

# Detering fraudulent and exaggerated claims in the NSW CTP insurance scheme.

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Note: this report is  
being reviewed.



**SIRA**  
State Insurance  
Regulatory Authority

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# Fraudulent and exaggerated claims

## Role of the State Insurance Regulatory Authority

The State Insurance Regulatory Authority (SIRA) is the government organisation responsible for the regulatory functions for workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation.

We focus on ensuring key public policy outcomes are achieved in relation to service delivery to injured people, affordability for the payers of compulsory insurance, and the effective management and financial sustainability of these insurance schemes.

SIRA regulates the NSW Motor Accidents CTP Scheme (the Scheme) for motor vehicles registered in NSW. CTP motor vehicle insurance is compulsory in all Australian States and Territories and is designed to ensure that compensation is available to those who are injured in motor vehicle accidents.

SIRA's role, among other things, is to license and regulate private insurers that underwrite the Scheme to ensure that premiums charged to vehicle owners are affordable and competitive, and benefits provided to those injured in a motor accident are delivered fairly and as quickly as possible.

## Legislative framework for deterring CTP claims fraud

SIRA administers the Scheme under *the Motor Accidents Compensation Act 1999* (MAC Act 1999), and the Motor Accidents Compensation Regulation 2015.

One of the objectives of the MAC Act 1999 is to deter CTP insurance fraud.

Section 116 of the MAC Act 1999 places an obligation on licensed insurers to take all reasonable steps to deter and prevent fraudulent claims. Section 117 sets out the penalties (maximum penalty of \$5,500 or imprisonment for 12 months) for persons who commit an offence for knowingly making false or misleading claims.

Section 117 of the MAC Act 1999 does not expressly confer the power to prosecute on any person. Historically, SIRA has relied on CTP insurers to conduct fraud control.

SIRA has the power to bring prosecution proceedings under the MAC Act 1999. However to run fraud prosecutions under s117 of the MAC Act 1999, SIRA would need to conduct independent investigations to gather sufficient admissible evidence to prove the offence and bring the prosecution within two years of the date of the commission of the fraud.

## What is CTP claims fraud?

CTP claims fraud can include the exaggeration of an otherwise legitimate claim, the intentional misrepresentation of the facts or manipulation of the claims process to gain a financial advantage where there has been no actual loss.

Specifically, CTP fraud is defined in s117 of the MAC Act 1999 as making a statement knowing that it is false or misleading in a material particular. As such, CTP fraud also falls within the criminal law provisions that create offences for obtaining or attempting to obtain monies or a financial advantage by deception.

Insurance fraud can be categorised into hard and soft fraud.

**Hard fraud** is also termed fabrication or fraud with respect to the circumstances of the accident or injury: either an accident did not happen or no injury was sustained, thereby rendering the entire claim bogus.

**Soft fraud** involves exaggerated claims: where the claim arising from a genuine accident resulting in injury contains exaggerated elements, for example inflated claims for care or loss of earnings, but is in other respects bona fide.

For regulatory purposes, a wider interpretation than 'hard fraud' is used. Fraud in the strict legal sense is considered, as well as soft fraud and claims leakage.

# Fraudulent and exaggerated claims

Regarding soft fraud, there is a difference between exaggeration that is part of the process to negotiate a lump sum, and gross exaggeration or outright lying. Ambit claims may be made as part of the negotiation for a lump sum payment on the basis that the insurer will 'play hard-ball' and both parties will eventually reach a compromise.

An example of an ambit claim is someone with minor soft tissue injuries who finds housework difficult and makes a claim for 10 hours per week gratuitous care (when arguably, only a few hours may be reasonable). Such a claim would typically be negotiated and a 'middle-ground' found between the insurer and the claimant.

However if a claimant were to make a statement that he or she has not worked since the accident and remains unemployed, and surveillance footage obtained by the insurer directly contradicts this assertion, then the claimant would be making a false or fraudulent claim.

The line between making a claim in the most favourable light and gross exaggeration can be a difficult one to discern.

Moreover, even if a claimant is found to be grossly exaggerating his or her claim, often the issue becomes one of credit so that the Claims Assessment and Resolution Service (CARS) or court (if the matter does not settle), reduces damages accordingly. Of course, CARS or the court process will determine the issue by the civil standard of proof being on the balance of probabilities.

It can be a fine line between legitimate case building and ambit claiming and soft fraud. Extreme case building (e.g. where there might be gross exaggeration) can tip a previously legitimate claim into the soft fraud category.

Figure 1 below depicts the difficulty in delineating between legitimate and suspect claiming behaviour.



# Fraudulent and exaggerated claims

## Fraud v leakage

'Leakage' is a common insurance industry term for when the insurer pays more than was appropriate or necessary under the terms of a policy or statute. Although leakage can occur due to fraud, other factors include claims management inefficiencies, lack of staff training or supervision, manual systems and processes and poor negotiation or settlement practices.

A common form of leakage is where insurers pay out small claims if the apparent cost of fighting the claim outweighs its cost. This may be a sensible business approach for individual claims, but over the long term it is not financially sustainable.

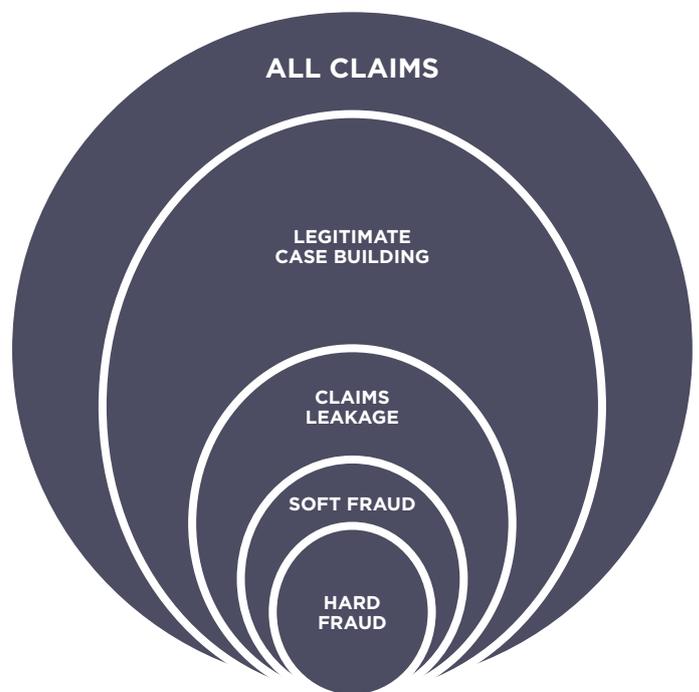
Figure 2 shows the different sub-sets of claims leakage (not to scale).

## Impact on the NSW CTP Insurance Scheme

SIRA estimates that the additional cost to NSW motorists of fraudulent and exaggerated claims is as much as \$400 million over 7 years. This contributes to increasing Green Slip prices. Some recent examples of claims where there may be fraud and exaggeration include:

- claims for future lost income and significant future expenses for young children involved in low speed accidents with no demonstrable physical injury
- claims for young children, some under 12 months of age, from minor accidents seeking compensation for psychological injuries evidenced by behaviour ordinarily considered developmental, such as crying and bed wetting
- low speed collisions where the extent of injuries claimed far exceeded what would be expected considering the damage to the vehicle
- people claiming to be passengers in vehicles involved in motor vehicle accidents, where further investigation shows they were not in the vehicle at the time
- staged accidents involving multiple vehicles
- claims for injuries not caused by the accident.

FIGURE 2: TYPES OF CLAIMS LEAKAGE



Cold calling and the use of claims farming practices is growing, and there is evidence that claims farming firms in the UK are starting to operate in Australia. There is evidence that the issue is emerging in other CTP schemes around Australia though NSW appears to be the epicentre.

SIRA has identified a significant increase in CTP claims for minor injuries from claimants who have engaged legal representation. It is not yet clear what the root causes of this increase are and what proportion are unmeritorious claims.

Advice received from the scheme actuaries estimates the increase in minor injury, legally represented claims to be about 20% in each calendar year 2013 and 2014 and nearly 40% in 2015, however the number of people recorded as injured in motor vehicle accidents has reduced during this period (measured from the number of total reported road casualties presenting to hospital).

Green Slip price increases have also been driven by increasing claim numbers since 2008. The scheme actuaries report that if the rising trend in claims costs goes unchecked, there will be significant impacts to scheme affordability, with predicted price increases of 10% - 20% per year over the next 18 months above the current premium rates. This would equate to an average increase for passenger vehicles in Sydney of between \$65 and \$130.

# Fraudulent and exaggerated claims

## SIRA claims integrity strategy

In accordance with SIRA's statutory obligation to deter fraud within the NSW CTP Scheme, a strategy has been developed to investigate and address fraud and claims leakage. SIRA has looked at the UK Government's recent efforts to combat major fraud (see 'The UK experience' on p.7).

SIRA is taking a holistic approach to addressing claims integrity and has developed a number of initiatives to highlight questionable claims and increase public awareness about the scheme and the impacts and penalties associated with claims fraud and leakage. The strategy focuses on both initiatives to curtail or remove systemic incentives to engage in fraudulent behaviour, as well as measures addressing the problem 'at source'.

A key initiative is the establishment of the NSW CTP Fraud Taskforce including representatives from SIRA, NSW Police and peak legal and medical bodies including the NSW Law Society, NSW Bar Association, Australian Lawyers Alliance (ALA), the Office of Legal Services Commissioner (OLSC), Australian Medical Association (AMA), and the Health Care Complaints Commission (HCCC), together with CTP insurers and the Insurance Council of Australia (ICA), NSW Fair Trading and the NSW Data Analytics Centre, to support the strategy. Discussions and partnerships with many of these organisations are already well advanced, and there is overall a deep well of support to address this issue.

The Taskforce will augment these efforts by enabling these organisations to work more closely in tackling the issue.

### Tactical measures

As a result of initial engagement with insurers on claims management practices for grossly exaggerated and fraudulent claims, insurers are now applying a more rigorous approach in identifying and responding to unmeritorious and fraudulent claims. Insurers have submitted a strategy for addressing this issue to SIRA.

SIRA is developing tactical initiatives to respond to unusual patterns of behaviour involving claimants and networks of legal and medical providers.

Substantial data sharing has occurred, and SIRA is working closely with insurers, OLSC and HCCC. SIRA is currently updating its Claims Handling Guidelines, and this issue will be addressed in terms of ongoing regulatory supervision and accountability on insurers to counter fraud.

A NSW CTP Fraud Hotline has been launched, supported by the ICA and using their existing infrastructure. Information is also available on the SIRA website.

### Strategic measures

The growing incidence of fraud highlights the need for SIRA to build greater capacity to more actively address the problem. Initiatives include establishing a database and analytical capability, ongoing audit and investigation resources, strengthening the prosecution powers of SIRA, increasing penalties, which are among the lowest in Australia, and developing a dedicated SIRA webpage on fraud.

Specifically, SIRA will explore establishing a team of police and investigators in OLSC/HCCC, along with an expanded team in SIRA.

The NSW Chief Data Scientist has been engaged to assist in the development of ongoing data capability.

Similar to the UK, SIRA is exploring measures to address certain practices such as claims farming, and working with the police on improved accident reporting systems.

It may also be necessary to look at structural changes to benefits or service fees to reduce incentives to make small unmeritorious claims. The CTP reform process provides an opportunity to consider the structural changes required.

As an earlier response to the issue, referral fees were banned in 2015, which prevents law firms from paying fees for the referral of clients, however there is some evidence claims farming firms continue to operate.

A public communications campaign is being developed to build community support and to make perpetrators aware of the Government's increasing scrutiny of fraud and exaggerated claims.

# Fraudulent and exaggerated claims

## **A challenge – dealing with fraud but supporting genuine claimants and service providers**

A challenge for SIRA and CTP insurers is to ensure that in addressing this issue, meritorious claims are still handled appropriately. As noted, in systems involving negotiation for a lump sum, there will often be a process of legitimate case building which may include putting claims in the best light or making ambit claims. There will doubtless be claims which exhibit similar profiles to claims under scrutiny but will be perfectly legitimate.

Another problem is determining ‘cause and effect’. For example, the response needs to be different in the case of a lawyer acting in good faith for a claimant who turns out to have lied, versus a lawyer encouraging a claimant to lie, or a doctor falsifying a medical certificate. While clear patterns have emerged, it is not completely clear where the primary source of the problem lies.

## **The UK experience**

### **UK motor vehicle insurance reforms**

For around a decade, the UK has been subject to major fraud problems in CTP. Three main types of CTP fraud in the UK have been identified:

1. The staged accident.
2. The induced accident, where an innocent motorist becomes involved in an accident that results in a personal injury. Typical accidents are referred to as ‘slam ons’ where the perpetrator slams on their brakes to cause an innocent party to run into the back of the vehicle. Taxis have been often involved in this type of scam in the UK.
3. The ghost accident where an accident did not happen, but a claim was lodged anyway.

There is no simple profile of an insurance fraudster, but in the UK they may loosely be categorised as:

- organised gangs
- individuals who commit pre-meditated fraud without assistance
- opportunists who commit insurance fraud when given the opportunity
- individuals whose claims are so exaggerated that they cross the line from being ambit claims as part of the normal negotiating process with an insurer to outright dishonest claims.

In 2012 the UK Government introduced a package of reforms that ban referral fees for solicitors and tighten regulatory controls over claims management companies. This resulted in an almost 10% reduction in claims frequency in 2012–2013 and a 10% reduction in insurance premiums. It has recently become evident, however, that claim frequency in the UK, particularly for whiplash injuries, is increasing once more.

### **UK motor insurance reforms announced**

Further reforms to UK motor insurance were recently announced, seeking to address the growing number of minor whiplash injury claims. These claims are placing upward pressure on motor vehicle insurance prices.

The reforms announced recently by the UK Government are aimed at reducing the excessive and increasing costs arising from whiplash and other soft tissue injury claims. Specifically, the UK Government proposes to:

- remove the right to general damages or cash settlements for minor soft tissue injuries
- remove legal costs by transferring personal injury claims of up to £5,000 to the small claims court.

# Fraudulent and exaggerated claims

In future, UK claimants suffering whiplash or other soft tissue injuries after a motor vehicle accident will be offered physiotherapy and treatment by their insurers rather than a negotiated cash settlement.

The reforms will also limit the amount that medical service providers can recover for providing a medical report, require an injured person to undergo an independent medical examination to verify the extent of their injuries, and place more rigour around training of medical professionals. The UK Government intends to consult on these proposed changes in early 2016.

## **Learning from the UK experience**

In response to concerns regarding claims farming and referral networks in Australia, the Motor Accidents Compensation Regulation 2015 NSW banned referral fees for CTP claims. There does not appear to have been any reduction in the number of minor, legally represented claims to date, however it is less than six months since the regulation was changed.

While claims frequency reduced almost immediately following a ban on referral fees in the UK in 2012, lawyers and claims management companies have refined their business models and it would appear that unsolicited approaches from companies encouraging people to make a compensation claim for motor accident injuries continue. Enforcement is challenging in an environment where many claim farming companies operate from overseas jurisdictions.

The UK experience demonstrates that, where there is no consequence for bringing an unmeritorious claim, service providers will maximise opportunities for financial gain. Insurers frequently make commercial decisions to settle small claims involving minor injuries to avoid the time and cost involved in investigating them, encouraging an excessive compensation culture.

# Analysis of CTP scheme trends

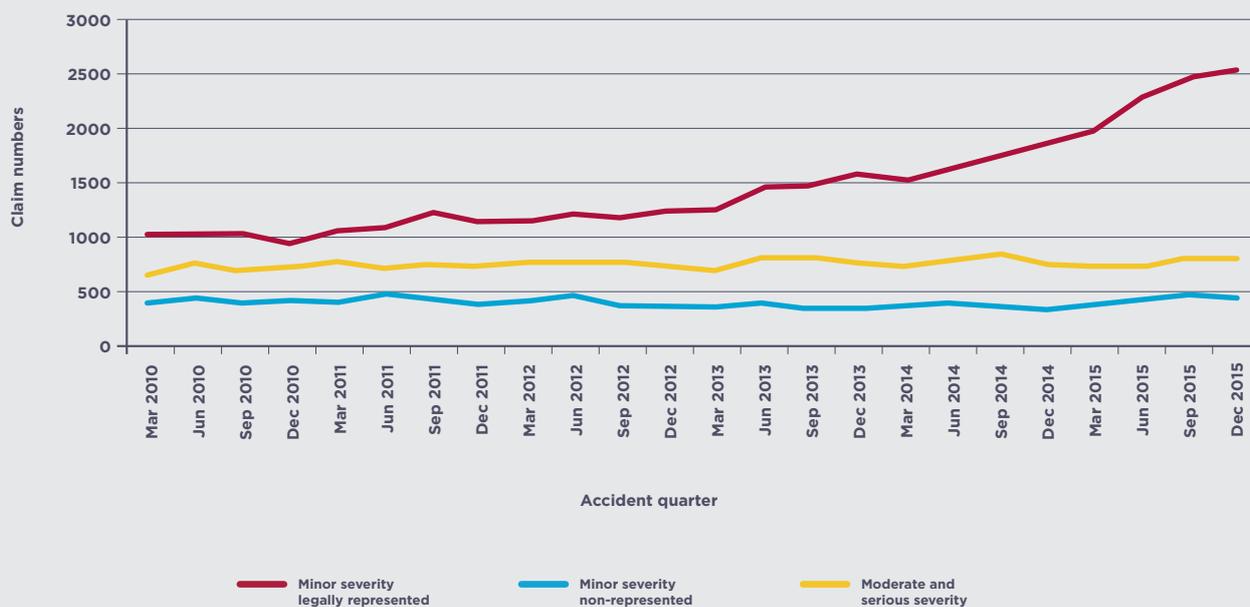
## Background

In recent times there has been rapid growth in the number of claims which are of minor severity and legally represented, as shown in Figure 3. SIRA commissioned an investigation into the issue across the insurance industry.

The claim frequency for other types of claims - e.g. minor and not legally represented, moderate severity and serious severity claims - is stable and has been so for the past five years. The problem can clearly be isolated to minor, legally represented claims.

The investigation required insurers to submit a significant amount of extra data and this was merged with the existing Personal Injury Register (PIR) data that SIRA already collects.

FIGURE 3: CLAIM NUMBER PROJECTIONS AS AT DECEMBER 2015 BY SEVERITY AND LEGAL REPRESENTATION



# Analysis of CTP scheme trends

## Increase in minor injury, legally represented claims

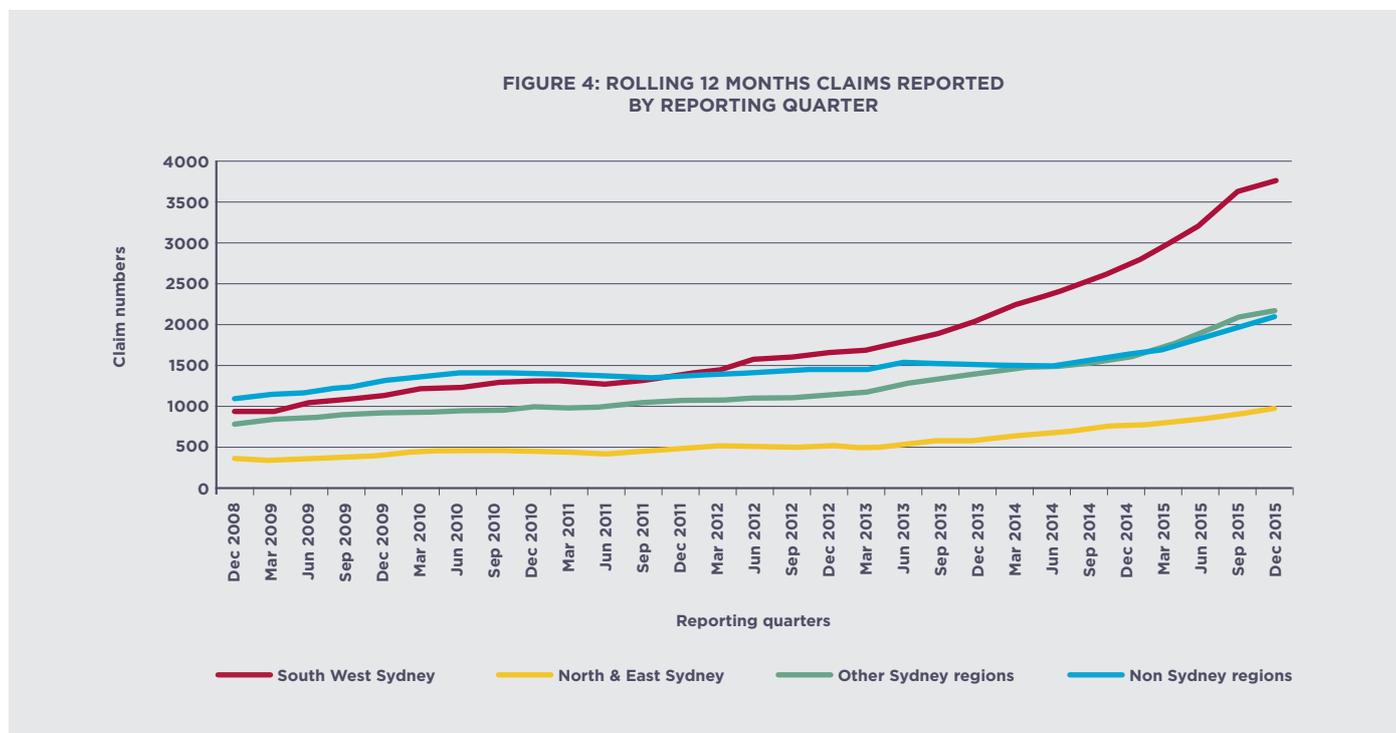
Over the past six years, and mainly in the last two years, there have been significant increases in some areas in the number of minor injury, legally represented claims as shown in Figure 4<sup>1</sup>. The majority of these are occurring in the area of Sydney bounded by the M4, M7 and M5 and in as far as Campsie.

While the growth for minor injury, legally represented claims in this area is concerning, there is now evidence that the growth is occurring in other parts of Sydney and across the rest of the State. In 2015, growth in the number of minor injury, legally represented claims has been above 20% in all parts of NSW. Moreover, if this trend continues, the number of claims from other parts of Sydney and NSW will approach that of South West Sydney in three years' time.

South West Sydney postcodes represent approximately 20% of the State in terms of population and number of vehicles yet they account for nearly half of the minor injury legally represented claims in NSW.

The number of minor injury, legally represented claims for this area alone is now greater than the *total reported for all of NSW* in 2009.

Since 2008 the number of minor injury, legally represented claims has increased in South West Sydney from between 255 to 355%. Figure 5 shows the growth in the past seven years in claim numbers in selected regions across Sydney. Figure 5a shows this information as a 'heat map'.



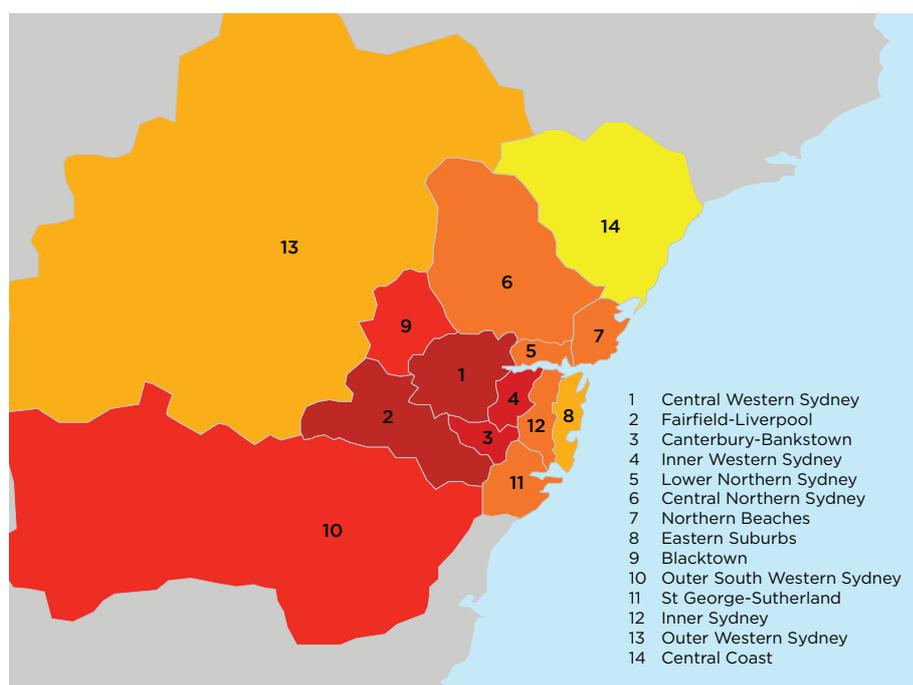
<sup>1</sup> The data referred to as South West Sydney in the graphs and charts is collected according to statistical subdivisions which include Canterbury-Bankstown, Fairfield-Liverpool, Inner Western Sydney (includes area from Ashfield to Lidcombe) and Central Western Sydney (includes Silverwater, Parramatta, Toongabbie and Guildford). Cumulatively they are referred to as South West Sydney.

# Analysis of CTP scheme trends

Figure 5: Increase in number of claims from 2008-15

Region	Statistical subdivision location*	Total Increase (%)
South West Sydney	Central Western Sydney	355
South West Sydney	Fairfield-Liverpool	313
South West Sydney	Canterbury-Bankstown	279
South West Sydney	Inner Western Sydney	256
North & East Sydney	Lower Northern Sydney	198
North & East Sydney	Central Northern Sydney	195
North & East Sydney	Northern Beaches	150
North & East Sydney	Eastern Suburbs	116
Other Sydney regions	Blacktown	237
Other Sydney regions	Outer South Western Sydney	233
Other Sydney regions	St George-Sutherland	180
Other Sydney regions	Inner Sydney	169
Other Sydney regions	Outer Western Sydney	140
Other Sydney regions	Central Coast	85

Figure 5a: Heat map of the number of minor injury legally represented claims - Sydney metropolitan area



\* Australian Bureau of Statistics classification.

# Analysis of CTP scheme trends

Legally represented minor injury claims average between \$95,000 and \$110,000 each, which is more than the average claim size for all claims covering minor and major injuries in any other jurisdiction in Australia. As a result, around \$213 of every Green Slip premium, is now going towards these claims, up from \$96 in 2008, an increase of 121% as shown in Figure 6 below. The increasing number of legally represented minor injury claims has also led to higher claims handling expenses by insurers.

If the claims trends continue we expect further premium increases of at least 10% per annum over the next few years. These sorts of increases in CTP premiums will bring into question affordability of vehicle ownership for motorists on low incomes.

## Propensity to claim

During this period there has been a 2% to 3% per year decline in the number of total reported road casualties presenting to hospital. This is contrary to the increasing numbers of minor injury, legally represented claims.

In normal circumstances victims of motor vehicle accidents are often taken to hospital; some will be admitted due to the severity of their injuries and others will be treated and sent home to recover. Postcodes in South West Sydney now have significantly more claims lodged than there are victims of road accidents attending local hospitals.

**FIGURE 6: PREMIUM REQUIRED TO PAY FOR MINOR INJURY LEGALLY REPRESENTED CLAIMS**



# Analysis of CTP scheme trends

The following tables (Figure 7a and 7b) show the ratio of CTP claims that eventuate when compared to the number of road accident victims that attend hospital.

From 2008 to 2011, this ratio was approximately 66%. In recent years this ratio has grown

dramatically and is now 110%, while in South West Sydney it is more than 200%.

When the figures are broken down further, to the statistical subdivision level, Canterbury-Bankstown, Fairfield-Liverpool and Central Western Sydney are all over 200%.

**Figure 7a: Propensity to claim by regions and year of report (70% of casualties)**

Region	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015* (%)
South West Sydney	91	107	109	107	133	155	172	210
North & East Sydney	83	98	97	98	110	110	115	128
Other Sydney regions	75	88	87	87	105	102	96	115
Non Sydney regions	36	38	41	39	45	45	54	56
<b>Total</b>	<b>59</b>	<b>67</b>	<b>68</b>	<b>67</b>	<b>79</b>	<b>84</b>	<b>95</b>	<b>110</b>

\* 2015 propensity to claims are calculated based on 2015 claim numbers and 2014's level of casualty

**Figure 7b: Propensity to claim for statistical subdivision regions in SW Sydney (70% of casualties)**

Statistical SubDivision Regions	2008 (%)	2009 (%)	2010 (%)	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015* (%)
Canterbury-Bankstown	96	105	111	105	129	164	177	226
Fairfield-Liverpool	92	115	119	119	144	171	192	218
Inner Western Sydney**	81	96	106	90	118	120	128	146
Central Western Sydney**	86	103	92	100	127	136	153	206
South West Sydney	91	107	109	107	133	155	172	210

\* 2015 propensity to claims are calculated based on 2015 claim numbers and 2014's level of casualty.

\*\* Inner Western Sydney includes the area from Ashfield to Lidcombe. Central Western Sydney includes Silverwater, Parramatta, Toongabbie, Guildford.

**Note:** Approximately 30% of those attending hospital will be the at-fault driver, and not entitled to significant compensation from CTP. These at-fault drivers have been excluded from the analysis leaving 70% of casualties.

# Analysis of CTP scheme trends

## These claims have unusual characteristics when compared to the State average

The minor injury, legally represented claims from Sydney's south west typically have:

- higher number of claims per accident
- higher proportion of child claimants
- higher proportion of unemployed claimants
- higher proportion of claimants who do not attend hospital.

## Service providers

Most of the growth in minor injury, legally represented claims appears to be originating from newly established legal firms. Most of the growth of these firms has occurred in South West Sydney.

There is evidence that some of the claims handled by lawyers acting in a large number of claims involve a small number of medical providers. For example, one legal service provider has represented claimants in more than 400 claims in the past few years, while one medical provider

was the treating doctor in more than 200 of these claims. That medical provider was the treating doctor for other claimants on less than 10 occasions.

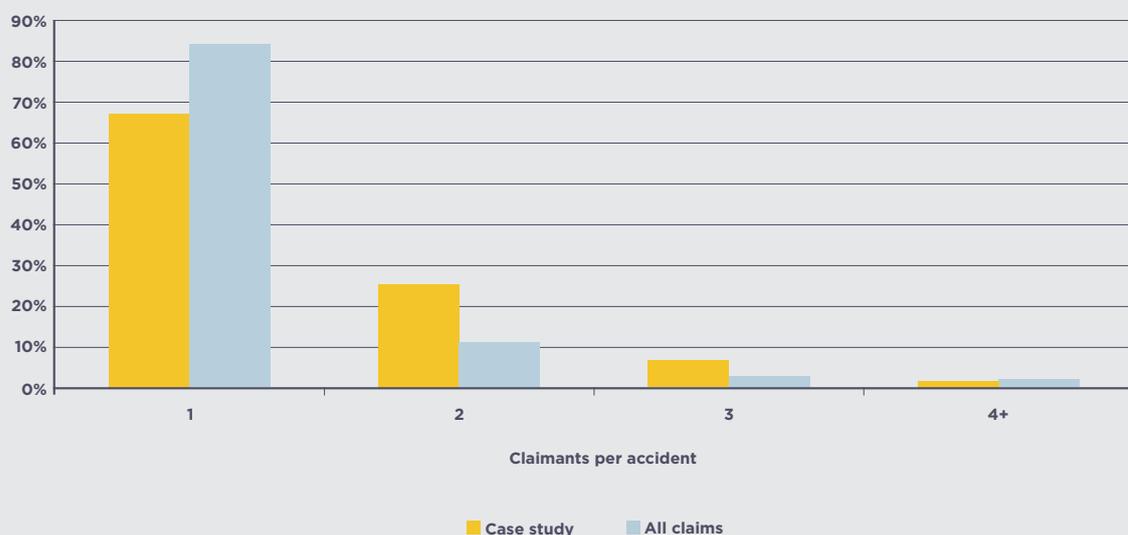
Given the number of GPs in NSW and the number of minor claims, in any year a GP would expect to see on average two new CTP claimants. The fact that some GPs are seeing hundreds of claims over three years is unusual.

## Case study

One lawyer and doctor have more than 200 minor injury claims in common. Figures 8, 9 and 10 compare the claims in the case study to the State average. The unusual characteristics of the claims are:

- higher number of claims per accident
- higher proportion of child claimants
- higher proportion of unemployed claimants
- lower proportion of accidents involving pedestrians.

FIGURE 8: CLAIMS PER ACCIDENT



# Analysis of CTP scheme trends

FIGURE 9: CLAIMANT TYPE

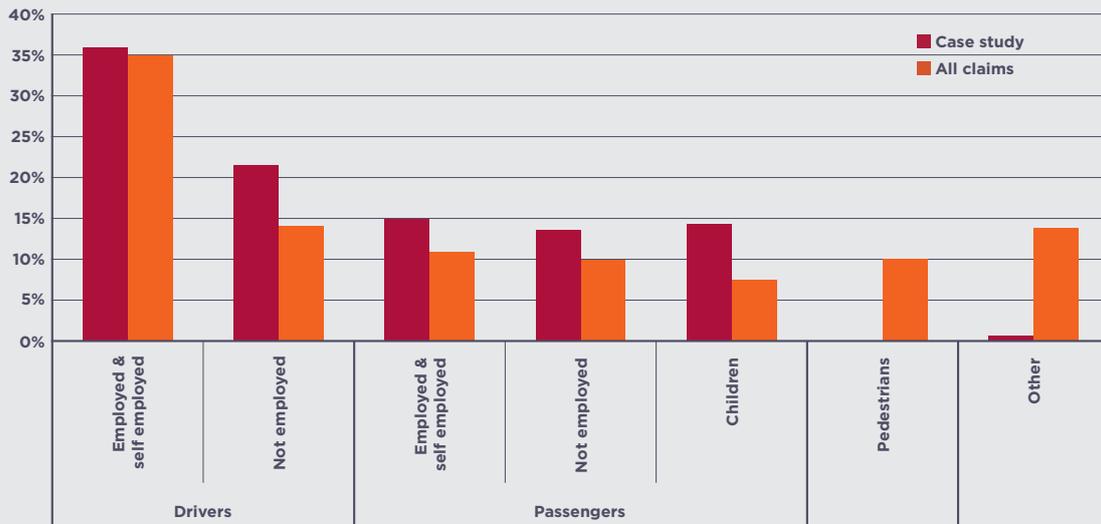
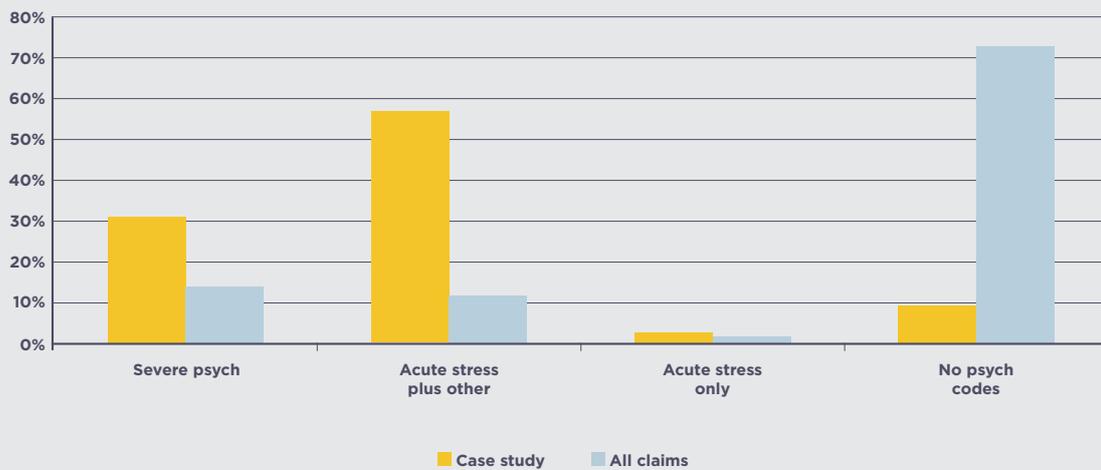


FIGURE 10: CLAIMS DISTRIBUTION BY INJURY TYPE



# Analysis of CTP scheme trends

## General observations about claims in South West Sydney

### Claimants who are children

There has been high growth in the number of claims involving children in Sydney's south west where acute stress is the only injury. Acute stress is a psychological symptom after the accident, such as stress reaction. These claimants are often not referred for any medical follow-up or the condition is not confirmed by a medical practitioner at the time of the accident. Typically the child is upset about the accident, may lose some sleep for a few nights, but then the symptoms disappear. While this can be a real symptom of a vehicle accident, the growth of these claim types in Sydney's south west compared to the rest of NSW does raise questions about potential fraud and exaggeration by some claimants. By age group, claims where acute stress is the only injury are far more common in very young children and particularly in Sydney's south west.

FIGURE 11: MINOR INJURY, LEGALLY REPRESENTED CLAIMS - AGE OF CLAIMANT AT ACCIDENT

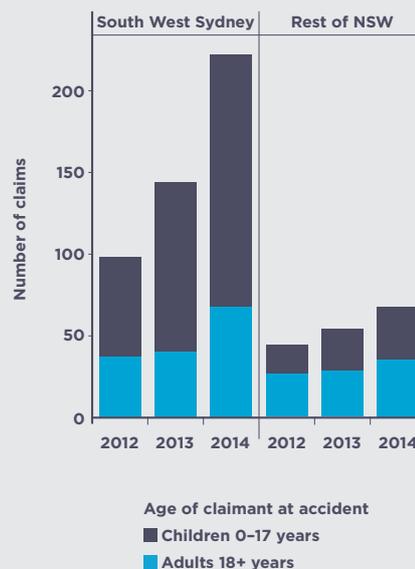
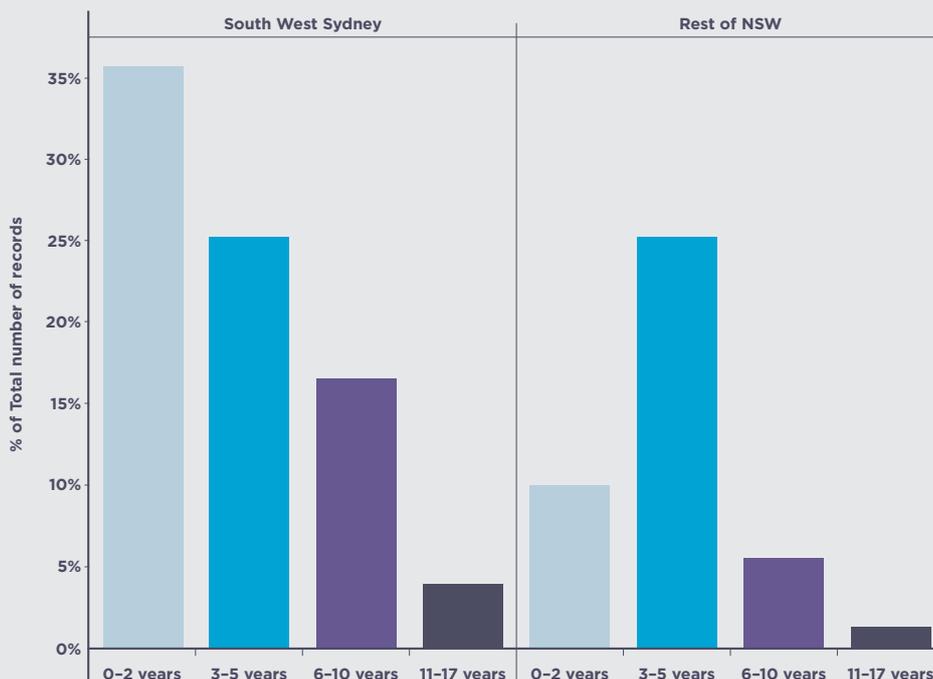


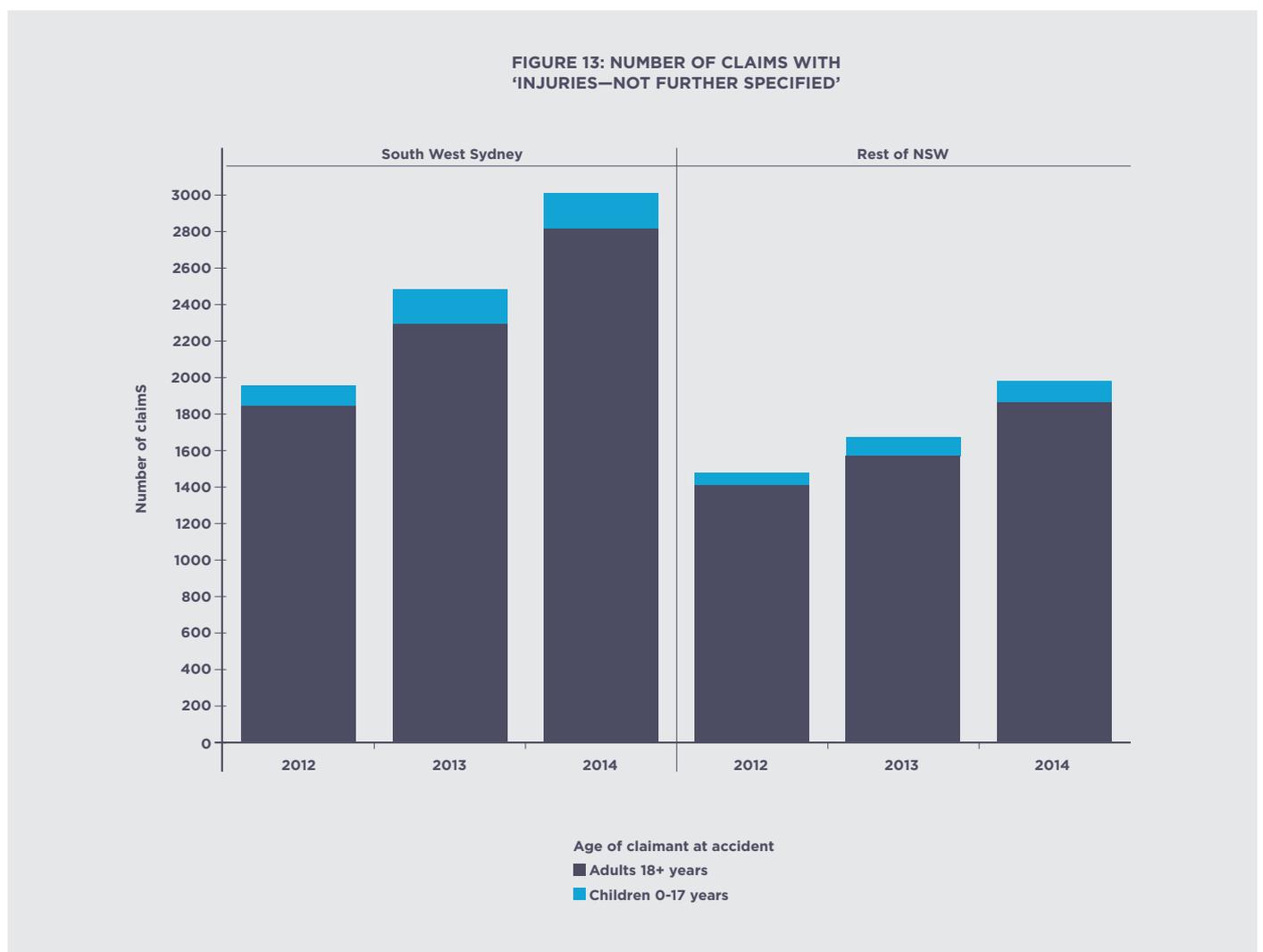
FIGURE 12: MINOR INJURY, LEGALLY REPRESENTED CLAIMS - ACUTE STRESS ONLY INJURY BY AGE GROUP



# Analysis of CTP scheme trends

## Claimants who are adults

Adult claimants in South West Sydney typically display different types of injuries to children. These injuries are more likely to be soft tissue injuries (not including fractures) e.g. stiffness, bruising, minor whiplash, and concussion without loss of consciousness. These claimants tend to not be referred for any further follow-up or the condition remains unconfirmed by a medical practitioner and the symptoms disappear after a few days.



# CTP fraud hotline

Together with the Insurance Fraud Bureau of Australia, we have set up the CTP insurance fraud hotline to contact if you have seen or suspect fraudulent CTP personal injury claims.

You can:

- call toll free 1800 600 444
- email [report.fraud@ifbaintelligence.com](mailto:report.fraud@ifbaintelligence.com)
- lodge an online form at <http://www.ifbaintelligence.com/report>

All reports will be treated confidentially and can be made anonymously.



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State Insurance  
Regulatory Authority

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