

**INQUIRY INTO 2020 REVIEW OF THE COMPULSORY
THIRD PARTY INSURANCE SCHEME**

Organisation: State Insurance Regulatory Authority (SIRA)

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Supplementary submission
to the Law and Justice
Standing Committee 2020
Review of the compulsory
third party insurance
scheme

December 2020

1. Overview

On 17 November 2020, the Hon Wes Fang MLC, Chair, Standing Committee on Law and Justice, invited the State Insurance Regulatory Authority (SIRA) to submit a further submission to the *2020 Review of Compulsory Third Party insurance scheme*. SIRA understands that the Committee is seeking specific information on the operation of the 6-month liability period under the scheme, specifically the period claimants are entitled to claim benefits irrespective of fault under the *Motor Accident Injuries Act 2017* (the 2017 Act and 2017 scheme).

Under the 2017 scheme, all people injured in a motor accident in NSW are provided with up to 26 weeks (six months) of statutory benefits from the date of the accident, irrespective of fault or injury severity.

Statutory benefits under the 2017 scheme include weekly income payments if the person was an earner, medical and treatment costs, and commercial attendant care expenses. This is a significant increase in benefits from those traditionally available to the at-fault drivers in a motor vehicle accident under the *Motor Accidents Compensation Act 1999* (the 1999 scheme) and supports the object of the 2017 Act to encourage early and appropriate treatment and care to achieve optimum recovery of persons from injuries sustained in motor accidents and to maximise their return to work or other activities.

2. No-fault statutory benefits under the 2017 scheme

The 2017 scheme reforms significantly improved support for all drivers

The commencement of the 2017 scheme on 1 December 2017 introduced a six-month period of defined statutory benefits, irrespective of fault or injury severity. This provides greater support for all injured people and specifically for at-fault drivers, compared to what was available under the 1999 scheme.

Under the 1999 scheme, which stopped selling policies on 30 November 2017, an at-fault driver could only receive a maximum of \$5,000 for medical treatment or lost earnings for the first the six months after an accident. As all other benefits were fault based, at-fault drivers could not recover any additional costs incurred for treatment, rehabilitation or lost income.

Under the 2017 scheme, all people injured in a motor vehicle accident are entitled to 26 weeks of defined statutory benefits, which include treatment and care, return to work and vocational support, as well as weekly payments of income benefits for earners while they are off work.

Additionally, injured people may receive access to treatment, such as one general practitioner consultation and two treatment consultations (for example physiotherapy), before a claim is made but after notification of an injury has been given¹. This is at the insurer's discretion, having considered the injured person's circumstances. Treatment will only be approved within the first 28 days of the accident without a claim being made². Treatment beyond the three consultations can also be approved within the 28 days.

Children, 16 years and under at the time of the accident, receive treatment and care for life if necessary, irrespective of who was at-fault³.

Another important aspect of the 2017 scheme is the provision of benefits for blameless accidents. This ensures that a person injured in a motor vehicle accident for which no person was at-fault is not disadvantaged when accessing benefits.

Some examples of blameless accidents can include:

- A collision caused by, or with an animal on a public road
- An accident caused by debris on the road
- Poor or unsafe road conditions
- Unforeseen mechanical problems such as brake or engine failure
- An accident caused by a driver who suffered a medical episode at the wheel.

In a recent case, *AAI v Singh* [2019] NSWSC 1300, the Supreme Court confirmed that under the 2017 Act a person injured in a blameless accident is considered not at-fault and therefore entitled to statutory benefits past 26 weeks. This includes treatment and

¹ Motor Accident Guidelines, version 5.1, 17 April 2020, section 4.77 page 16.

² Ibid, section 4.78 page 16.

³ *Motor Accident Injuries Act 2017* section 3.28 (1) (a).

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care benefits for up to five years and the payment of income benefits for up to 104 weeks. All insurers and SIRA's Dispute Resolution Service (DRS) are applying this precedent.

The 26-week liability period for statutory benefits for at fault drivers and people with minor injuries

Once a person injured in a motor vehicle accident has made a claim to receive statutory benefits, the insurer of the driver or owner of the vehicle at-fault for the accident will determine liability for the claim.

Section 6.19(1)-(8) of the 2017 Act, and Part 4 of the Motor Accident Guidelines published by SIRA, require insurers to provide written notice to injured people on whether they accept liability and how they have determined fault in an accident:

- for statutory benefits during the first 26 weeks after the accident, an insurer must inform a claimant within four weeks of receiving a claim for statutory benefits
- for statutory benefits after the first 26 weeks after the accident, an insurer must advise whether it accepts a claim within three months of receiving a claim.

There are limited circumstances in which an insurer can stop providing statutory benefits to an injured person at 26 weeks. These are:

- if the motor vehicle accident was caused wholly or mostly by the fault of the injured person; or
- if the person's only injuries are minor injuries as defined by the 2017 Act.

If an insurer denies liability for providing statutory benefits for more than 26 weeks, because it has determined on the facts that the injured person was wholly or mostly at-fault for causing an accident or only has minor injuries, then statutory benefits will cease generally at the 26-week mark.

An example of when a person would be considered mostly at-fault is where the person's contributory negligence (e.g. when a drug or alcohol offence contributed to the accident) was greater than 61%⁴.

Injured people who disagree with any determination of an insurer, including relating to liability for statutory benefits after 26 weeks, can request that decision be reassessed by insurer internal review⁵. Where an injured person disagrees with an insurer's decision after an internal review, they can lodge a dispute with DRS requesting the insurer's decision be overturned.

Statutory benefits for people with minor injuries may continue past 26 weeks

If the person's only injuries are minor injuries as defined by the 2017 Act, their statutory benefits generally cease after 26 weeks. The 2017 Act and the Motor Accident Guidelines enable the continuation of treatment and care benefits for people who experience a minor injury beyond the 26-week limitation period. This occurs if additional treatment or care can improve the recovery of the injured person and they were not at-fault for the accident.

⁴ Ibid sections 3.11 and 3.28.

⁵ An insurer internal review is required before most disputes can be lodged with DRS.

As noted in pages 16-17 of SIRA's initial submission to the Committee, SIRA completed a review of the definition of minor injury in February 2020. This review found that the definition within the 2017 Act, including the eligibility for defined benefits, was achieving its objectives of encouraging early and appropriate treatment while maximising return to work/other activity outcomes.

The review found that 42% of people with minor injuries finished their treatment and care claims within 13 weeks after a motor accident, which increased to 75% by 26 weeks, and 98% by 52 weeks.

SIRA continues to monitor the application of all minor injury provisions and is providing continual guidance to stakeholders.

3. Operation of no-fault statutory benefits since 1 December 2017

Statistics – claims and payments

- Since 1 December 2017, more than 4553⁶ at-fault drivers have been provided with up to six months of benefits for medical expenses and income cover. NSW is one of five Australian jurisdictions which provides benefits to drivers irrespective of fault. Please refer to Appendix 1 for a summary and comparison of the different benefit structures, design and operating models of Australian motor accident insurance schemes.
- Between 1 December 2017 and 30 June 2020, over \$73.7 million dollars in benefits have been paid to at-fault drivers, which represented an average payment of \$16,196 per claim and 17.5% of overall benefits paid out to injured motorists.
- The 2017 CTP scheme has significantly increased the value of benefits paid to at-fault drivers compared the 1999 scheme. Between April 2010 to 30 June 2020, \$17.7 million dollars in benefits have been paid to 7050 at-fault drivers, with an average payment of \$2,509 per at-fault ANF claim. The 1999 scheme capped payment available to at-fault drivers at \$5,000.
- The percentage of at-fault claims increased from 5.8% of claims under the 1999 scheme⁷, to 18.75% of claims under the 2017 scheme. This reflects the increased level of support, benefits and incentives available for at-fault drivers to make a claim under the 2017 scheme.
- As noted in page 11 of SIRA’s initial submission to the Committee, the number of at-fault statutory benefit claims has been tracking in line with expected experience in the first and second accident years of the 2017 scheme. The full experience of the third accident year, given the impact of the COVID-19 pandemic, will not be known until the completion of the period.

Current payments for at fault and not at-fault claimants – all injuries to 30 June 2020

Not at-fault claimants (all injuries)*		At-fault claimants (all injuries)
Payments	Amount	Amount
Weekly payments	\$145,658,764	\$30,677,508
Treatment and care	\$162,021,171	\$39,166,431
Funeral	\$53,300	\$26,192
Other [^]	\$39,569,834	\$3,870,830
TOTAL:	\$347,303,070	\$73,740,961

[^]Other: legal costs, fund management fees, investigation costs, medico-legal costs and recoveries.
*Interstate, compensation to relatives and workers’ compensation recoveries are excluded

⁶ From 1 December 2017 to 30 June 2020.

⁷ Between April 2010 to 30 June 2020.

1999 CTP Scheme – average payments for at-fault claimants, April 2010 to 30 June 2020

Payment band received by at-fault claimant	Number of claims	Average Payment
Less than \$1000	2,645	\$2,509
Between \$1000 to \$5000	2,061	
Greater than \$5000 ⁸	2,344	
TOTAL:	7,050	\$17,688,450

2017 CTP scheme – comparison average payments as at 30 June 2020

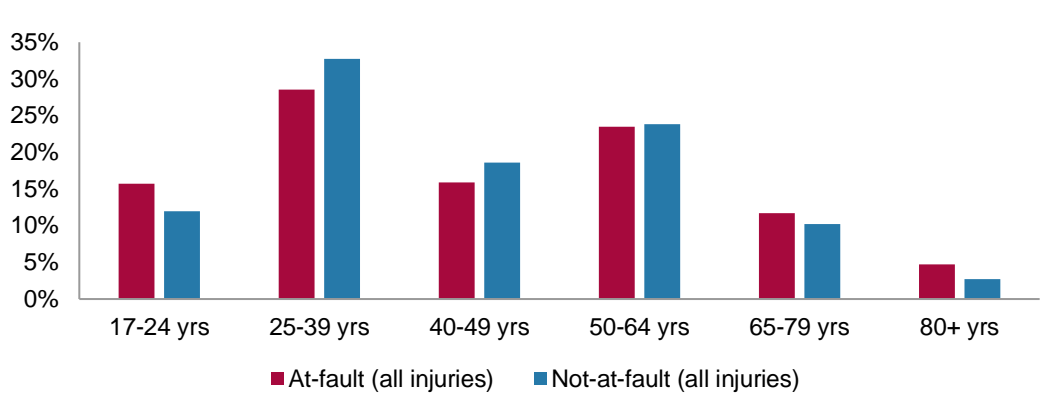
	Total payments	Number of claims	Average payment
At-fault (with non-minor injuries)	\$64,524,135	3,342	\$19,307
At-fault (with soft tissue only injuries)	\$9,216,826	1,211	\$7,611
At-fault (all injuries)	\$73,740,961	4,553	\$16,196
Not-at-fault (all injuries)	\$347,303,070	19,726	\$17,606

Note: At-fault includes mostly-at-fault claims
 Interstate, compensation to relatives and workers' compensation recoveries are excluded

Statistics – customer demographics

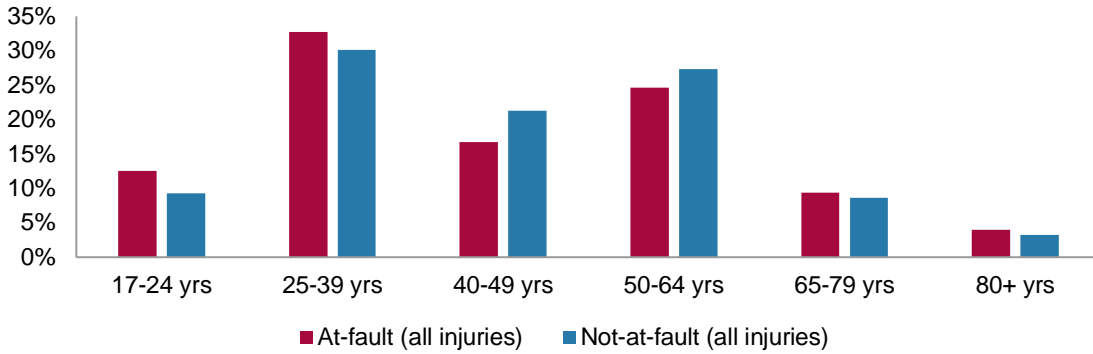
- There is a greater proportion of at-fault drivers aged between 17 to 24 years, and 65+ years compared to the mix of not-at fault drivers of the same age groups.
- The income earning status of claimants is largely consistent, whether they are at-fault or not-at fault claimants.

Proportion of claims by age group at 30 June 2020



⁸ Instances where insurers approved payments slightly above the \$5,000 cap to close a claim under the 1999 scheme

Proportion of payments by age group at 30 June 2020



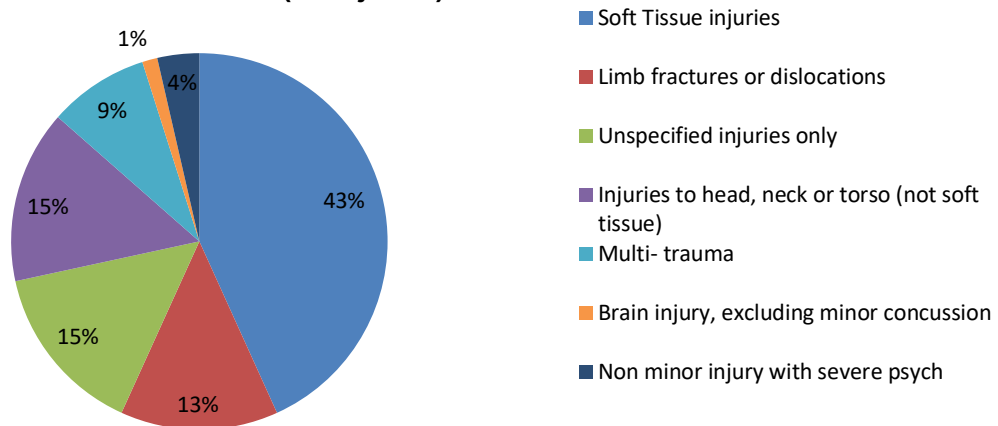
Customer demographics by earner at 30 June 2020

Earner Status	At-fault (with non-minor injuries)	At-fault (with soft tissue only injuries)	At-fault (all injuries)	Not-at-fault (all injuries)
Earner	61%	53%	59%	57%
Non-Earner	22%	23%	22%	27%
Not yet determined	18%	24%	19%	16%
Total	100%	100%	100%	100%

Note: At-fault includes mostly-at-fault claims
 Interstate, compensation to relatives and workers' compensation recoveries are excluded

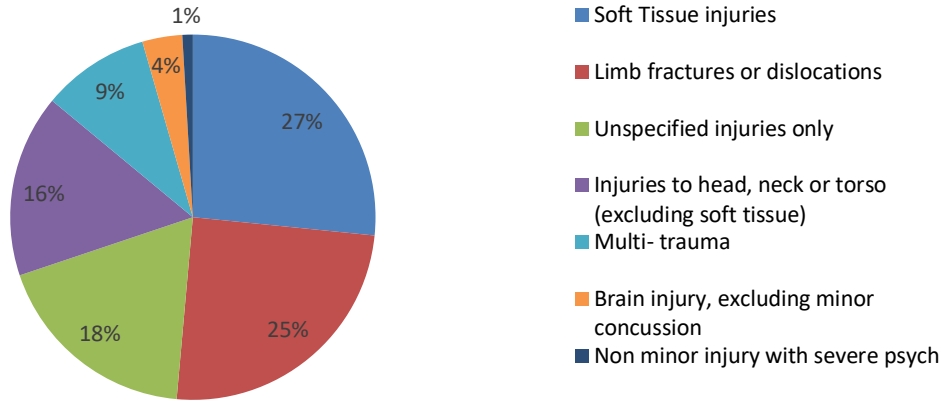
- 27% of at-fault claimants experienced a soft tissue injury and 25% a limb fracture or dislocation; compared to 43% of not-at fault claimants experiencing a soft tissue injury and 14% a limb fracture or dislocation.⁹

Injury profile of not at-fault drivers (all injuries)



⁹ As at 30 June 2020

Injury profile of at-fault drivers (all injuries)



- As presented on the following page, the highest at-fault claim frequency (i.e. generally number of at-fault claims as a proportion of vehicles) is reported for motorcycles, taxis and buses. A registered taxi is 11 more times likely than a Class 1 motor vehicle to make an at-fault CTP claim, while a registered motorcycle is about 7 times more likely to make an at-fault claim compared to a Class 1 motor vehicle.

At-fault claims by vehicle class and region at 30 June 2020

At fault Vehicle Class		Number of at-fault statutory benefit claims 1 December 2017 to 30 June 2020						Total at-fault Accidents	Total registered vehicles 30 June 2019 to 30 June 2020	At-fault claim frequency per registered vehicle (%)
		Metro	Outer Metro	Newcastle	Wollongong	Country	Unknown			
1	Motor Car	1,568	73	275	81	557	6	2,560	4,315,935	0.06
3c	Goods Vehicle < 4.5t GVM	182	20	49	9	192	2	454	950,110	0.05
3d	Goods Vehicle > 4.5t & <16t GVM	15	-	1	1	3	-	20	55,665	0.04
3e	Goods Vehicle > 16t GVM	12	1	6	-	10	-	29	46,670	0.06
5	Primary Producers ' Vehicle	-	-	1	-	20	-	21	88,309	0.02
6a	Omnibus > 16 Passengers	31	-	3	-	4	-	38	9,581	0.40
6b	Omnibus < 16 Passengers	3	-	-	-	1	-	4	3,385	0.12
6c	STA Buses	17	-	-	-	-	-	17	1,669	1.02
6d	Omnibus - Hospital and Charity	1	-	-	-	-	-	1	3,752	0.03
6e	Omnibus - Other	3	-	-	-	-	-	3	4,936	0.06
7	Taxi - Cab	33	-	-	-	3	-	36	5,542	0.65
8	Private Hire Car	2	-	-	-	-	-	2	1,266	0.16
9a	Drive-Yourself Vehicle - Motor Car	11	-	-	-	1	1	13	27,147	0.05
9d	D. Y. V. - Goods Veh. < 4.5t GVM	-	-	1	-	2	-	3	3,851	0.08
10d	Motorcycle < 225 ml	123	1	10	2	16	-	152	43,251	0.35
10e	Motorcycle 225 - 725 ml	265	18	101	19	117	-	520	98,869	0.53
10f	Motorcycle 725 - 1125 ml	107	6	24	10	42	-	189	50,295	0.38
10g	Motorcycle 1125 - 1325 ml	28	6	12	9	34	-	89	23,244	0.38
10h	Motorcycle > 1325 ml	47	6	21	4	46	-	124	36,487	0.34
11	Police Vehicle	3	-	-	-	-	-	3	4,724	0.06
13	Ambulance Vehicle	1	-	-	-	-	-	1	1,862	0.05
15c	Tow Truck	2	-	1	-	-	-	3	1,471	0.20
Unk	Unknown	-	-	-	-	-	252	252	-	-
UVP	UVP	-	-	-	-	-	19	19	-	-
Grand Total		2,454	131	505	135	1,048	280	4,553	5,793,159	0.08

Statistics – internal review and disputes

- Disputes regarding an insurer’s determination of fault as at 30 June 2020:
 - 457 of 6,473 (7%) of internal reviews related to an injured person’s fault status. 111 were reviewed in favour of an applicant customer, while in 346 decisions were upheld.
 - 270 of 4321 (6%) disputes heard at DRS related to an injured person’s fault status. 188 of these matters have been settled, declined or determined, with 79 determinations outstanding.

Fault status internal reviews for all claimants from 1 December 2017 as at 30 June 2020

Internal Review Type	Decision Upheld	Decision changed		Total Determined
		In favour of customer	In favour of insurer	
Is the injured person mostly at-fault?	346	111	0	457
Total internal reviews				6,473

Fault status disputes for all claimants from 1 December 2017 as at 30 June 2020

DRS Dispute Matter	In Progress	Settled/ Withdrawn	Declined	Determined Disputes	Other	Total
Is injured person mostly at-fault?	79	53	4	131	3	270
Total fault status disputes at DRS						4,312

4. Measurement of customer experience

SIRA recently commissioned the Social Research Centre to conduct an independent benchmark study to measure customer experience and health outcomes in the NSW CTP and workers compensation schemes.

This study went well beyond standard customer satisfaction tests to measure customer experience with insurers, trust in the schemes, perceptions of justice, return to work and life, and health and social outcomes.

A total of 893 people with CTP claims participated in the baseline survey online or over the phone. The participants had dealings with an insurer between 1 April 2019 and 31 March 2020 and were representative of the general population of people making claims in the scheme.

Key findings relating to at-fault status included:

- 62% of people with a CTP claim who were at fault rated their health at the time of the survey as good to excellent.
- 64% of people with a CTP claim who were at fault agreed that their insurer was easy to deal with, 65% agreed the insurer was efficient in their dealing and 64% agreed the insurer acted with empathy.
- 65% of people with a CTP claim who were at fault expected to make a complete, or nearly complete, recovery.
- 74% of people with a CTP claim who were at fault were rated the extent to which their life is back on track as 6 out of 10 or more.

SIRA will publish the full results of this study in early 2021. It is the first phase of a larger program of work which will include two repeat surveys (three and six-months post baseline) and a series of qualitative measures (focus groups and case studies).

Appendix 1: Motor Accident Injury Insurance in Australian State and Territory Jurisdictions

Australian States and Territories have vastly different motor accident insurance schemes, benefit structures and operating models

All Australian jurisdictions have different benefits structures, different methods of determining premiums (risk rating¹⁰, community rating¹¹, risk based and community-based blend¹² or by vehicle classification) and are underwritten by either the public or private sector:

- Three Australian jurisdictions are fault-based or primarily fault-based: Queensland (privately underwritten), South Australia (privately underwritten) and Western Australia (publicly underwritten).
- The ACT and Victoria are hybrid no-fault schemes: they also provide common law damages (fault-based). The ACT scheme commenced on 1 February 2020 and is only partially through the first year of the scheme. It is privately underwritten.
- The Northern Territory is a no-fault scheme without common law damages. This scheme is administered by the Territory Insurance Office (TIO) on behalf of the NT Government.
- Tasmania is managed by the Motor Accidents Insurance Board (MAIB) Tasmania and is a publicly underwritten hybrid no-fault scheme.

Statutory benefits differ between jurisdictions in eligibility criteria and length of availability. Modified common law damages have different injury thresholds. Premiums are also determined differently.

¹⁰ Risk rating correlates the premium paid with the likelihood of claims against the policy. Discounts and penalties may be applied through risk rating factors such as, a no claim bonus or demerit points.

¹¹ A community rating system means that everyone is entitled to buy the same cover, at the same price, regardless of individual risk characteristics. There might be different prices for regions and vehicle class. Low risk owners subsidise high risk drivers.

¹² This includes risk-based pricing (discount and penalty), within limits, to keep premiums affordable and a community-base for social equity.

State/Territory	Type of Scheme and premium	Are benefits available to at-fault drivers?	
		Statutory Benefits	Common Law Damages
NSW	<p>Privately underwritten</p> <p>Hybrid:</p> <ul style="list-style-type: none"> No-fault: statutory benefits for 26 weeks, including minor injury Fault based statutory benefits for non-minor injury after 26 weeks Common law – Fault and 10% WPI threshold Risk-based and community-based blend approaches to premium setting 	Yes - 6 months for treatment and care, and weekly benefits*	No
QLD	<p>Privately underwritten</p> <p>Fault-based - common law</p> <ul style="list-style-type: none"> Nil statutory benefits Community rating premium based on vehicle class with a floor and cap range by Government. 	No	No
VIC	<p>Publicly underwritten</p> <p>Hybrid</p> <ul style="list-style-type: none"> Statutory benefits – no threshold, unlimited treatment and income support Common law – fault based and 30% WPI threshold or serious injury certificate. Community rating premium 	Yes – treatment and care, and income support benefits*	No
SA	<p>Privately underwritten</p> <p>Fault based - common law</p> <ul style="list-style-type: none"> Nil statutory benefits (except for minors) Community rating premium 	No	No
WA	<p>Privately underwritten</p> <p>Fault-based - common law</p> <ul style="list-style-type: none"> Nil statutory benefits Risk rating premium 	No	No

State/Territory	Type of Scheme and premium	Are benefits available to at-fault drivers?	
		Statutory Benefits	Common Law Damages
TAS	Publicly underwritten Hybrid <ul style="list-style-type: none"> No-fault, capped statutory benefits Fault based common law Government set premiums based on vehicle category 	Yes - treatment and care (capped at \$500,000); weekly earnings (up to 2 years)	No
ACT commenced 1 Feb 2020	Privately underwritten Hybrid <ul style="list-style-type: none"> No-fault, capped statutory benefits for 5 years Common law - fault and 10% WPI threshold, damaged capped for non-economic loss¹³ Community rating premium 	Yes - up to 5 years treatment and care, and income replacement*	No
NT	Publicly underwritten No-fault <ul style="list-style-type: none"> No-fault, capped statutory benefits* Nil common law Community rating premium model based on vehicle category 	Yes	No

*Subject to some exclusions such as for serious driving offences.

Damages (common law) claims

No Australian jurisdiction provides common law or modified common law damages to injured people at-fault in an accident. The basis of common law is that you are taking action against a party for a negligent or wrongful civil act or omission which has caused your injury.

¹³ <https://apps.treasury.act.gov.au/maic/for-injured-people>

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

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