

**Submission  
No 3**

## **INQUIRY INTO 2022 REVIEW OF THE LIFETIME CARE AND SUPPORT SCHEME**

**Organisation:** State Insurance Regulatory Authority (SIRA)

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SIRA

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# 2022 Review of the Lifetime Care and Support Scheme

Submission to the Standing  
Committee on Law and Justice

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The Hon Christopher Rath MLC  
Chair, Standing Committee on Law and Justice  
Parliament of NSW

Dear Mr Rath

**SIRA's submission to the 2022 Review of the Lifetime Care and Support Scheme**

Thank you for your invitation to make a submission to the 2022 Review of the Lifetime Care and Support Scheme. I am pleased to attach SIRA's submission.

Under the *Motor Accidents Injuries Act 2017*, people injured in a motor accident from 1 December 2017 who require treatment and care more than five years after the relevant motor accident will, for the purposes of the payment of treatment and care benefits, be transferred to the Lifetime Care and Support Authority as the relevant insurer.

SIRA has been working with the Lifetime Care and Support Authority, as well as insurers, to ensure a seamless transition for claimants.

This submission provides an overview of the work to support this transition.

I would welcome the opportunity to appear before the Committee to give evidence about these important issues.

Sincerely

**Adam Dent**  
Chief Executive

23 September 2022

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# 1. About SIRA

The State Insurance Regulatory Authority (SIRA) was established in 2015 to steward and regulate NSW's statutory insurance and care schemes — motor accidents Compulsory Third Party (CTP) insurance, workers compensation insurance and the home building compensation scheme. SIRA is a customer-centric, intelligence-led, risk-based regulator whose core purpose is to ensure that NSW insurance schemes protect and support the people who need them, now and in the future.

SIRA's role in the State's insurance and care schemes is to:

- ensure that access to compensation is balanced with affordability of insurance and the efficiency and viability of the 2017 Scheme
- minimise the cost to the community of motor accident and workplace injuries, and the risks associated with the injuries
- ensure access to treatment that will assist in injured persons' recoveries
- lead the strategic development and effective oversight of NSW insurance and care schemes
- promote the effective management of claims and any disputes or complaints that may arise
- promote injury prevention, effective injury management and return to work measures and programs
- oversee and monitor compliance with legislation
- collect, analyse and publish data relating to performance
- advise the Minister on appropriate strategies, policies, and practices.

Pursuant to section 20(4) of the *State Insurance and Care Governance Act 2015*, SIRA is not, in the exercise of its functions, subject to the control and direction of the Minister.

SIRA launched a new strategy, SIRA2025, in March 2022. The strategy outlines SIRA's goals and strategic priorities until 2025. Holding regulated entities to account for outcomes, putting the customer at the centre, and data and digital, are important elements of the strategy. Through this strategy SIRA will use the full range of scheme stewardship, design, and regulatory functions to deliver better outcomes for customers.

In December 2021, SIRA made adherence to its Customer Service Conduct Principles a licence condition for all insurers operating in the 2017 Scheme.

SIRA is holding regulated entities to account for outcomes through its new Regulatory Publishing Policy. This policy commits SIRA to publishing more information about insurers, employers, healthcare providers, and other regulated entities. The policy will improve transparency and, in turn, the accountability of insurers and regulated entities, deterring sub-standard performance and increasing compliance. Ultimately, this leads to better outcomes for customers.

SIRA continues to make detailed scheme performance data available via an interactive Open Data Portal on its website. SIRA also publishes quarterly scheme actuarial reports, regulatory activity updates and measures of insurer performance. It also publishes the results of an annual survey of customers, which shows customers' experience with the claims process, trust in the system, and the extent to which insurers uphold SIRA-mandated Customer Service Conduct Principles.

SIRA is investing heavily in its regulatory intelligence, data and analytics capability. This work aims to ensure that SIRA has the right data and insights to inform its regulatory actions and scheme design to deliver optimal outcomes and impact.

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## 2. Introduction

CTP, or ‘Green Slip insurance’, is mandatory for motor vehicles registered in NSW. CTP insurance protects vehicle owners from liability where their vehicle causes the injury or death of another person.

SIRA licenses and regulates private insurers that underwrite the current CTP Scheme (2017 Scheme) as well as the previous 1999 Scheme under the *Motor Accidents Compensation Act 1999* (MAC Act).

Lodgement of claims under the MAC Act ended on 31 May 2018, six months after the last accident, however late claims are permitted. The 1999 Scheme will continue to operate until all claims for accidents prior to 1 December 2017 are finalised. As of June 2022, 2,869 active claims remain.

The 2017 Scheme was established in 2017 under the *Motor Accident Injuries Act 2017* (MAI Act). The 2017 Scheme resulted from a reform of the reform of the 1999 Scheme and sought to enable broader coverage and a more affordable system. The 2017 Scheme reforms have reduced complexity, sped up the payment of benefits, provided for internal review of insurer decisions and reduced premiums by an average of \$153. There are approximately 6 million policies operating within the 2017 Scheme. SIRA currently licenses and regulates six private insurers that underwrite the 2017 Scheme.

The 2017 Scheme reforms addressed insurer ‘super profits.’ In 2021, the transitional excess profits and excess losses (TEPL) review triggered a return of \$91 million to the 2017 Scheme. A third TEPL assessment cycle is currently underway. This will examine three accident years: 2018, 2019 and 2020.

Further changes to the 2017 Scheme resulted in the introduction of the *Personal Injury Commission Act 2020* which established the Personal Injury Commission (the Commission) to deliver improved customer service and dispute resolution, and the extension of functions of the Independent Review Office (IRO) to provide assistance to injured persons under the CTP scheme.

The three-year Statutory Review of the Motor Accident Injuries Act 2017, undertaken by Clayton Utz and Deloitte in July 2021, considered all aspects of the 2017 Scheme, including its framework, objectives and implementation. It also considered recommendations arising from the 2020 Legislative Council Standing Committee on Law and Justice Review of the 2017 Scheme. The Reviewers had the benefit of feedback regarding the 2017 Scheme from 31 organisations or individuals, including insurers, legal practitioners, peak bodies, medical and allied health professionals, and individual injured motorists.

The final report was tabled in the NSW Parliament in November 2021. The report made 73 recommendations. The response by SIRA and the NSW Government to the recommendations is progressing as detailed in SIRA’s submission to the 2022 Review of the Compulsory Third Party insurance scheme.

The 2017 Scheme is still maturing, as the first claims in the Scheme reach their five-year legislative milestone in December 2022, in addition to changes currently being implemented in response to various reviews.

A design feature of the 2017 Scheme provides that people who are injured in a motor accident, on and from 1 December 2017, and who require treatment and care statutory benefits more than five years, will, for the purposes of the payment of treatment and care benefits, be transferred to the Lifetime Care and Support Authority (LCSA) as the relevant insurer as provided for under sections 3.2 and 3.45 of the MAI Act. This is referred to as CTP Care.

Claimants will transition from the CTP Insurer to CTP Care from December 2022, or earlier by agreement. SIRA has been working with the LCSA, insurers and other stakeholders on an implementation strategy for CTP Care, to ensure a smooth transition for injured people whose claims management for treatment and care will transfer to the LCSA.

## 2.1 2017 CTP Scheme

The 2017 Scheme provides benefits for pedestrians, passengers, cyclists, motorcyclists, drivers of other vehicles and, to a limited extent, the driver at-fault. Claims are managed by the CTP insurer of the at-fault vehicle. People injured on NSW roads by an uninsured or unidentified vehicle can also claim scheme benefits through the Nominal Defendant Fund which SIRA manages.

SIRA's functions are set out under section 10.1 of the MAI Act. The 2017 Scheme applies to injuries resulting from a motor vehicle accident occurring on or after 1 December 2017.

Benefits under the 2017 Scheme are fully funded by premiums. Premiums paid by motorists cover the cost of claims, insurers' administration and claims management costs, insurers' profit, GST and a fund levy, each of which appear as a separate charge on Green Slips. SIRA administers the fund levy which is comprised of:

- **Motor Accidents Operational Fund (MAOF)** which pays for initial public hospital and ambulance services for anyone injured on NSW roads; the costs of running the CTP insurance scheme including support services such as CTP Assist, CTP Assist, the Commission and IRO and vocational and return to work support; and fees to Transport for NSW to administer the registration process.
- **Lifetime Care and Support Scheme (LTCS) Fund** which covers the lifetime treatment, rehabilitation and care of people who have been severely injured on NSW roads regardless of who was at fault. To be eligible for the LTCS scheme, severe injury criteria must be met.
- **Motor Accident Injuries Treatment and Care Benefits Fund (MAITCB)** which is vested in the Lifetime Care and Support Authority to cover payments and costs relevant to treatment and care under the CTP Care program which provides treatment and care for people with needs five years after the motor accident, or earlier by agreement.

The 2017 Scheme has been designed to support recovery from injury by providing fast access to payments for treatment, care, and loss of income to assist people to return to work or their other pre-injury activities.

Eligible injured people have access to statutory benefits and common law for an award of damages, including:

- Statutory benefits include weekly income payments (if the person is an earner and has lost time from work due to the accident), treatment costs and commercial attendant care.
- People with 'minor injuries' as defined in the MAI Act (that is, soft tissue and/or minor psychological or psychiatric injuries) or those who were wholly or mostly at-fault in the accident are limited to 26 weeks of weekly payments of statutory benefits.
- The maximum weekly payment period for injured people whose injury is not minor and who were not the person mostly at-fault in the accident, is up to 104 weeks unless the injured person has a pending damages claim.
- A claim may be made for damages for economic and non-economic loss. No damages may be awarded to an injured person if the person's injuries resulting from the motor accident were minor injuries. Permanent impairment thresholds must be met to be eligible for non-economic loss.
- An injured person who has a pending claim for damages may claim statutory benefits for loss of earnings or earning capacity for up to 156 weeks if the degree of permanent impairment as a result of the injury is not greater than 10 per cent, and 260 weeks if the degree of permanent impairment as a result of the injury is greater than 10 per cent.
- After five years from the date of the accident (or earlier by agreement), icare's CTP Care will become responsible for paying for reasonable and necessary treatment and care instead of the CTP insurer.
- Reasonable funeral expenses, regardless of fault.
- Compensation to close relatives who were dependent on a person who died as a result of a motor accident in NSW and was not at-fault.

**Table 1a: 2017 Scheme benefits and damages entitlements at a glance – At fault claims**

At fault claims: Benefits/damages type	All
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident
Weekly benefits payments for loss of earnings	Up to 26 weeks
Damages for future economic loss	No
Damages for non-economic loss (e.g. pain and suffering)	No
Treatment and care benefits	Up to 26 weeks
Funeral expenses	Available whether at fault or not at fault
Damages for dependants in compensation to relatives claims	No
Legal and other expenses	Available as prescribed under the MAI Act and Regulations

**Table 1b: 2017 Scheme benefits and damages entitlements at a glance –Not at fault claims**

Not at fault claims: Benefits/damages type	Minor injuries <sup>1</sup>	Non-minor WPI <sup>2</sup> ≤ 10%	Non-minor WPI > 10%
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident	Available for anyone injured in a motor vehicle accident	Available for anyone injured in a motor vehicle accident
Weekly benefits payments for loss of earnings	Up to 26 weeks	Up to 156 weeks	Up to 260 weeks
Damages for future economic loss	No	Yes (after 20 months)	Yes
Damages for non-economic loss (e.g. pain and suffering)	No	No	Yes
Treatment and care benefits	Up to 26 weeks	CTP Care after 5 years	CTP Care after 5 years
Funeral expenses	Available whether at fault or not at fault	Available whether at fault or not at fault	Available whether at fault or not at fault
Damages for dependants in compensation to relatives claims	No	Yes (WPI threshold not relevant)	Yes (WPI threshold not relevant)
Legal and other expenses	Available as prescribed under the MAI Act and Regulations	Available as prescribed under the MAI Act and Regulations	Available as prescribed under the MAI Act and Regulations

A key feature of the 2017 Scheme is to encourage early resolution of claims, and quick, cost effective and just resolution of disputes. An injured person can request an internal review of specified insurer decisions as a first step in resolving disputes. The internal review is required to be conducted independently of the original decision maker, and provides an opportunity to resolve disputes early, without the need to progress to the Commission.

1 Soft tissue and/or minor psychological or psychiatric injuries

2 Whole person impairment



# 3. Lifetime Care and Support Scheme

The LTCS is established by the *Motor Accidents (Lifetime Care and Support) Act 2006* to provide treatment, rehabilitation and care to people severely injured in motor accidents in NSW, regardless of fault.

To be eligible for the LTCS Scheme, a person must have a severe injury, which includes brain injury, spinal cord injury, specific types of amputations, blindness or burns.

The LTCS Scheme is operated by the LCSA, managed by icare. The LTCS Scheme is funded through a levy on Green Slip premiums collected by CTP insurers and paid into a statutory fund administered by the LCSA.

SIRA continuously works with CTP insurers and LCSA to ensure a timely and smooth transition for the injured person from an insurer to the LTCS Scheme. SIRA regularly reviews the Motor Accident Guidelines which set out the roles and responsibilities for when a CTP claimant becomes a LTCS Scheme participant and ensures the ongoing and effective communication between insurers and LCSA. The Motor Accident Guidelines prescribe that insurers must provide certain information to icare, including contacting icare prior to making adverse liability decisions regarding LCSA participants.

## 3.1. CTP Care

After five years from the date of the accident (or earlier by agreement), icare's CTP Care will become responsible for paying for reasonable and necessary treatment and care instead of the CTP insurer.

The MAI Act established the MAITCB Fund, belonging to and vested in the LCSA, which provides for people with claims in the 2017 Scheme who require treatment and care for more than five years after the accident, but who do not meet severe injury criteria of the LTCS Scheme.

The MAITCB fund pays for the management and treatment for these people and the LCSA acts as the relevant insurer to manage and pay for the injured person's statutory benefits for treatment and care.

## 3.2. Levy rates to fund LTCS Scheme and CTP Care

The Board of icare has responsibility for determining the annual aggregate levy requirements for the LTCS and MAITCB Funds. The SIRA Board has responsibility for setting per vehicle levy rates that are expected to meet the icare targets.

The SIRA Board is not responsible for the setting of icare levy targets (as these relate to separate statutory funds managed by icare), but SIRA is able to request information from icare in support of any changes to their requirements.

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### 3.3. LTCS Fund

The target collection set by icare for the LTCS Fund increased from \$448 million at the beginning of the 2017 Scheme compared to \$538 million for the 12 months starting July 2022. This is an increase to the average levy per vehicle of \$6.70 or an eight per cent increase (from \$80.60 to \$87.30).

Effective 1 July 2022, the LTCS average levy per vehicle was increased by \$3.65 or a four per cent increase on the previous 12 months. The key drivers being an increase in the fund's operating expenses and the customary inflationary increases.

As a part of the levy setting process in 2021, icare notified SIRA of a deficit in the funding position of the LTCS Fund and for the first time icare introduced a deficit repair component to the levy, driven by poor investment returns. The deficit repair levy was subsequently removed for July 2022, however current discussions with icare have indicated that the deficit repair component of the levy might be re-introduced from January 2023 as the funding position has worsened again, due to increases in attendant care costs, poor investment returns and increases in icare's operational expenses.

### 3.4. MAITC Benefits Fund

The target collection set by icare for the MAITCB Fund increased from \$58 million at the beginning of the 2017 Scheme compared to \$138 million for the 12 months starting July 2022. This is an increase to the average levy per vehicle of \$11.89 or a 113 per cent increase (from \$10.50 to \$22.39).

Effective 1 July 2022, the MAITCB Fund average levy per vehicle was increased by \$6.94 or a 44.9 per cent increase on the previous 12 months.

The almost 45 per cent increase in levy requirement effective 1 July 2022 is significant. The largest driver of this increase is the revised view of operating expenses and a higher deficit repair levy to partially recover the fund's net asset deficit which doubled from \$85.6 million at 31 December 2020 to \$171.8 million at 31 December 2021.

The levy determination process for both the LTCS and MAITCB Funds for the calendar year 2023 is currently underway.

# 4. CTP Care readiness

People injured in a motor accident on and from 1 December 2017 who require treatment and care statutory benefits more than five years after the relevant motor accident will, for the purposes of the payment of treatment and care benefits be transferred to LCSA as the relevant insurer as provided for under sections 3.2 and 3.45 of the MAI Act.

CTP Care is administered by the LCSA and refers to the functions exercised by the LCSA as the relevant insurer under the MAI Act.

## 4.1. Motor Accident Guidelines

SIRA developed CTP Care Guidelines, included in the Motor Accident Guidelines, in October 2020, to set out the requirements for the transition of the management of treatment and care benefits payments for requirements, complaints handling, treatment and care, customer experience and data provision.

The guidelines apply to the LCSA in the exercise of its functions as the relevant insurer:

- for the payment of statutory benefits for treatment and care provided more than five years after a motor accident under section 3.2 of the MAI Act, or
- when it enters into an agreement with a licenced insurer to assume responsibility for the payment of statutory benefits for treatment and care provided within five years after a motor accident under section 3.45 of the MAI Act.
- As part of SIRA's continuous review of the Motor Accident Guidelines and following a review, SIRA publicly consulted on proposed changes to the CTP Care Guidelines to enhance clarity to support a smooth transition for the injured person. SIRA is currently finalising changes to the CTP Care Guidelines, informed through stakeholder feedback.

## 4.2. SIRA ensuring a smooth transition between insurers

SIRA has engaged extensively with CTP Care and licensed insurers to enable oversight and monitoring to ensure a smooth transition of claims. This has included:

- Monthly Steering Committee and Operational meetings with CTP Care to ensure governance and preparedness.
- Regular engagement and discussion with licensed insurers, including a review of the transition notices to injured persons to ensure appropriate and consistent messaging.
- Provision of operational guidance for LCSA's business readiness to function as a relevant insurer for treatment and care statutory benefits.
- Allocating technical support and resource to assist the LCSA deliver on its IT capabilities as the relevant insurer.

In December 2022, the first cohort of injured people will transfer to CTP Care (except those who transitioned prior to 5 years after the motor accident subject to the Early by Agreement arrangement).

CTP Care Early by Agreement enables an early transfer of an injured person if it is likely that there will be a requirement for ongoing treatment and care more than five years from the date of the accident.

In FY 2021-22, 35 claimants have been transferred by agreement to CTP Care. It is anticipated that 70 injured persons who currently have active treatment and care needs will transition to CTP Care in December 2022, with an anticipated 248 in the first quarter and 1300 in the first year.

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These injured persons were notified six months from their upcoming transition and will be further notified two weeks prior to their transition date. Current treatment and care service providers will also be notified at least two weeks before CTP Care becomes the relevant insurer.

In addition, CTP Assist will proactively contact the relevant injured persons three weeks before their transition to ensure injured people understand their entitlements and support them through to CTP Care.

### 4.3. Ongoing supervision and monitoring

SIRA supervises insurer compliance with their obligations and performance under the MAI Act and the Motor Accident Guidelines. SIRA uses data analytics and insights to hold insurers to account for their performance.

Whilst CTP Care is not subject to licence conditions in line with the licensed insurers within the CTP scheme, SIRA will implement a consistent supervision framework where relevant according to its statutory powers. SIRA's statutory powers only extend to CTP Care's provision of treatment and care benefits. Supervision will include regulatory engagement, inclusion in relevant Insurer Claims and Conduct Assurance Program (ICCAP) activities, insurer metric and complaints monitoring.

SIRA and IRO actively engage and exchange complaints performance information under a Memorandum of Understanding and this will include any complaints raised in relation to icare's claims management and provision of treatment and care.

The performance of CTP Care will be included in regular public scheme and insurer performance reporting.

SIRA does not have statutory power to supervise the LCSA's management of claims in the LTCS Scheme.

In relation to the transition of claims from licensed insurers to CTP Care, SIRA will conduct an ICCAP activity in June 2023, to review the insurers compliance to their obligations related to the transition of claims to CTP Care.

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