

NSW Motor Accidents CTP scheme

*Motor Accidents Compensation Act
1999*

Scheme performance report 2019

Issued 2020

Contents

1. Executive Summary.....	3
1.1 Introduction	3
1.2 Key performance indicators for the 1999 scheme.....	4
1.3 Outlook.....	4
2. Background.....	6
2.1 State Insurance Regulatory Authority	6
2.2 SIRA's Dispute Resolution Service.....	6
2.3 Overview of the 1999 scheme	6
2.4 Scheme reform	7
3. Claim numbers, payments and scheme efficiency.....	7
3.1 Background.....	7
3.2 Key facts	8
4. Dispute Resolution Service.....	10
4.1 Background.....	10
4.2 Key facts	10
Medical Assessment Service.....	11
Claims Assessment and Resolution Service (CARS).....	11
5. Glossary.....	12

1. Executive Summary

1.1 Introduction

This is the State Insurance Regulatory Authority's (SIRA) 2018-2019 performance report for the '1999' NSW Compulsory Third Party (CTP) Motor Accidents ('Green Slip') Scheme, established under the *Motor Accidents Compensation Act 1999* (1999 Act).

Following a major scheme review, the '1999 scheme' stopped selling CTP policies on 30 November 2017. Policies were then sold under the new '2017 scheme', established under the *Motor Accident Injuries Act 2017* (2017 Act), which commenced on 1 December 2017. SIRA regulates both schemes.

The 1999 scheme will continue to operate for many years until all claims for accidents before 1 December 2017 are finalised.

This report covers the 1999 scheme experience from 1 July 2018 to 30 June 2019 and is the first year of the scheme being fully in run-off. The last accident year ended on 30 June 2018 and was a partial accident year of five accident months from 1 July 2017 to 30 November 2017. Accidents from 1 December 2017 report in to the 2017 scheme.

As people injured in road accidents before 1 December 2017 had up to six months after their accident to submit a claim under the 1999 scheme, regular lodgement of claims ended on 31 May 2018. Claims lodged more than six months after the date of accident may be accepted if the injured person can provide a full and satisfactory explanation for the delay.

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

This and future 1999 scheme performance reports will be briefer as there will be minimal new claims lodged under the 1999 scheme and the focus will be on the settlement of the remaining claims. Additionally, as premiums are no longer sold under the 1999 scheme, SIRA has no influence on 1999 scheme profit margins.

A separate 2018-2019 performance report has been produced for the 2017 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.

The data in this report is based on information from the scheme actuary, Ernst & Young, and information provided by SIRA.

Dominant trend in the 1999 scheme addressed

The dominant trend in the scheme since 2008 to 2016 was year on year increases in legally represented minor severity claims. This increased overall claims costs per policy issued. This trend was reduced through:

- changes to the *Motor Accidents Compensation Regulation 2015* (Cost Regulation) on 1 November 2016 which capped legal costs for smaller settlements (\$50,000 or

less) to protect settlement amounts from disproportionately large contracted out legal fees.

- the impact of the CTP Fraud Taskforce and establishment of NSW Police Strike Force Ravens in August 2016 which made arrests and charges for CTP fraud.

1.2 Key performance indicators for the 1999 scheme

- There were 14,617 open claims under the 1999 scheme at 30 June 2019. This compares with 24,135 open claims at 30 June 2018.
- Finalisation rates were 4 percent lower than expected over the year. The average payment per claim was also slightly lower (3 percent rounded) than expected across all claim types.
- The average payment for full claims finalised in 2018-19 was \$146,215, compared to \$116,027 in 2017-2018.
- The average payment for legally represented minor severity claims was lower than expected by approximately 10 percent.
- Claim payments for 2019 were six (6) percent (or \$94 million) lower than expected. Of this amount, \$87 million represented the reduction in payments for legally represented minor severity claims.
- Although there were lower than expected payments for serious severity claims, this was largely negated by higher than expected payments for moderate severity claims.
- Scheme experience is that legal costs are 22 percent of the claim costs, half of which is for contracting out legal costs.
- The number of new full claims reported between 1 July 2018 to 30 June 2019 was 471.
- Claims Assessment and Resolution Service general assessment applications rose by 12 per cent (249 more applications) in 2018-19. There was also a 37 percent decrease in CARS applications (685 less applications) seeking an exemption from claims assessment.
- Medical Assessment Service applications decreased for the first time in recent years and by 351 disputes compared to 2017/2018.

1.3 Outlook

The 1999 scheme has been in run-off since 1 December 2017 when the 2017 scheme commenced selling policies.

The 2017 scheme design addresses problems with the 1999 scheme such as high legal costs, excessive insurer profits, costly premium prices and the lengthy and complicated claims process.

The 2017 scheme is also delivering significant changes to improve the experience of people injured in motor vehicle accidents in NSW. The changes are set to deliver more benefits to injured people as well as speed up and simplify the claims process. The

recovery of the injured person is central to the 2017 scheme, with more CTP dollars to go to injured people, particularly people with more severe injuries.

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. CTP Assist, SIRA's support and information service, answers telephone and digital inquiries from injured people in both the 1999 and 2017 schemes. CTP Assist also provides an outbound call service to provide procedural advice to injured people with MAS and/or CARS disputes who do not have legal representation.

2. Background

2.1 State Insurance Regulatory Authority

The 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.

Green Slip 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 schemes which provide benefits for pedestrians, passengers, cyclists, motorcyclists, drivers of other vehicles and, to a limited extent, the driver at fault.

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 Green Slip premiums 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 operates an independent Dispute Resolution Service (DRS) which provides an alternative to court for resolving disputes for the NSW CTP schemes.

SIRA's dispute resolution role is 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.

For claims under the 1999 Act, it includes the Medical Assessment Service (MAS) and the Claims Assessment and Resolution Service (CARS).

SIRA's services are delivered without charge to injured people and insurers. Services are funded through a levy on premiums.

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.

In March 2017, after lengthy and broad consultation, the NSW Parliament passed the 2017 Act to introduce a new approach to CTP insurance in NSW. The 2017 scheme 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)	472 injury notifications (ANFs and full claims).
Open claims	There were 14,617 open claims under the 1999 scheme at 30 June 2019. This compares with 24,135 open claims at 30 June 2018.
Finalised claims	There were 11,234 finalised claims in 2018-2019 mainly for previous accident years.
Finalisation rates all claims	Finalisation rates were 4 percent lower than expected over the year. The average payment per claim was also slightly lower (3 percent rounded) 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 10 percent.
Nominal defendant	SIRA received 73 claims as the Nominal Defendant during 2018-19 compared to 484 in 2017-18. Nominal Defendant claims have represented approximately 4.2 percent of all claims and 4.8 percent of incurred costs since the scheme was established in 1999.
Forecast payments	<p>Claim payments for 2019 were six (6) percent (or \$94 million) lower than expected. Of this amount, \$87 million represented the reduction in payments for legally represented minor severity claims.</p> <p>There were also lower than expected payments for serious severity claims, which were largely negated by higher than expected payments for moderate severity claims.</p>

Topic	Fact
Benefits paid	The scheme paid \$1.4 billion in benefits in 2018-19, mainly for claims made in previous years. This compares with a total of \$1.41 billion in benefits paid in 2017-18. This was a small reduction of \$18.4 million in total benefits over 12 months.
Average payment – full claims	The average payment on full claims finalised in 2018-19 was \$146,215, compared to \$116,027 in 2017-2018.
Outstanding estimates	\$3.42 billion in outstanding estimate by insurers as at 30 June 2019.
Legal costs	Legal costs, as a percentage of claim size, remain consistent with previous years. Scheme experience is that legal costs are 22 percent of the claim costs, half of which is for contracting out legal costs.
Superimposed inflation	<p>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 is misleading since it masks the impact of changes in the claims mix that have occurred over this time.</p> <p>Superimposed inflation increased artificially for the 2019 payment year. The increase is due to the changing mix of claims finalising as the scheme develops further in the run-off phase.</p> <p>Superimposed inflation at a more granular level indicates that it is still prevalent in the scheme, although at low levels.</p>

Topic	Fact
Efficiency	<p>Scheme efficiency is unchanged since the 2018 accident year.</p> <p>Projected average efficiency for the latest five accident years to 2018 is 46 percent and over the lifetime of the scheme is estimated to be 44 percent.</p> <p>Non-legally represented claims have approximately 56 percent efficiency across all claim sizes, while efficiency for legally represented claims ranges from 36 percent (<\$100k) to 49 percent (>\$1m). Legally represented claims consistently have lower efficiency than non-legally represented claims.</p>

4. Dispute Resolution Service

4.1 Background

As mentioned in section 2.2 of this report, SIRA provides a dispute resolution service as an alternative to court, for medical and claims disputes.

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.

Medical Assessment Service

- There were 5,325 Medical Assessment Service (MAS) applications lodged and 5,194 finalised in 2018-19. There were 351 less applications than 2017-2018.
- Permanent impairment assessment applications decreased by 12 percent (496 less applications) in 2018-19.
- There has been a decrease by 10 percent (127 applications received in 2018-19 whereas 142 applications were received in 2017-18) of medical reviews on permanent impairment certificates issued.
- Permanent impairment disputes took a median 91 working days to resolve. This has remained relatively stable over the past four years despite the significant increase in volumes.
- Treatment dispute applications rose significantly from 485 in 2017-2018 to 617 in 2018-19, the highest in recent years.
- Treatment disputes took an average of 134 working days to resolve and further medical assessments took an average of 116 working days to resolve.
- Administrative challenges resulted in nine MAS decisions being set aside by the court and sent back for a new decision to be made.

Claims Assessment and Resolution Service (CARS)

- In 2017-18, 4,120 CARS disputes were lodged and in the current reporting period (2018-19 year) there were 3,667 applications lodged and 3,303 matters finalised.
- CARS general assessment applications rose by 12 per cent (249 more applications) in 2018-19. There was also a 37 percent decrease in CARS applications (685 less applications) seeking an exemption from claims assessment. Exemption applications were resolved on average within 21 working days compared to 15 the previous year.
- There was a two per cent increase in general assessment finalisations which were resolved on an average of 174 working days.
- Administrative challenges resulted in six CARS decisions being set aside by the court and sent back for a new decision to be made.

5. Glossary

Item	Description
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.
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.

Item	Description
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 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.

This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

Motor Accidents Insurance Regulation, Level 6, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

CTP Assist 1300 656 919

Website www.sira.nsw.gov.au

Catalogue no. SIRA09089 | ISBN 978-0-7347-4638-2 © State Insurance Regulatory Authority NSW 0818