

December 2022

Recovery plans

Insurer claims and conduct assurance program

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1. Introduction

The *Motor Accident Injuries Act 2017* (the Act) establishes the NSW Compulsory third party (CTP) insurance scheme. In conjunction with the Act, the Motor Accident Guidelines (the MAGs) support the delivery of the objects of the Act by establishing principles and requirements to ensure timeliness, fairness, transparency and better outcomes and experiences for injured people.

The State Insurance Regulatory Authority (SIRA) is the independent regulator of statutory schemes in NSW, including CTP. In line with Division 9.1 of the Act, SIRA has issued licenses to six insurers who operate within the scheme. These licenced insurers are required to adhere to the obligations placed on them under the Act, MAGs and the conditions of their licence. SIRA has a statutory function to monitor the compliance of the licensed insurers and authority to publish information about their level of compliance with requirements and duties imposed.

In accordance with its statutory functions and pursuant to Section 10.24 of the Act, SIRA undertook an Insurer Claims and Conduct Assurance Program (ICCAP) supervisory activity to ensure that licensed insurers were meeting their obligations as it relates to recovery planning including risk screening. The activity was conducted in two phases:

1. Desktop review
2. Claims file review

The ICCAP activity also supports the SIRA2025 strategy to hold insurers to account and improve the outcomes and experience for claimants within the scheme.

This report outlines the findings of the supervisory activity on the information provided by insurers and access to their claims management platform. SIRA notes and appreciates the licensed insurer's engagement and transparency throughout this supervision activity.

2. Recovery plans

There is strong evidence that recovery and returning to meaningful activity after injury or illness improves when the process is planned, and the actions of the person and external parties are coordinated¹. In the early stage of a workers compensation claim, a written recovery and/ or return to work (RTW) plan, increases the likelihood of RTW by 1.7 times. After 30 days a written plan becomes more important increasing the likelihood of RTW by 3.4 times². Whilst not all claims within the CTP scheme have a RTW component and the legislated basis differs, claims management activities aimed at maximising the injured person's recovery and participation in activity, are universal. The benefits of assessing the barriers to recovery and documenting a tailored and coordinated recovery plan remain consistent.

The MAGs set out the requirements of recovery plans including risk screening for persons injured as a result of a motor accident in NSW. It is noted that this ICCAP was conducted in accordance with MAGs version 8.2 which was in effect at the time of the supervisory activity.

3. Desktop review

A desktop review was conducted to ensure insurers had a systematic approach to ensuring compliance with their recovery planning and risk screening obligations. Insurers were requested to provide information demonstrating how they implement systematic compliance with the MAGs in relation to recovery planning and risk screening. This included the provision of:

- Policies, procedures and processes
- Training and support provided to staff
- Compliance assurance activities
- A copy of any relevant templates or tools utilised

Key themes from the desktop review included:

- Procedures and training materials did not include information relating to all requirements established by the MAGs.
- Compliance measures presented seemed insufficient to ensure compliance with licence condition 10 which states:

“(Compliance with laws) The Licensee must establish and maintain compliance measures to ensure that it complies at all times with its obligations under the Act and the regulations and guidelines made under it.”

As a result of the desktop review, all insurers were required to provide further information to support compliance with their recovery planning obligations and consider further activities to ensure compliance is addressed at a systemic level.

¹ Collie, A., Lane, T., Di Donato, M. and Iles, R. August 2018. Barriers and enablers to RTW: literature review. Insurance Work and Health Group, Monash University: Melbourne, Australia.

² Sheehan LR, Gray SW, Lane TJ, Beck D, Collie A. 2018. Employer Support for Injured Australian Workers: Overview and association with RTW. Insurance Work and Health Group. Monash University: Melbourne

4. Claims file review

4.1. Scope

Insurers	Allianz Australia Insurance Limited trading as Allianz (Allianz) AAI Limited trading as AAMI (Suncorp) AAI Limited trading as GIO (Suncorp) Insurance Australia Limited trading as NRMA Insurance (NRMA) QBE Insurance (Australia) Limited trading as QBE (QBE) Youi Pty Ltd (Youi)
File review date	File reviews were conducted in October and November 2022.
Scope	The claims file review aims to review insurer's systems to comply with: <ul style="list-style-type: none"> • Compliance to the recovery plan and risk screening requirements as defined in the MAGs (4.75-4.93) • Related compliance measures in line with the Insurer's <i>Licence Condition 10</i> • SIRA's Customer Service Conduct Principles in accordance with insurer's <i>licence condition 2</i>
Criteria	See appendix 1
Review cohorts	Stratified random sample of claims comprised of: <p>Cohort 1 - Claims lodged in last 6 months where data indicates a recovery plan is required.</p> <p>Cohort 2 - Claims lodged since December 2017, are open with active treatment payments in the last 3 months and where data indicates a recovery plan is required.</p> <p>Cohort 3 - Claims lodged in last 6 months where data indicated no recovery plan was required.</p>
Access to information	Insurers provided SIRA with unrestricted access to their claims records and claims representatives to assist in the completion of the review.
	The SIRA reviewers engaged with insurer claims representatives throughout the review to highlight potential non-compliances and gather further information to assess and determine compliance.
	Through this process, insurers were also afforded the opportunity to provide SIRA with their views in relation to the non-compliance.
	Insurer responses were considered prior to the Lead Auditor making a final determination.

4.2. Results

The insurers demonstrated an overall average file review result of 56%. The review criteria was comprised of three main elements - compliance, practice and Customer Service Conduct Principles. As a collective, the insurers scored 58%, 40% and 67% respectively in these areas.

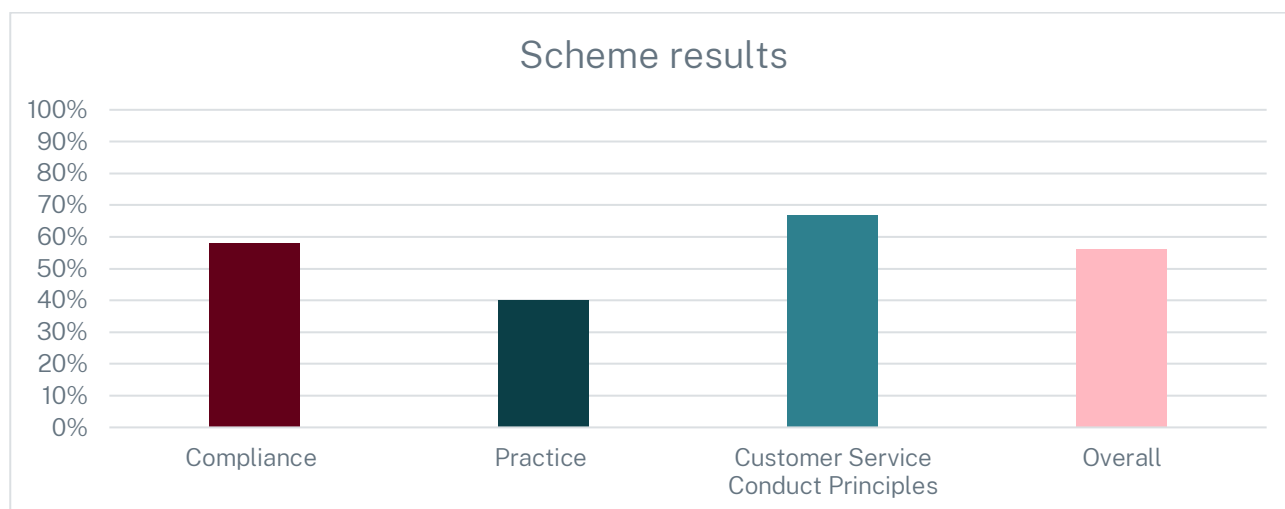


Figure 1: Scheme results

At an insurer level, Allianz received the highest overall score of 73%. Allianz also scored the highest result in relation to compliance (76%) and the Customer Service Conduct Principles (85%). Youi scored the highest result in relation to practice (57%).

QBE had the lowest overall score of 35%. QBE also had the lowest score in relation to compliance (37%) and practice (11%). NRMA scored the lowest in relation to Customer Service Conduct Principles (58%).

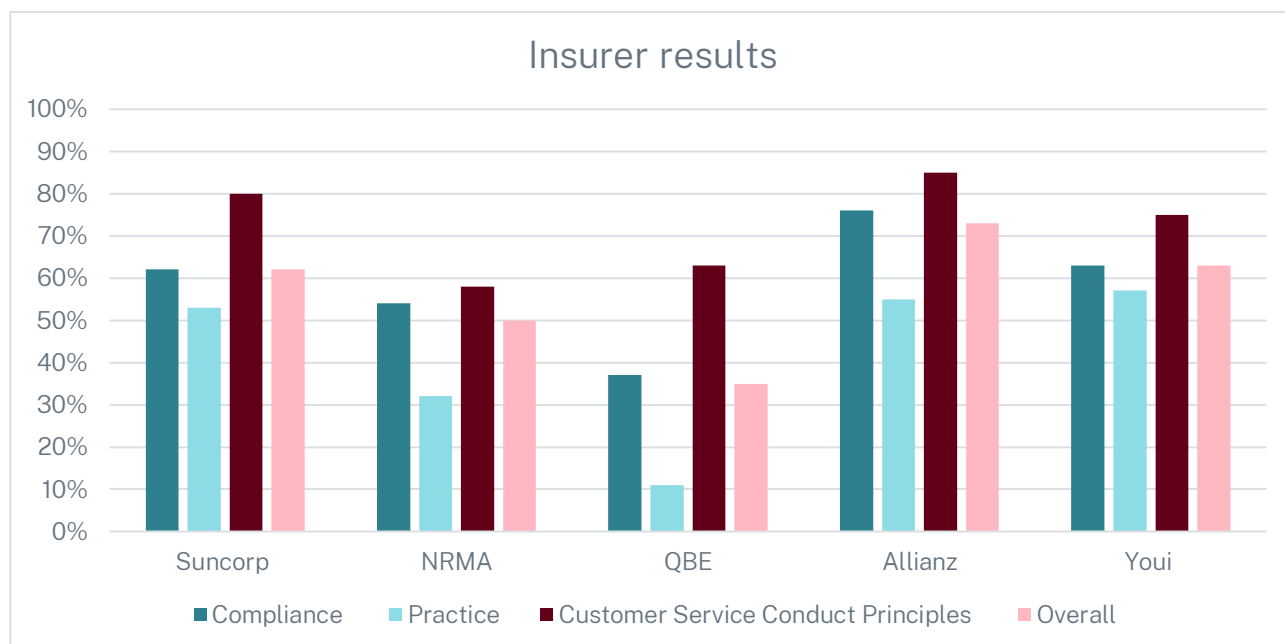


Figure 2: Insurer results

In relation to individual obligations, insurers demonstrated lower levels of conformance to compliance requirements including:

Clause reference	Clause description
Motor Accident Guidelines: 4.82	<p>The recovery plan may simply monitor treatment progress, it need not incorporate return to work support or vocational retraining where full return to work or other activities has been achieved. The recovery plan must be established, in consultation with the:</p> <ul style="list-style-type: none"> (a) claimant who has an obligation under the Act to minimise loss and participate in reasonable and necessary treatment and car and rehabilitation. (b) recent status of the claimant from the claimant's treating doctor (c) claimant's employer, where the claimant has authorised contact with the employer and the employer elects to be part of the recovery, and to the maximum extent that their cooperation and participation allows. (d) any treating clinicians or therapists as appropriate
Motor Accident Guidelines: 4.85	<p>The recovery plan must be:</p> <ul style="list-style-type: none"> (a) completed within 28 days of the claim being made or within 28 days of the claimant's initial discharge from hospital in circumstances where the claimant has been admitted to hospital within two days of the date of the motor accident and remained in hospital for a period of not less than three continuous weeks, whichever is the later (b) reviewed no less than 12 weekly intervals or as pertinent changes occur.
Motor Accident Guidelines: 4.88	<p>Within the recovery plan that is sent to both the claimant and nominated treating doctor, the following details must be included at a minimum:</p> <ul style="list-style-type: none"> (a) the name of the claimant (b) claim number (c) date of injury (d) current treatment being undertaken (e) future treatment expected to be undertaken (f) current fitness for work and/or usual activities (g) expected fitness for work and/or usual activities with milestones (h) obligations of the claimant (i) consequences for the claimant if they do not adhere to the recovery plan (j) contact details of the insurer representative (k) what action the claimant can take if they disagree with the recovery plan

In relation to practice, insurers demonstrated lower levels of conformance in relation to the following criteria:

Clause reference	Clause description
Motor Accident Guidelines: 4.80	<p>The insurer should regularly engage with the claimant and stakeholders involved to review progress and continue to assess and address risk of poor recovery. The outcome must be recorded on the claimant's file and integrated into the recovery plan.</p>
Motor Accident Guidelines: 4.89	<p>The recovery plan may be provided to all stakeholders including treating practitioners as deemed appropriate.</p>

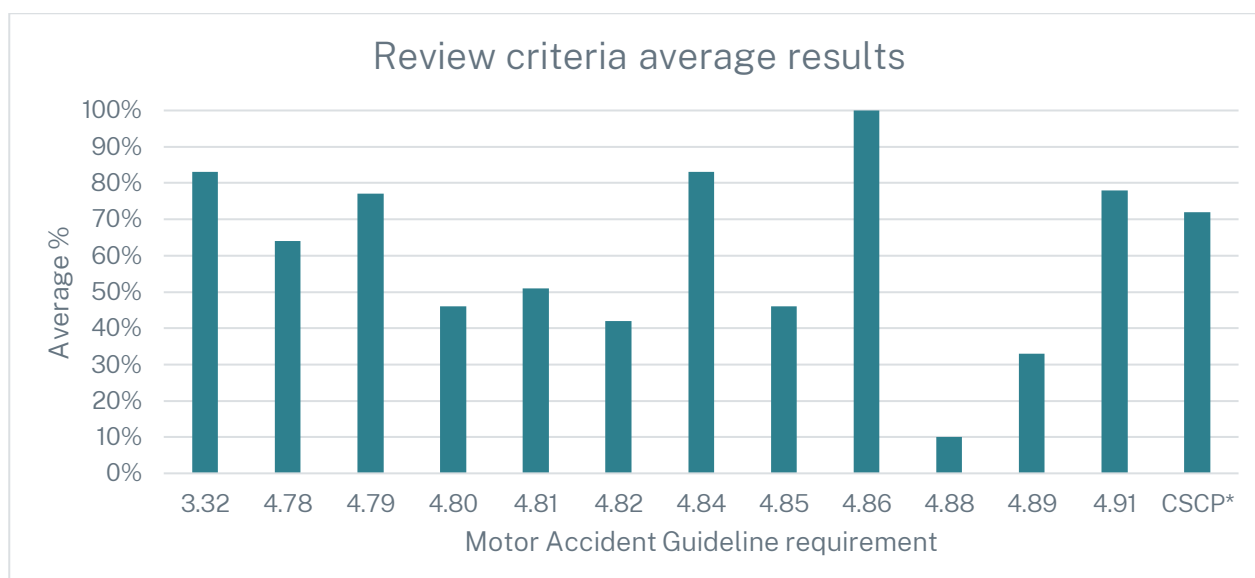


Figure 3: Review criteria average results

4.3. Observations

- Risk screening was commonly completed by insurers without contacting the claimant (or an attempt to contact the claimant) and therefore risk screening was commonly performed on the basis of the papers. This approach did not always provide the insurer with a full insight into the factors that influence and are risks to recovery.
- Ongoing risk screening did not always consider factors for which there is moderate to strong evidence³ of an influence on recovery outcomes. These factors include psychological, behavioural and social factors.
- The minimum requirements of a recovery plan were a significant area of non-compliance; however, many non-compliances could be remediated through insurers reviewing and updating their standard templates.
- All insurers had a discrete approach to tailoring the recovery plans. Some insurers included elements beyond the compliance requirements to further adopt a person-centric approach. Others did not include information tailored to the claimant, either due to a lack of consultation or they hadn't considered the information already on file.
- Some insurers addressed the requirements of 4.88 (k), by utilising alternate wording. It is noted that SIRA adopted a strict compliance view for 4.88 (k). It is SIRA's position that the recovery plan creates an obligation on the claimant and consequences if they fail to comply with the plan (including the ability for the insurer to suspend weekly payments (refer to clause 4.86)) and therefore it must be made clear to a claimant that they can disagree with any aspect of the plan and the subsequent action they can take.
- There was varying levels of consultation or consideration of the information from the claimant, their treating practitioner and other providers in the formulation of a recovery plan. There is an opportunity to improve coordination and collaboration between all stakeholders involved in supporting the claimant to recover align expectations, assist in developing a common goal and plan, and optimising outcomes.
- There was evidence across insurers of good strategic reviews on files which could be used to guide the consultation with claimants and treating practitioners and integrated into a tailored and documented recovery plan.

* Customer Service Conduct Principles

³ Reversing the trend – improving return to work outcomes in NSW

<https://www.sira.nsw.gov.au/fraud-and-regulation/research/reversing-the-trend-improving-return-to-work-outcomes-in-nsw>

5. Regulatory response

All insurers were provided with an individual report from the ICCAP activity outlining their results, details of non-conformances and required actions.

Based on the findings of the recovery plan ICCAP, the following actions will be undertaken:

Action 1

All insurers to develop and implement a remediation plan to ensure systematic compliance is embedded across all areas where substantial compliance was not demonstrated. The development of the remediation plan and associated reporting requirements must be conducted in line with SIRA's remediation plan expectations.

Action 2

SIRA will monitor the implementation of the remediation plans on a monthly basis. Remediation plan requirements will be monitored until SIRA is satisfied that substantial compliance is being achieved.

Action 3

SIRA will review current research and confirm appropriate translation into the policy framework.

Action 4

SIRA will engage with industry in 2023 to support the uplift in the compliance and practice with a view of improving customer experiences and outcomes.

Action 5

SIRA will conduct a further file review in October 2023 to ensure systematic compliance is embedded in each of the insurer's operations.

Action 6

SIRA will consider further regulatory action in relation to specific insurers who demonstrates ongoing non-compliance to recovery plan obligations.

Appendix 1 – Review criteria

Clause reference	Clause description
Motor Accident Guidelines: 3.32(b) (compliance)	An insurer must: (b) provide up-to-date, accurate and complete claims data to the Universal Claims Database (UCD), in accordance with the Act and the UCD Claims Data Manual, as amended from time to time, or as otherwise required by the authority.
Motor Accident Guidelines: 4.78 (compliance)	A claimant must be screened for risk of poor recovery within three business days of lodgement of their claim. This must include direct contact with the claimant where available and consideration of recent information by the treating doctor. The outcome of this screening must be recorded on the claimant's file.
Motor Accident Guidelines: 4.79 (compliance)	Where a claimant is identified to be at or above a medium risk of poor recovery, the insurer must take action to support the claimant through the appropriate internal claims management stream. The insurer should conduct a comprehensive assessment to determine the relevant course of treatment. The outcome of this assessment must be integrated into the claimant's recovery plan.
Motor Accident Guidelines: 4.80 (practice)	The insurer should regularly engage with the claimant and stakeholders involved to review progress and continue to assess and address risk of poor recovery. The outcome must be recorded on the claimant's file and integrated into the recovery plan.
Motor Accident Guidelines: 4.81 (compliance)	All claimants must have a tailored recovery plan with the following exceptions: (a) where the claimant is performing their pre-injury duties (b) where the claimant is performing their usual activities (c) where the claimant is part of the Lifetime Care & Support Scheme (d) where the claim is denied (e) where a claimant has returned to their pre-injury duties and activities within 28 days of the claim being made
Motor Accident Guidelines: 4.82 (compliance)	The recovery plan may simply monitor treatment progress, it need not incorporate return to work support or vocational retraining where full return to work or other activities has been achieved. The recovery plan must be established, in consultation with the: (a) claimant who has an obligation under the Act to minimise loss and participate in reasonable and necessary treatment and car and rehabilitation. (b) recent status of the claimant from the claimant's treating doctor(c) claimant's employer, where the claimant has authorised contact with the employer and the employer elects to be part of the recovery, and to the maximum extent that their cooperation and participation allows. (d) any treating clinicians or therapists as appropriate
Motor Accident Guidelines: 4.84 (compliance)	An insurer must fulfil their obligations under any recovery plan they have established for a claimant.
Motor Accident Guidelines: 4.85 (compliance)	The recovery plan must be: (a) completed within 28 days of the claim being made or within 28 days of the claimant's initial discharge from hospital in circumstances where the claimant has been admitted to hospital within two days of the date of the motor accident and remained in hospital for a period of not less than three continuous weeks, whichever is the later (b) reviewed no less than 12 weekly intervals or as pertinent changes occur.
Motor Accident Guidelines: 4.86 (compliance)	Where a claimant failed to comply with a recovery plan that has been developed and provided to them, the insurer must provide notice to the claimant that weekly payments may be suspended during the period of noncompliance in terms of Division 3.3, section 3.17(s) of the Act. See Division 3.3, section 3.19 of the Act for required notice periods when discontinuing weekly payments.
Motor Accident Guidelines: 4.88 (compliance)	Within the recovery plan that is sent to both the claimant and nominated treating doctor, the following details must be included at a minimum: (a) the name of the claimant (b) claim number (c) date of injury (d) current treatment being undertaken (e) future treatment expected to be undertaken (f) current fitness for work and/or usual activities (g) expected fitness for work and/or usual activities with milestones (h) obligations of the claimant (i) consequences for the claimant if they do not adhere to the recovery plan (j) contact details of the insurer representative (k) what action the claimant can take if they disagree with the recovery plan

Motor Accident Guidelines: 4.89 (practice)	The recovery plan may be provided to all stakeholders including treating practitioners as deemed appropriate.
Motor Accident Guidelines: 4.91 (compliance)	The insurer must advise the claimant that they may change their nominated treating practitioner if required due to, for example, the claimant moving house or their doctor leaving the area. The claimant needs to advise the insurer of any change and the reasons for the change.
Licence condition 2 (Customer Service Conduct Principles)	In the management of the claim, did the insurer conduct itself in line with the Customer Service Conduct Principles?

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident compulsory third party (CTP) insurance and home building compensation in NSW. This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals, or as a substitute for legal advice.

SIRA, Level 14-15, 231 Elizabeth Street, Sydney NSW 2000

Website www.sira.nsw.gov.au

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