There were 3,587 referrals to the Medical Assessment Service (MAS) and 4,071 matters finalised in 2019-20. The decrease of 1,660 compared to 2018-2019 was expected due to the 1999 scheme being in run-off.
- Permanent impairment assessment referrals decreased by 50 percent (1,664 less referrals) in 2019-20.
- There has been a decrease by 14 percent (851 referrals received in 2019-20 whereas 988 referrals were received in 2018-19) of medical reviews on MAS certificates issued.
- Permanent impairment disputes took an average 122 working days to resolve. This has remained relatively stable over the past four years.
- Treatment dispute referrals decreased from 616 in 2018-2019 to 493 in 2019-20.
- Treatment disputes took an Average 157 working days to resolve, compared to an average of 133 in 2018-19.

- Administrative challenges resulted in seven MAS decisions being set aside by the court and sent back for a new decision to be made.

4.4. Claims Assessment and Resolution Service (CARS)

There were 2,697 referrals to the Claims Assessment and Resolution Service (CARS) and 2,913 matters finalised in 2019-2020. There were 900 less referrals than 2018-2019.

CARS general assessment referrals decreased by 20 per cent (463 less referrals) in 2019-20. CARS general assessments were resolved on average within 194 working days compared to an average of 174 working days in 2018-19.

There was a 60 percent decrease in CARS referrals (710 less referrals) seeking an exemption from claims assessment. Exemption applications were resolved on average within 21 working days, the same as 2018-19.

Administrative challenges resulted in seven CARS decisions being set aside by the court and sent back for a new decision to be made.

5. Glossary

Item	Description
Abbreviated Injury Scale (AIS)	The Abbreviated Injury Scale (AIS) is an anatomical-based coding system created by the Association for the Advancement of Automotive Medicine to classify and describe the severity of injuries. It represents the threat to life associated with the injury rather than the comprehensive assessment of the severity of the injury.
Accident Notification Form (ANFs)	This form provides for the early payment of reasonable and necessary medical expenses and/or lost earnings up to 6 months after an accident and a maximum of \$5,000. ANFs can be lodged by at-fault and not-at-fault injured parties up to 28 days after the date of accident.
Accident year	The year in which the motor vehicle accident giving rise to the claim occurred. Accident years generally run from 1 July to 30 June.
Bulk billing	Under the Bulk Billing Agreement, an amount is collected as part of the Fund levy and paid to the Ministry of Health and the Ambulance Service of NSW for public hospital and public road ambulance services.
Claims	The claims in the NSW CTP 1999 scheme are split into full claims, ANFs and workers compensation recovery claims.
Compulsory third party (CTP) insurance	CTP insurance protects a person (the first party) who buys the policy from an insurer (the second party) against claims made by someone they injure (the third party).
Contracted out legal costs	Costs payable to the legal practitioner representing the claimant, by the claimant, under an agreed private arrangement i.e. those costs in excess of those specified in the SIRA Cost Regulation. These costs are not transparent to the insurer or in the data they submit to SIRA. Information on these costs are directly submitted by legal practitioners to SIRA's claims costs disclosure database.

Item	Description
Claims Cost Disclosure	Mandatory disclosures of claims cost provided by the insurer and the claimant's legal practitioner as mandated by Clause 23(2) of the <i>Motor Accidents Compensation Regulation 2015</i> . The costs breakdown includes the award or settlement amount, (party/party) costs, other legal fees including barrister fees and previous lawyers' fees.
Estimated Injury Severity (EIS)	An estimate of the highest Abbreviated Injury Scale (AIS) injury severity level for each injured party based on the available medical and injury information recorded by the insurer at the time of the injury review.
Fund levy	A levy that is part of CTP insurance premiums which funds the Lifetime Care and Support scheme. Part of the Fund levy is also used to fund SIRA and Bulk Billing arrangements for ambulance and hospital services.
Green Slip	Another name for a CTP policy that dates to the start of the NSW CTP scheme in 1989 when the CTP insurance invoice was a green piece of paper.
Run-off	Run-off means that the insurer ceases to take on board any new business but will continue to fulfil existing claims.
Scheme efficiency	Scheme efficiency, measures how much of the premium dollar goes to claimants as benefits.
Superimposed inflation	Superimposed inflation is the increase in claim costs over time, over and above wage inflation. It is a regular feature of compensation schemes and is usually caused by a combination of legal, judicial, social, medical and other external factors. Superimposed inflation tends to be volatile over time.
Underwrite	The process of assessing risk and ensuring the cost and conditions of the cover consider the risks faced by the individual concerned.
Permanent impairment	Permanent impairment is an assessment of the degree of permanent impairment arising from an injury or injuries caused by a motor accident. It is based on standard guidelines that assign values to the permanent impairment of one or more body parts, systems or functions, expressed as a percentage.

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. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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