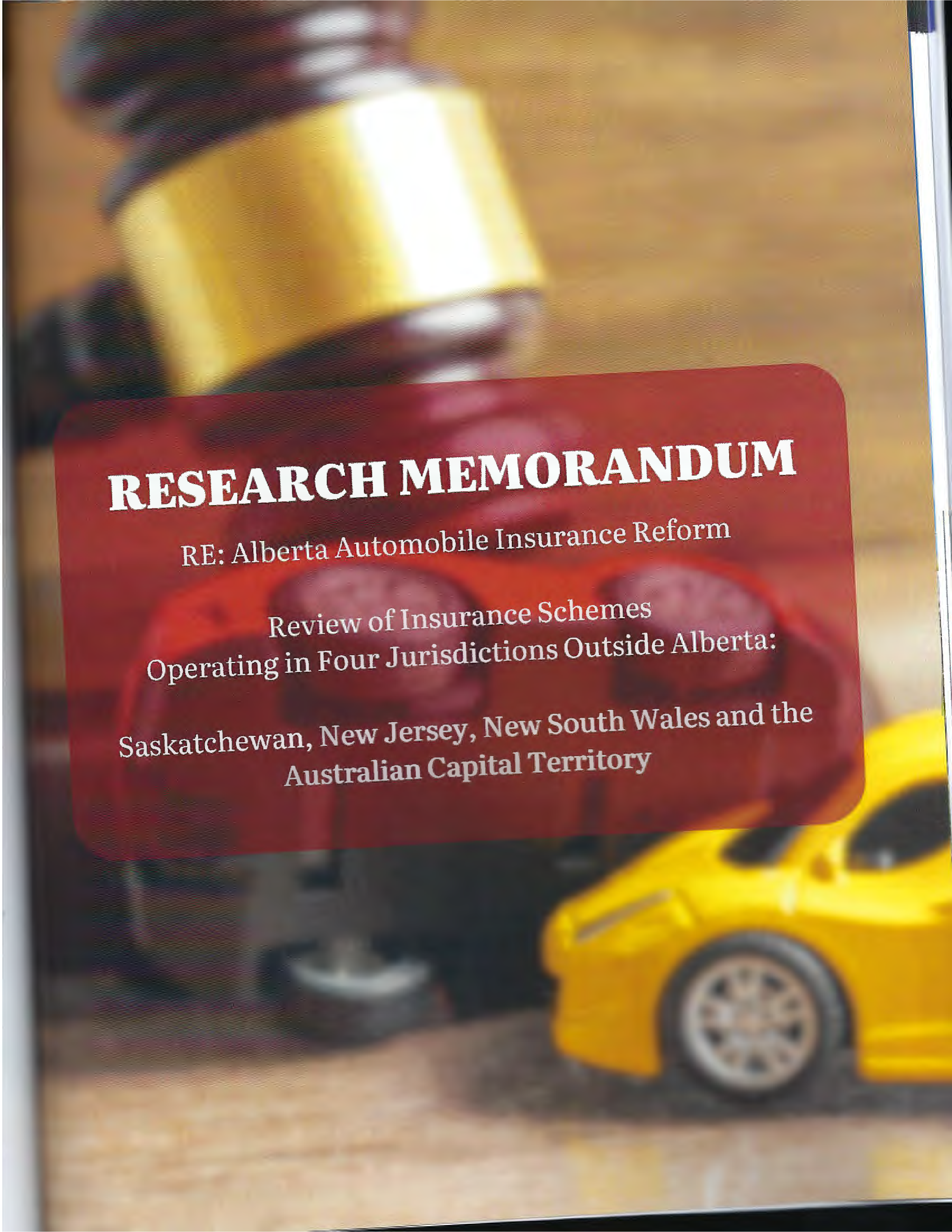

RESEARCH MEMORANDUM

RE: Alberta Automobile Insurance Reform

Review of Insurance Schemes
Operating in Four Jurisdictions Outside Alberta:

Saskatchewan, New Jersey, New South Wales and the
Australian Capital Territory

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ESTION PRESENTED:

Alberta Civil Trial Lawyers Association ("ACTLA") is engaged in a consultation cess with the Government of Alberta in relation to changes that the Government is idering making to private passenger automobile legislation in the province. You requested our assistance to help gather information that may support and inform TLA's submissions to Government as part of that process.

ng the fall of 2023, the Government announced a first phase of changes to system that do not include reforms related to bodily injury or the Minor Injury ulation. Those changes were targeted at areas of the system including auto repair and reforms to promote more transparency in the industry.

TLA's engagement is focused on the second stage of changes, which are expected e announced during the first quarter of 2024. In this phase, it appears among other gs that the Government is contemplating adoption of a no-fault or hybrid no-fault em.

issions have been made to the Government by other parties recommending a no- or hybrid approach, including by the Insurance Bureau of Canada ("IBC")[1], and by Automobile Insurance Advisory Committee reporting to the Minister of Finance[2]. se recommendations, as well as announcements and press releases from the Alberta ernment in relation to the changes being considered, indicate that the Government oking at automobile insurance regimes currently operating in several other dictions and considering them as potential models for changes that are contemplated hase two of Alberta's reform.

have asked that we conduct research into the automobile insurance schemes in those el jurisdictions being considered by the Alberta government, in order to understand those schemes are, how they work, and what advantages or challenges they may ent for consumers in those jurisdictions. The particular jurisdictions you have asked look at are:

- Saskatchewan
- New Jersey
- New South Wales
- Australian Capital Authority

NCLUSIONS:

have reviewed legislation, public information packages, media reports, actuarial and istical data, and commentary concerning the automobile insurance schemes operating ch of the four jurisdictions you have identified. Our review indicates that in all of jurisdictions, the scheme in place offers some limited form of access to ordinary ts, although the mechanisms governing that access are formulated in somewhat dif-

Insurance Bureau of Canada, "Enhancing Care and Expanding Choice" July 2023, https://www.albertaautoinsurers.ca/wp-content/uploads/2023/07/Alberta-Auto-Insurance-Reform-Report_Jul-27-2023.pdf.

Report on Fundamental Reform of the Alberta Automobile Insurance Compensation System, September 2020, by tomobile Insurance Advisory Committee for the Minister of Finance of the Government of Alberta.

ferent ways. In all jurisdictions, there is either a basic package of insurance or certain defined benefits as a standardized offering, and ability to claim damages over and above that basic package is conditioned on either payment of higher premiums, or a finding that claimant suffers from injuries of a certain threshold of seriousness.

In Saskatchewan, all automobile insurance policies are provided by SGI, which is a Crown corporation. In all other jurisdictions, insurance is provided through private insurers.

To summarize the essential structure of each scheme:

Saskatchewan	Consumers must choose either the no-fault option or the tort option. The two are mutually exclusive. Beneficiaries under the no-fault option may sue for economic damages exceeding their policy coverage, but may not sue for non-economic damages. *Under the tort option, beneficiaries receive a more limited basic package of benefits* and may sue for both economic and non-economic damages exceeding the policy limits.
New Jersey	Consumers have a choice between a Standard and a Basic policy. The choice made affects the cost of the insurance, the types of options that an insured may have to choose from within the policy, and the amounts of insurance benefits that may be claimed. By default, both the Standard and Basic policies are subject to a "Limited Right to Sue" option, which restricts beneficiaries from suing for pain and suffering unless their injuries fall within a specified list of permanent impairments. However, under the Standard policy, the consumer may choose the "No limitation on lawsuit" option, and then is entitled to sue for any additional damages.
New South Wales	All vehicle owners must purchase compulsory third party ("CTP") insurance when registering their vehicle. The CTP policy prescribes certain statutory benefits payable to injured parties for economic and non-economic losses for one year for at-fault drivers and persons with minor "threshold" injuries, and up to two years for others. Persons suffering more than a 10% permanent impairment may make a claim to the Personal Injury Commission for damages extending beyond the two-year period. Commencement of proceedings in the ordinary courts is only permitted for claims that are exempt from assessment by the Commission, either because they so qualify under conditions set out in the Regulations, or because the Commission has issued a certificate to that effect.
Australian Capital Territory	All vehicle owners must purchase CTP insurance when registering their vehicle. The scheme provides benefits for up to five years for treatment and care, lost income, and quality of life benefits based on permanent incapacity, to anyone injured in a motor vehicle accident regardless of fault. If a claimant's WPI is assessed at 10% or more, the claimant may also bring a motor accident claim in the ordinary courts.

Concerning the impact on costs of insurance, rankings for Saskatchewan, New Jersey, and New South Wales place them among the higher cost jurisdictions for automobile insurance in their respective countries. In the Australian Capital Territory, the current CTP scheme has only been in effect since 2020, and consequently we were not able to locate much data providing indications of its cost effectiveness.

Bottom Line
RESEARCH AND COMMUNICATIONS

DISCUSSION:

A: SASKATCHEWAN

Automobile insurance in Saskatchewan is provided by Saskatchewan Government Insurance ("SGI"), a Crown corporation created in 1944[3] and operating today pursuant to the framework set out in The Saskatchewan Government Insurance Act, 1980, SS 1979-80, c S-19.1. SGI operates two branches of insurance services: the Saskatchewan Auto Fund, which is the province's mandatory automobile insurance program, and SGI Canada, which offers property and casualty insurance in five Canadian provinces.[4] SGI is the exclusive provider of automobile insurance in the province.

As a crown corporation, SGI is also subject to The Crown Corporations Act, 1993, SS 1993, c C-50.101, which designates the Crown Investments Corporation ("CIC") as the holding company for all subsidiary crown corporations in Saskatchewan. As part of its mandate, CIC is responsible to the Lieutenant Governor for review and evaluation of the objectives, goals, revenues, expenses, expenditures, investments and operating results of subsidiary crown corporations, including SGI.[5] SGI is also bound to provide annual reports and financial statements to the Executive Council of the provincial government, and is subject to annual audits.[6]

SGI's website reports that the Saskatchewan Auto Fund is financially self-sustaining, operating on a break-even basis over time. It does not receive money from, nor pay dividends to, the government.[7]

i. General Framework

The benefits scheme for auto insurance provided by SGI is set out in The Automobile Accident Insurance Act, RSS 1978, c A-35 ("AAIA"). It is a hybrid scheme that offers Saskatchewan residents two options:

- No-fault coverage, which is the default option that consumers receive automatically if no election is made. The scheme for this coverage is set out in Part VIII of the AAIA.
- Tort coverage, which the consumer must specifically elect by filing a declaration form to that effect with the insurer[8]. The scheme for this coverage is set out in Part II of the AAIA.

Premiums are the same for both types of coverage; however claimants receive different levels of coverage under each plan. In 2018, a CBC article reported that approximately 99 percent of Saskatchewan residents opted for no-fault insurance.[9]

The automobile insurance scheme in effect in Saskatchewan today developed through several iterations. Prior to 1995, all automobile insurance in the province was tort-based. However, in that year, a pure no-fault system was introduced based on strong recommendations from SGI that spiralling injury claim costs and inadequacies of the tort system could be improved upon through a no-fault scheme. On January 1, 2003, the auto insurance scheme was again modified to provide a limited tort option alongside the no-fault coverage, resulting in the current hybrid scheme.[10]

ii. No-fault Coverage

Rules governing no-fault coverage are set out in Part IV, Division 3.2 and Part VIII of the AAIA. Section 101(1.1) states that Part VIII "applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident [...] and who has not provided the insurer with a tort election [...]".

See *The Government of Saskatchewan Insurance Act*, SS 1944(2), c 13.

SGI website: https://sgi.sk.ca/ourbusiness.

The Crown Corporations Act, 1993, SS 1993, c C-50.101, ss. 5(1) and (2).

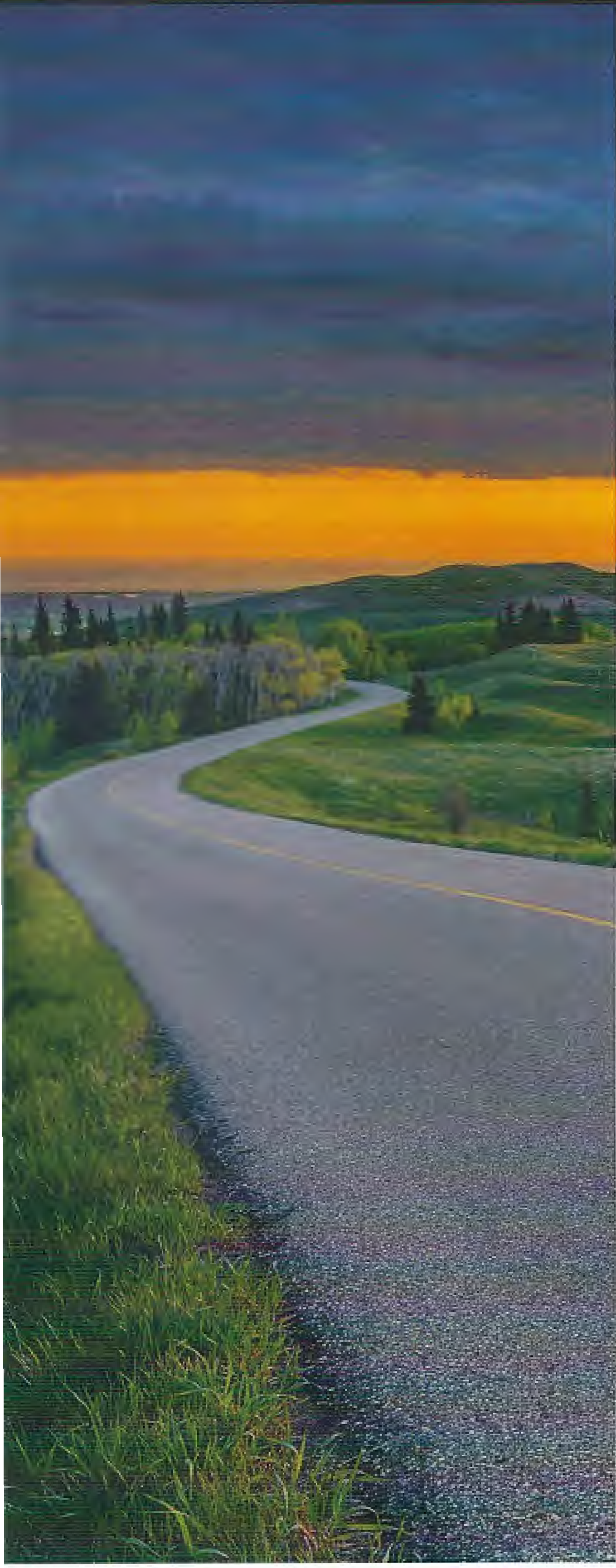
Ibid, ss 33-34; *The Saskatchewan Government Insurance Act*, 1980, SS 1979-80, c S-19.1, ss 19-20.

SGI website: https://sgi.sk.ca/governance.

The Automobile Accident Insurance Act, RSS 1978, c A-35 ("AAIA"), s 40.2.

Alicia Bridges, "How does 'no fault' insurance affect your compensation after a crash?", CBC News, April 18, 2018, https://www.cbc.ca/news/canada/saskatchewan/no-fault-tort-insurance-difference-saskatchewan-1.4623986.

Saskatchewan Institute of Public Policy, "SIPP Briefing Note: Choice in Automobile Insurance: Tort versus No-fault Coverage", December 2002, https://ourspace.uregina.ca/server/api/core/bitstreams/aa5a878f-0069-4bf6-98f0-e77051c6d0f3/content.



Section 102 confirms that the no-fault and tort coverage options are mutually exclusive. The provision states that "a person entitled to benefits under the no-fault provisions of the Act is not entitled to benefits pursuant to Part II [tort coverage] other than a death benefit pursuant to Part II relating to the death of an insured."

Beneficiaries under the no-fault option are permitted to sue an at-fault driver for economic losses that exceed the coverage under their policy (AAIA, s. 41.15). However, they may neither sue nor be sued for non-economic losses (ie pain and suffering) respecting injuries arising out of or stemming from bodily injury, except in the following limited circumstances:

- where the at-fault driver is convicted of impaired driving;
- where the at-fault driver is convicted of criminal negligence;
- where the at-fault driver is convicted of using a vehicle to intentionally cause or attempt to cause bodily injury to another person;
- where the at-fault driver dies and was impaired by alcohol or drugs (AAIA, ss. 40(a.1) and 41.16(2)(a) and (b)) [11]

In addition, a beneficiary under a no-fault insurance policy may bring a claim for pain and suffering damages against certain types of businesses, in relation to their business activities, if their acts or omissions caused, contributed to, or exacerbated the beneficiary's loss. Eligible third parties are limited to:

- vehicle manufacturers
- makers or suppliers of motor vehicle parts;
- vehicle sellers;
- garages, repair shops or service stations;
- licensed drinking establishments.[12]

The no-fault regime provides coverage to an injured insured regardless of who is responsible for the accident (s. 106). For insureds who are resident in Saskatchewan, coverage applies to accidents occurring anywhere in Canada or the United States, or on a vessel travelling between ports of those countries (s. 108).

However, exceptions apply, and for example benefits may be denied in whole or in part, where:

- An insured commits suicide or attempts to commit suicide with a motor vehicle (s. 107);
- The insured is an occupant of a stolen vehicle involved in an accident and is convicted of stealing or possession of the vehicle (s. 107.1);
- The insured is responsible for the collision and found to be impaired by alcohol or drugs or convicted of an offence involving criminal negligence or used the vehicle to deliberately harm someone (s. 174(3)).

11 SGI, "Your Guide to No-Fault Coverage: Personal Auto Injury Insurance", 2023, at p 3, https://sgi.sk.ca/documents/37148/138043/guide_nofault.pdf/58fc8fc0-1e37-4be5-948a-1868c8a5d153.

12 AAIA, s. 41.16(2)(c) and (5).

A. Benefits Payable

The no-fault policy provides coverage for:

- Income replacement;
- Medical and rehabilitation expenses;
- Travel and personal expenses;
- Living Assistance;
- Permanent Impairment;
- Death Benefits.

In its information brochure "Your Guide to No Fault Coverage"[13], SGI provides the following table setting out the maximum coverage amounts that are available to beneficiaries under its no-fault plan:

	Line	Benefit	Amount
Income benefits	1	Maximum insurable earnings	$108,253 annual income
	2	Industrial average wage	$58,552 annual income
	3	Substitute worker	$51,168 maximum per year
	4	Caregivers: Full Reduced	$984 maximum per week $496 maximum per week
	5	Loss of studies for students: Elementary Secondary Post-secondary	$6,271 maximum per year $11,652 maximum per year $23,304 maximum per year
Medical and rehabilitation	6	Medical and rehabilitation costs	$7,819,241 maximum
	7	Living assistance: Functional Cognitive	$984 maximum per week $693 maximum per week
Permanent impairment	8	Catastrophic injuries	$273,673 maximum
	9	Other permanent injuries	$224,073 maximum
Expenses	10	Meal allowance: Breakfast Lunch Dinner	$10.79 per day $15.33 per day $18.79 per day
	11	Private accommodation	$27 per day
	12	Travel by automobile	$0.47 per kilometre
	13	Clean, repair, replace clothing	$1,796 maximum
	14	Counselling expenses	$5,737 maximum
	15	Critical care	$34,428 maximum
	16	Non-refundable expenses	$2,870 maximum
	17	Financial counselling	$1,563 maximum

Concerning income replacement benefits, the following additional information helps to understand the scope of benefits available under the no-fault plan:

- For first 180 days after the accident: benefits are 90% of net pre-accident income (subject to annual maximum income of $108,253);
- After 180 days: benefits are the greater of (i) income benefits received for the first 180 days (ii) average annual income in the two years prior to the collision, or (iii) minimum wage;

[13] "Your Guide to No-Fault Coverage: Personal Auto Injury Insurance", 2023, at p 19, https://sgi.sk.ca/documents/37148/138043/guide_nofault.pdf/58fc8fc0-1e37-4be5-948a-58c8a5d153.

- Benefits are payable bi-weekly, commencing after a 7-day waiting period following the collision (waived in cases of catastrophic injury);
- Beneficiaries receiving a full income benefit for 24 consecutive months or more may receive a lump-sum pension benefit based on 10% of their total income benefits, payable either after income benefits cease or when the beneficiary turns 65.

Concerning compensation for bodily injury, as indicated in the above table, the maximum lump sum amount payable for non-catastrophic permanent impairment is $224,073; in the case of a beneficiary suffering catastrophic injuries, the maximum lump sum amount payable is $273,673. Catastrophic injuries are defined to include:

- paraplegia or quadriplegia;
- amputation resulting in two or more permanent impairments;
- total loss of functional vision or impairments of 80% or more of the entire visual system;
- a functional alteration of the brain resulting in a combined impairment of 50% or more;
- combined impairments resulting in a total impairment of 80% or more.[14]

The framework governing determination of the degree of permanent impairment for bodily injuries is detailed in Appendix B: Schedule of Permanent Impairments of The Personal Injury Benefits Regulations, c. A-35 Reg 3. Benefits payable for a given impairment or injury are calculated by multiplying the percentage impairment (eg humeral fracture with angulation of >15 degrees = 5%) by the maximum permanent impairment amounts discussed above.

No-fault coverage also provides death benefits as follows:

- spouse – 45% of the deceased's net income to a maximum gross salary of $108,253 per year;
- education and training allowance of up to $53,777 for dependent spouse;
- dependent child – 5% of the deceased's net income per dependent child or disabled adult;
- $35,850 for loss of a child;
- $17,925 per parent and non-dependent child for those with no spouse or dependents up to the maximum of $80,667.

B. Claims Process and Appeals

No-fault claims are received and processed in first instance by a personal injury representative, who collects and reviews salary, medical and other information, and then determines the amount of coverage a beneficiary is entitled to.[15] The decision as to benefit entitlement must be provided to the claimant in writing (s. 189).

A claimant who is dissatisfied with the decision concerning their benefit entitlement may challenge the decision in one of the following ways:

- Seek mediation by filing notice within 90 days of the insurer's decision (s. 190);
- Appeal the decision to either the Court of King's Bench or the Automobile Injury Appeal Commission within 90 days of either the insurer's decision or the written statement provided by the mediator at the close of mediation (s. 191).

A claimant may choose to attend mediation first and then pursue an appeal if unsatisfied with the mediation; or the claimant may skip mediation and proceed directly to an appeal. The claimant must choose between an appeal to the Court of King's Bench or to the Automobile Injury Appeal Commission, and may not bring an appeal before both (s. 191(2)).

14 *The Personal Injury Benefits Regulations*, Chapter A-35 Reg 3, s. 2(1)(c).
15 SGI, "Your Guide to No-Fault Coverage: Personal Auto Injury Insurance", 2023, at p 4, https://sgi.sk.ca/documents/37148/138043/guide_nofault.pdf/58fc8fc0-1e37-4be5-948a-1868c8a5d153.

With leave of a judge of the Court of Appeal, the insurer or the claimant may appeal a decision of the Court of Queen's Bench or appeal commission to the Court of Appeal on a question of law only, within 30 days of the date of the decision (s. 194).

iii. Tort Coverage

Individuals who choose SGI's tort coverage option receive a basic coverage package that provides them with benefits regardless of who is at fault for a collision, and are also entitled to sue an at-fault driver for additional losses that exceed the basic package, including both economic and non-economic losses (AAIA, s. 41(2)).

As mentioned earlier, a CBC article in 2018 reported that approximately 99 percent of Saskatchewan residents opted for no-fault insurance.[16]

Some or all of the benefits under the basic package will be denied if the claimant:

- was impaired by alcohol or drugs at the time of the collision;
- deliberately used their vehicle to harm another person or property;
- was travelling in a vehicle that was racing or in a speed test;
- was travelling in a vehicle attempting to evade a law enforcement officer;
- was driving an unregistered vehicle or while not qualified or authorized to drive;
- was convicted of a first offence for criminal negligence (permanent impairment benefits will not be paid) or a subsequent offence for criminal negligence in the last five years (income benefits will also not be paid);
- is entitled to Workers' Compensation benefits;
- is convicted of stealing a vehicle or possession of a stolen vehicle involved in a collision.

A. Suing and Being Sued

Individuals subscribing to the tort coverage plan are entitled to sue an at-fault driver for both economic and non-economic (pain and suffering) damages, as well as expenses, that exceed the amount of their benefits under the basic package. Note that, in comparison, beneficiaries opting for no-fault coverage may only sue for economic damages that exceed their policy benefits, and may not sue for pain and suffering.

Any settlement or court award that a beneficiary under the tort coverage plan receives for non-economic damages is subject to a $5000 deductible. SGI indicates that the purpose of the deductible is to discourage small claims and keep premiums low.[17] In addition, tort settlements and awards are reduced by the amount of any permanent impairment benefits the beneficiary received under the basic package. Ordinary tort principles, such as contributory

16 Alicia Bridges, "How does 'no fault' insurance affect your compensation after a crash?", CBC News, April 18, 2018, https://www.cbc.ca/news/canada/saskatchewan/no-fault-tort-insurance-difference-saskatchewan-1.4623986.

17 SGI, "Your Guide to Tort Coverage: Personal Auto Injury Insurance", 2023, https://sgi.sk.ca/documents/37148/138043/guide_tort.pdf/93ba9131-aae6-4397-8635-[illegible]0c928289, at p 4.

negligence or mitigation, may also apply to reduce the claimant's award.[18]

Individuals who have elected the tort coverage option may sue any at-fault driver, regardless of whether the other driver has no-fault or tort coverage, although in the case of a defendant subscribed to the no-fault option, the claim will be against SGI, not the insured directly. They may not sue where they themselves were the party responsible for the collision, or where there is no one at fault (eg, single-vehicle accidents or collisions with wildlife).

Individuals who have elected the tort coverage option may also be sued, if they are at fault for a collision, for economic damages that exceed any injured party's coverage under their insurance policy, regardless of whether the injured party has chosen tort coverage or no-fault coverage. In addition, an insured who has chosen the tort coverage option may also be sued by other tort coverage beneficiaries for non-economic damages that exceed the injured party's basic coverage. They cannot be sued for non-economic damages by persons who chose the no-fault option.

If an at-fault tort coverage subscriber is successfully sued or agrees to a damage settlement, SGI provides liability coverage for the first $200,000 of the damage award (AAIA, s. 42(2)).

B. Benefits Payable

The tort coverage policy provides a basic package of benefits covering:

- Income replacement;
- Medical and rehabilitation expenses;
- Travel and personal expenses;
- Living Assistance;
- Permanent Impairment;
- Death Benefits.

In its information brochure "Your Guide to Tort Coverage" (2023)[19], SGI provides the following table setting out the maximum coverage amounts that are available to beneficiaries under the basic package of the tort coverage plan:

18 Ibid, at p 6.
19 Ibid at p 19.

	Line	Benefit	Amount
Income benefits	1	Employed – totally disabled	$520 per week up to two y
	2	Employed – totally disabled, unable to return to any job	$520 per week for life
	3	Employed – partially disabled	$260 per week up to two y
	4	Homemaker – totally disabled	$520 per week up to two y
	5	Homemaker – partially disabled	$260 per week up to two y
	6	Unemployed/worked six months or more in year prior to collision – totally disabled	$520 per week up to two y
	7	Unemployed/worked six months or more in year prior to collision – totally disabled, unable to return to any job	$520 per week for life
	8	Unemployed/worked six months or more in year prior to collision – partially disabled	$260 per week up to two y
	9	Unemployed/worked less than six months in year prior to collision – totally disabled	$260 maximum per week up to two years
	10	Unemployed/worked less than six months in year prior to collision – partially disabled	$130 maximum per week up to two years
	11	Unemployed in year prior to collision/confined to hospital, bed or wheelchair	$260 per week up to one y
Medical and rehabilitation	12	Catastrophic injuries	$229,516 maximum
	13	Non-catastrophic injuries	$30,602 maximum
Permanent impairment	14	Catastrophic injuries	$198,914 maximum
	15	Non-catastrophic injuries	$15,301 maximum

As the table shows, income benefits in the amount of $520 per week are payable to a totally disabled claimant who was employed prior to the accident, and in the amount of $260 per week for a partially disabled claimant. If after two years, a claimant remains fully disabled, the amount of $520, indexed for inflation, is payable for life. Payments to a partially disabled claimant continue until he/she is able to return to full employment duties, or after two years, whichever comes first (AAIA, ss 22 and 22.1).

Concerning bodily injuries, as indicated in the above table, the maximum lump sum amount payable for non-catastrophic permanent impairment is $15,301; in the case of a beneficiary suffering catastrophic injuries, the maximum lump sum amount payable is $198,914. The same definition of "catastrophic injury" applies for purposes of both no-fault and tort coverage plans, and the framework governing determination of the degree of permanent impairment for bodily injuries in both cases is Appendix B: Schedule of Permanent Impairments of The Personal Injury Benefits Regulations, c. A-35 Reg 3.

Tort coverage also provides death benefits as follows:

- spouse – 45% of the deceased's net income to a maximum gross
- salary of $108,253 per year
- dependent child – 5% of the deceased's net income per dependent child
- $15,301 to estate of those with no spouse or dependants
- $7,651 funeral benefit[20]

C. Claims Process and Appeals

Claims under the tort option are received and processed in first instance by an injury adjuster, who collects and reviews salary, medical and other information, and then determines the amount of coverage a beneficiary is entitled to under the basic package.[21] The decision as to benefit entitlement must be provided to the claimant in writing (s. 189).

[20] SGI, "Guide to Choosing Personal Auto Injury Insurance 2023", at p 7 https://sgi.sk.ca/documents/37148/138043/guide_to_choosing.pdf/44c2bd6b-10a8-43ab-b55b-[illegible]161e8a33

[21] SGI, "Your Guide to Tort Coverage: Personal Auto Injury Insurance", 2023, https://sgi.sk.ca/documents/37148/138043/guide_tort.pdf/93ba9131-aae6-4397-8635-583e0c928289, [illegible] 3.

A beneficiary who is not satisfied with the adjuster's decision, either concerning responsibility for the accident or benefit entitlement under the basic package, may bring an action in the Court of King's Bench to resolve the dispute (AAIA, s. 62).

iv. Premiums and Statistics

In its 2022-2023 Annual Report, the Saskatchewan Auto Fund claims to have the lowest automobile insurance premiums of any Canadian jurisdiction.[22] The Report states:

> The Auto Fund completes regular cross-Canada rate comparisons to determine how much a vehicle owner would pay for auto insurance in other Canadian provinces given their current vehicle, driving record and claim history. The Auto Fund aims to maintain among the lowest average personal auto insurance rates in Canada, without compromising other important targets, such as the Minimum Capital Test. The Auto Fund achieved the lowest average personal auto rates in the 2022-23 comparison, which included all Canadian provinces except Quebec.[23]

However, a recent article from February 2023 in Insurance Business Magazine ranking average annual auto insurance premiums lists Saskatchewan as the province with the third highest rates, after British Columbia and Ontario. The ranking was compiled based on analysis of rates from several price comparison websites and by checking quotes from several major auto insurers.[24]

In an article reporting rates current as of March 2020, the IBC Canada Drives website ranked Saskatchewan as the province with the fourth highest average automobile insurance premiums, after British Columbia, Ontario and Alberta. Rankings were produced by dividing total premiums per province by total personal vehicles per province.[25]

SGI's website indicates that auto insurance rates have increased three times in the last 10 years[26]:

The Auto Fund's Annual Report also indicated that a number of factors, including claim costs, contributed to a reduction in the Fund's

Year	% of rate increase or decrease
2022	2.2 increase (with rebalancing) and reduction of 2.1 % in the capital amount
2021	0.0
2020	0.0
2019	0.0 (CLEAR table update for light vehicles)
2018	0.0 (CLEAR table update for light vehicles)
2017[1]	0.0 (CLEAR table update for light vehicles)
2016	0.0
2015	0.0
2014[2]	3.4 increase (with rebalancing) plus additional 1% capital amount
2013[3]	1.03 increase (with rebalancing) plus 1.23% surcharge

22 *Saskatchewan Auto Fund Annual Report*, 2022-2023, at p 2, https://sgi.sk.ca/documents/37148/2136437/4717+-+SGI+Auto+Fund+Annual+Report+2022-23_WEB_SECURE.pdf/a98fd240-782c-edf8-cb60-644dce480b97?t=1689959617833.

23 Ibid at p 10.

24 Mark Rosanes, "How to get cheap car insurance in Canada", February 14, 2023, https://www.insurancebusinessmag.com/ca/guides/how-to-get-cheap-car-insurance-in-canada-407120.aspx#Which%20provinces%20have%20the%20cheapest%20car%20insurance%20in%20Canada?

25 Canada Drives, "What's the Average Car Insurance Cost for Canadians?", https://www.canadadrives.ca/blog/news/car-insurance-across-canada-whats-the-difference

26 SGI: Auto insurance rates, https://sgi.sk.ca/rates.

Rate stabilization reserve:

> Overall, 2022-23 proved to be a challenging year for the Auto Fund, with claim costs impacting our finances most significantly. After a few years of reduced travel, there were more customers driving, leading to more collisions. Inflation increased the cost of auto and injury claims, while supply chain issues increased vehicle repair cycle times, resulting in higher rental vehicle costs. There was also an increase in storm claims for hail and flood damage. Collectively, this resulted in an underwriting loss of $452.4 million. The Auto Fund also experienced a downturn in investment income and administrative costs were higher due to the Corporate Transformation program. All factors combined resulted in a reduction to the Rate Stabilization Reserve of $270.8 million.[27]

The Auto Fund Annual Report noted increases in damage claim frequency and severity during the prior year:

> Current year damage claims, excluding catastrophe claims [storm claims], are 23.4% higher than the prior year, due to increased claim frequency and severity. With drivers continuing to return to the roads after the slowdown during the pandemic, claim frequency increased. This increase in the number of claims also came during a period that included high levels of inflation and supply chain problems pushing up the average cost per claim. […] Overall, damage frequency has increased from 122.2 claims per 1,000 insured years in 2022 to 133.3 in 2023, while the average cost per damage claim has increased from $5,479 per claim to $6,447 per claim.
>
> Current year injury claims are 2.7% higher than the prior year due to increased claim severity in 2023. The average cost per injury claim has increased by 11.3%. The injury claim frequency during the fiscal year dropped from 4.6 claims per 1,000 insured years in 2022 to 4.2 claims per 1,000 insured years in 2023.[28]

B: NEW JERSEY

New Jersey is one of several US states that have introduced some form of no-fault or no-fault hybrid automobile insurance. The Insurance Information Institute explains the meaning of "no-fault", in its strictest sense, as referring to "state laws that both provide for the payment of no-fault first-party benefits and restrict the right to sue, the so-called "limited tort" option". First-party benefits are commonly referred to as personal injury protection ("PIP"), and are mandatory coverage in true no-fault states.[29]

The Insurance Information Institute also explains that in US no-fault jurisdictions, the ability to sue for compensation beyond policy limits is permitted only in cases that meet certain stipulated conditions. These conditions are known as either "verbal thresholds" (where the condition is based on a verbal description or category of injury) or a monetary threshold (eg the cost of medical bills). Jurisdictions that provide motorists with a choice between pure no-fault and a tort option are referred to as "choice no-fault" states.[30]

New Jersey is a choice no-fault state with a verbal threshold governing the right to sue under the no-fault option. The scheme

27 *Auto Fund Annual Report*, supra note 24, at p 2.
28 *Ibid*, at p 16.
29 Insurance Information Institute, "Background on: No-fault auto insurance", November 6, 2018, https://www.iii.org/article/background-on-no-fault-auto-insurance
30 . Ibid.

originated with the New Jersey Automobile Reparation Reform Act (No-Fault Act)[31], which came into force on January 1, 1973. It appears that funding insurance plans required by the scheme created challenges for insurers, some of whom elected to leave the New Jersey automobile market. A number of reforms and modifications were introduced over the years in attempts to address those and other concerns.[32] Automobile insurance in New Jersey continues to be provided by private insurers.

i. Structure of the Insurance Scheme

Any dollar amounts indicated below are in US dollars.

Auto insurance consumers in New Jersey may choose between two options: a Standard policy, and a Basic policy. There are also options within each type of policy.

The choice between a Standard and Basic policy affects the cost of the insurance, the types of options that an insured has to choose from (e.g., comprehensive, collision, or uninsured/underinsured motorist coverage), and the amounts of insurance benefits that may be claimed. The Basic policy costs less, but provides more limited coverage and options. The New Jersey Auto Insurance Buyer's Guide provides the following summary of coverage options available under the two policy types[33]:

COVERAGE	STANDARD POLICY	BASIC POLICY
BODILY INJURY LIABILITY	**As low as:** $25,000 per person, $50,000 per accident **As high as:** $250,000 per person, $500,000 per accident	Coverage is ***not*** included, but $10,000 for all persons, per accident, is available as an **option**
PROPERTY DAMAGE LIABILITY	**As low as:** $25,000 per accident **As high as:** $100,000 or more	$5,000 per accident
PERSONAL INJURY PROTECTION	**As low as:** $15,000 per person or accident **As high as:** $250,000 or more *Up to $250,000 for certain injuries* **regardless of selected limit***	$15,000 per person, per accident Up to $250,000 for certain injuries*
UNINSURED/ UNDERINSURED MOTORIST COVERAGE	Coverage is available up to amounts selected for liability coverage	None
COLLISION	Available as an option	Available as an option (from some insurers)
COMPREHENSIVE	Available as an option	Available as an option (from some insurers)

Note that under either plan, PIP coverage up to a maximum of $250,000 is provided for all medically necessary treatment of any of the following injuries:

- permanent or significant brain injury, spinal cord injury, or disfigurement;

31 NJ. Stat. Ann.§§ 39:6A-1 to 39:6A-35 (West 1990).

32 Megan K. Gajewski, "Automobile Insurance Reform in New Jersey: Could a Pure No-Fault System Provide a Solution" (1995) 25:3 Seton Hall L Rev 1219, at p 1237-1246.

33 *New Jersey Automobile Insurance Buyer's Guide*, 2023, https://www.nj.gov/dobi/division_consumers/pdf/autoguide2023.pdf.

- medically necessary treatment of other permanent or significant injuries rendered at a trauma center or acute care hospital immediately following the accident and until the patient is stable, no longer requires critical care and can be safely discharged or transferred to another facility in the judgment of the attending physician.[34]

For purposes of the foregoing, "significant disfigurement" means the result and/or manifestation of a serious traumatic injury that is observable as a permanent and substantial defect in the appearance and functional ability of the person injured. "Significant disfigurement" is a serious outward change that substantially detracts from the appearance and functional ability of the person injured.[35]

Concerning the right to sue for personal injuries beyond the policy limits, the default under both the Standard and Basic policy is "Limited Right to Sue" option, which restricts beneficiaries from suing for pain and suffering unless their injuries fall within a specified list of permanent impairments (the "verbal thresholds"). The impairments entitling a beneficiary to sue are:

- loss of body part;
- significant disfigurement or significant scarring;
- a displaced fracture;
- loss of a fetus;
- permanent injury (any injury shall be considered permanent when the body part or organ, or both, has not healed to function normally and will not heal to function normally with further medical treatment based on objective medical proof);
- death.

In order to satisfy one of the verbal thresholds, the beneficiary must provide sworn medical proof attesting to their condition:

> In order to satisfy the tort option provisions of this subsection, the plaintiff shall, within 60 days following the date of the answer to the complaint by the defendant, provide the defendant with a certification from the licensed treating physician or a board-certified licensed physician to whom the plaintiff was referred by the treating physician. The certification shall state, under penalty of perjury, that the plaintiff has sustained an injury described above. The certification shall be based on and refer to objective clinical evidence, which may include medical testing, except that any such testing shall be performed in accordance with medical protocols pursuant to subsection a. of section 4 of P.L. 1972, c.70 (C.39:6A-4) and the use of valid diagnostic tests administered in accordance with section 12 of P.L. 1998, c. 21(C.39:6A-4.7). Such testing may not be experimental in nature or dependent entirely upon subjective patient response. The court may grant no more than one additional period not to exceed 60 days to file the certification pursuant to this subsection upon a finding of good cause.[36]

Under the Standard policy, an insured may elect to pay a higher premium and choose the "No Limitation on Lawsuit" option, which allows him/her to sue an at-fault driver for pain and suffering resulting from <u>any</u> injury. Under the Basic policy, this option is not available, and the insured has a right to sue only upon satisfying one of the verbal thresholds.

ii. Premiums and Statistics

Data collected by the National Association of Insurance Commissioners ("NAIC") ranked New Jersey in 2020 as the 7th most expensive state for average insurance premiums in the US.[37] Historical rankings for years prior to 2020 consistently placed New Jersey in the top 10 most expensive states for automobile insurance. The NAIC rankings were as follows[38]:

34 N.J. Admin. Code § 11:3-14.3(b).
35 N.J. Admin. Code § 11:3-14.3(c).
36 N.J. Stat. § 39:6A-8.
37 Insurance Information Institute website, "Facts + Statistics: Auto insurance", https://www.iii.org/fact-statistic/facts-statistics-auto-insurance.
38 Insurance Information Institute website, Archived Tables - Top 10 Most Expensive and Least Expensive States For Auto Insurance, https://www.iii.org/table-archive/20997.

Year	New Jersey Average Insurance Cost Ranking
2020	7th most expensive
2019	6th most expensive
2018	6th most expensive
2017	4th most expensive
2016	1st most expensive
2015	1st most expensive
2014	1st most expensive
2013	1st most expensive
2012	1st most expensive
2011	1st most expensive
2010	1st most expensive
2009	2nd most expensive
2008	3rd most expensive
2007	2nd most expensive

A new law that took effect at the beginning of 2023, which increased certain minimum coverage amounts under the Standard policy, caused a further increase in premiums for drivers who have opted for that policy[39].

C: NEW SOUTH WALES

Automobile insurance in New South Wales operates under the supervision of the State Insurance Regulatory Authority ("SIRA"), a statutory body created in 2015 by the State Insurance and Care Governance Act 2015, No 19. SIRA replaced the Motor Accidents Authority ("MAA"), which had been the previous manager of NSW's compulsory third party ("CTP") personal injury insurance scheme.

The most recent iteration of NSW's CTP scheme is set out in the Motor Accident Injuries Act 2017, No 10 ("MAIA"). It is promoted as being designed to provide early support and recovery for persons injured in road accidents.[40] The CTP scheme requires all vehicle owners to buy a CTP personal injury insurance policy, known as a "Green Slip", before registering a vehicle.

The CTP Green Slip policy covers the owner of the vehicle and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability in respect of the death of or injury to a person caused by the fault of the owner or driver of the vehicle (MAIA, s. 2.3), but does not cover the cost of damage to vehicles or property. It prescribes certain statutory benefits payable to injured parties for economic and non-economic losses for up to two years. Mechanisms also allow for persons suffering more than a 10% impairment to make a claim for damages extending beyond the two-year period.

Although the CTP scheme is overseen by SIRA, insurance is provided by private insurers. The objective of limiting compensation for non-economic loss is expressly stated at s. s 1.3(3)(b) the MAIA:

> 1.3 [...]
>
> (3) It must be acknowledged in the application and administration of this Act—
>
> [...]

39 Ken Burns, "New Jersey law will raise auto insurance rates in 2023", WHYY PBS website, December 31, 2022, https://whyy.org/articles/new-jersey-car-insurance-rate-hike-2023/.

40 SIRA website, "Why reform was needed", https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/why-reform-was-needed.

(b) that the law (both the enacted law and the common law) relating to the assessment of damages in claims made under this Act should be interpreted and applied in a way that acknowledges the clear legislative intention to restrict access to non-economic loss compensation to serious injuries, (MAIA, s 1.3(3)(b)).

i. Threshold Injuries

The extent of statutory benefits available under the CTP Green Slip is influenced by whether a claimant's injury is classified as a "threshold injury". Threshold injuries are defined in the MAIA as comprising soft tissue injuries or less serious psychological injuries:

1.6 Meaning of "threshold injury"

(1) For the purposes of this Act, a threshold injury is, subject to this section, one or more of the following—

(a) a soft tissue injury,

(b) a psychological or psychiatric injury that is not a recognised psychiatric illness.

(2) A soft tissue injury is (subject to this section) an injury to tissue that connects, supports or surrounds other structures or organs of the body (such as muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissues, fat, blood vessels and synovial membranes), but not an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci or cartilage.

Examples of injures which would be considered threshold are whiplash injuries, and psychological or psychiatric injuries, such as feelings of sadness, anxiety, fear, anger or guilt as well as adjustment disorder and acute stress disorder. Injuries such as fractures, nerve injuries, or complete or partial rupture of a tendon, cartilage, meniscus or ligament, are not considered threshold injuries.[41]

The determination of whether an injury is a "threshold injury" is made by the insurer, based on medical information, including an initial certificate of fitness provided by the claimant's treating medical practitioner. Among other things, the certificate identifies the type of injuries, the treatment plan, and how the injuries affect the claimant's ability to do normal activities including work. Subsequent certificates of fitness may be provided by a treating physiotherapist or a treating psychologist.[42] The insurer must determine whether the claimant's injury is a threshold injury within 9 months of the filing of a claim for benefits (MAIA, s 6.19(2)).

Claimants with threshold injuries may obtain statutory benefits for a maximum of 52 weeks following the accident, as discussed below.

ii. Statutory Benefits

Any amounts indicated below are in Australian dollars.

Green Slip coverage allows all injured people to claim benefits for up to 52 weeks, regardless of whether they are at-fault or not. After 52 weeks, benefits cease for drivers who were mostly at-fault for the accident, and for claimants with threshold injuries.

An insurer must give the claimant notice within 4 weeks after the claim for statutory benefits stating whether or not the insurer agrees to payment of the benefits during the first 52 weeks, and must give notice within 9 months of whether it agrees to payment of statutory benefits beyond the first 52 weeks (MAIA, s. 6.19(1) and (2)).

A claimant who disagrees with a decision made by the insurer concerning eligibility for benefits may request an internal review by the insurer.

If the claimant is not satisfied with the insurer's review decision, or if the insurer fails to provide a review decision, the claimant can seek a merit review which is conducted by a review officer of the Personal Injury Commission. Both the claimant and the insurer

41 SIRA website, "Threshold Injuries: Information for GPs in the NSW CTP scheme", https://www.sira.nsw.gov.au/resources-library/motor-accident-resources/publications/for-professionals/threshold-injury-information-for-general-practitioners-working-in-the-NSW-CTP-scheme.

42 SIRA website, "For motor accidents" https://www.sira.nsw.gov.au/for-service-providers/cofcoc#For_motor_accidents.

may seek further review from a panel of review officers at the Commission if they are dissatisfied with the original review officer's decision (MAIA, ss7.9 and 7.10).

The maximum statutory benefits available to a claimant are as follows.

Weekly income benefits (MAIA, ss 3.6-3.12)

- first 13 weeks after accident – weekly payment of 95% of the difference between the person's pre-accident weekly earnings (to a maximum of $3,853) and the person's post-accident earning capacity (if any) or post-accident earnings, whichever is the greater;
- 14–78 after accident - (a) in the case of total loss of earnings—80%, or (b) in the case of partial loss of earnings—85%, of the difference between the person's pre-accident weekly earnings (to a maximum of $3,853) and the person's post-accident earning capacity (if any) or post-accident earnings, whichever is the greater, after the first entitlement period;
- payments cease after 52 weeks to injured persons most at fault or with threshold injuries;
- for all other claimants payments cease at:

(a) 104 weeks, unless the person's injury is the subject of a pending claim for damages (discussed below),

(b) 156 weeks if the person's injury is the subject of such a pending claim and the degree of any permanent impairment of the injured person as a result of the injury is not greater than 10%,

(c) 260 weeks if the person's injury is the subject of such a pending claim and the degree of permanent impairment of the injured person as a result of the injury is greater than 10%.

Treatment and care (ss 3.24-3.33)

- Benefits for treatment and care cover:

o the reasonable cost of treatment and care;

o reasonable and necessary travel and accommodation expenses incurred by the injured person in order to obtain treatment and care for which statutory benefits are payable;

o if the injured person is under the age of 18 years or otherwise requires assistance to travel for treatment and care, reasonable and necessary travel and accommodation expenses incurred by a parent or other carer of the injured person in order to accompany the injured person while treatment and care for which statutory benefits are payable is being provided;

o reasonable expenses in employing a person to provide domestic services to the claimant's dependants, if the dependants are not able to perform the services themselves due to age or incapacity;

- Benefits cease after 52 weeks to injured adult persons most at fault for the accident or to injured persons with threshold injuries.

iii. Damage Awards

Injured persons who are not at fault and who have more than threshold injuries can seek both economic and non-economic damages beyond the two-year statutory benefit period by making a damages claim. This is initiated by giving notice in the required form to the insurer (Motor Accident Guidelines, ss. 4.122-4.124). The insurer then makes a determination of whether it admits liability for payment of the additional damages, and if it does, must make an offer of settlement to the claimant (MAIA, s 6.20). The insurer is entitled to conduct an investigation, and the claimant may be required to undergo medical assessments requested by the insurer (MAIA, s. 6.27).

A claim for damages cannot be settled unless the claimant has legal representation or the settlement is approved by the Personal Injury Commission, who must be satisfied that the settlement complies with the requirements of the MAIA and the Motor Accident Guidelines (MAIA, s 6.23).

The maximum amount of damages that may be awarded for non-economic loss is $521,000 (MAIA, s. 4.13). A claimant is not entitled to either economic or non-economic damages unless his/her degree of permanent impairment is greater than 10%. If there is a dispute about the degree of permanent impairment and the parties are unable to reach a settlement, either party can refer the dispute to the Personal Injury Commission for assessment, which may include assessment by a medical officer. The Commission then makes a determination of the insurer's liability for the claim and the amount of damages, which is intended to reflect the amount of damages that a court would be likely to award (MAIA, ss 7.36(1)(b)).

Commencement of proceedings in the ordinary courts is only permitted for claims that are deemed to be exempt from assessment by the Commission, either because they so qualify under conditions set out in the regulations, or because the Commission has issued a certificate to that effect (MAIA, ss 6.31 and 7.34.).

Pursuant to s. 7.6 of the *Motor Accident Injuries Regulation* 2017, following kinds of claims are exempt from assessment:

(a) a claim in respect of which the claimant is a person under legal incapacity;

(b) a claim involving an action under the *Compensation to Relatives Act* 1897 brought on behalf of a person under legal incapacity;

(c) a claim made against a person other than an insurer;

(d) a claim in connection with which the insurer has, by notice in writing to the claimant, alleged that the claimant has engaged in conduct in contravention of section 6.41 (Fraud on motor accidents injuries scheme) of the Act;

(e) a claim in respect of which the insurer has, by notice in writing to the claimant and to the owner or driver of the motor vehicle to which a third-party policy relates, declined to indemnify the owner or driver under the third-party policy.

iv. Lifetime Care & Support Scheme

In cases involving catastrophic injuries, NSW provides a separate system of benefits under the Lifetime Care & Support ("LTCS") Scheme. Benefits under this scheme are paid by SIRA, rather than by private insurers *(Motor Accidents (Lifetime Care and Support) Act* 2006 No 16, s. 11A ["LTCS Act"]). Participation in the scheme can be interim or long-term, but the scheme is only available for people who have suffered the following injuries:

- Spinal cord injury resulting in permanent neurological deficit;
- Brain injury, where Post Traumatic Amnesia is greater than 1 week;
- Amputations;
- Burns (full thickness burns greater than 40% of total body surface area, or greater than 30% if the injured person is under 16 years of age); and
- Permanent blindness in both eyes.

(Lifetime Care and Support Guidelines, Part I, s. 6 ["LTCS Guidelines"])

However, a person is not eligible to be a participant in the scheme if the person has been awarded damages pursuant to a final judgment entered by a court or a binding settlement for future economic loss in respect of the treatment and care needs arising from the injury (LTCS Act, s. 7(3)).

LTCS provides support for "reasonable and necessary" treatment, rehabilitation and care, which may include:

- medical treatment (for example, medication, surgery, scans, specialist appointments, X-rays);
- dental treatment;
- rehabilitation (for example, physiotherapy, occupational therapy or speech pathology);
- ambulance journeys;
- attendant care services and respite;
- domestic assistance (for example, help with cleaning, laundry or shopping);
- aids and appliances (for example, wheelchairs, hoists, continence equipment);
- prostheses;
- educational and vocational training;
- home and vehicle modifications;
- workplace and educational facility modifications.

Determination of what is "reasonable and necessary" is made by the LTCS Authority, pursuant to a very detailed process and considerations set out in the LTCS Guidelines (in particular Part 6).

v. Premiums and Statistics

In addition to premiums that are calculated based on the usual factors like location, vehicle type, driver age, and driving record, the CTP scheme also charges a fund levy, which is used to finance things like the cost of public hospitals, ambulance services, administrative costs of running the Green Slip scheme, benefits provided to participants under the LTCS scheme, and future treatment and care for other seriously injured persons.

CTP Green Slip premiums are set by each insurer, based on how they independently choose to apply the factors taken into account. The amount of the levy is also variable, depending on the vehicle type and location.[43]

However, SIRA maintains oversight of the premiums set by insurers pursuant to a transitional excess profit and losses (TEPL) mechanism. Relying on that mechanism, SIRA has clawed back profits on insurance premiums collected by insurers. See e.g:

- "SIRA claws back $183.1 million in excess insurer profit", 19 December 2023, https://www.sira.nsw.gov.au/news/sira-claws-back-$183.1-million-in-excess-insurer-profit
- "SIRA claws back $178.7 million in excess insurer profit", December 21, 2022, https://www.sira.nsw.gov.au/news/sira-claws-back-$178.7-million-in-excess-insurer-profit
- "Cheaper Green Slips are now guaranteed", https://www.sira.nsw.gov.au/news/cheaper-green-slips-are-now-guaranteed

An article by Compare the Market, a price comparison website, found New South Wales to have significantly higher auto insurance premiums than any other Australian state or territory, based on data collected in 2021. The ranking found average monthly rates in

43 Mark Rosanes, Insurance Business Magazine, "What NSW drivers need to know about green slip insurance", June 28, 2022, https://www.insurancebusinessmag.com/au/news/auto-motor/what-nsw-drivers-need-to-know-about-green-slip-insurance-411107.aspx.

New South Wales to be $120.00, versus $103.20 in the next highest state, which was South Australia.[44]

In 2020, SIRA conducted a survey of customer experience of the CTP insurance claims process. Key insights from the survey were that length of time in a compensation program, presence of mental health issues, and level of pain tended to impact a participant's experience of the claims process:

> Overall, certain groups of people tended to report poorer experience and outcomes – regardless of injury severity or scheme. This includes people who are in the schemes for longer, have symptoms of probable serious mental illness, or are experiencing moderate to severe pain.
>
> People who had been in the compensation system for longer periods were more likely to report poor customer experience, a lesser sense of justice in the compensation process, lower trust in the scheme to get them better, and had poorer outcomes. This finding reinforced the importance of providing tailored early intervention to promote safe return to work and activities.
>
> Similarly, the study reinforced the importance of early identification of poor mental health and providing easy access to treatment sooner. Mental health was reported as an issue across both schemes with one quarter of people with a CTP claim (25%) and one in five (19%) people with a workers compensation claim assessed as having a probable serious mental illness. People with poor mental health were more likely to report poorer results, including in relation to customer experience, trust, return to work and activities, and self-reported health and social outcomes.
>
> Pain affected many people who participated in the survey and their outcomes. One in five (22%) people with a CTP claim reported moderate to extreme pain and discomfort [...]. People experiencing higher degrees of pain were more likely to have had a poor customer experience, have lower trust in the scheme, reduced perceptions of justice in the scheme, and there was a decreased likelihood of them having returned to work or other activities. The early identification of ongoing pain and early access to treatment could help to reduce pain and promote recovery and outcomes.
>
> [...]
>
> This study has identified areas that SIRA and insurers can focus on to improve customer experience and outcomes. On the customer service front, the lowest scoring Customer Service Conduct Principle for both schemes related to insurers resolving a person's concerns quickly. This presents a tangible focus for insurers moving forward. In terms of health outcomes, the early identification of probable mental illness and pain, as well as opportunities for safe return to work and activities, will facilitate improved recovery and experience.[45] **[emphasis added]**

A CTP Scheme Performance Report published June 30, 2023 evaluated the how CTP Green Slip scheme is performing against the objectives outlined in the MAIA. Key insights of the report include:

- Since the commencement of the scheme on December 1, 2017, premiums in the market (including levies and GST) decreased from an average of $635 to $488;
- However, the average premium increased from June 2022 to June 2023 by 17 or 3.6 percent, driven predominantly by further increases in levies, and an increase in benefits payable as a result of legislative amendments that increasing the maximum benefit period for basic claims from 6 months to 1 year;
- That increase was despite two clawbacks of insurer profits totalling $270 million.[46]

Actuarial reports are available and provide useful data concerning the type and number of claims and amounts paid per claim. For example, the "2017 CTP Scheme Quarterly Actuarial Monitoring" report dated June 30, 2023 prepared by Ernst & Young provides the following information:

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44 Compare the Market, "What is the average cost of car insurance in Australia?" _

45 SIRA website, "Summary of the SIRA customer experience and health outcomes study", https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-and-claims/summary-of-the-sira-customer-experience-and-health-outcomes-study; see also the full report, "SIRA Regulatory Measurement of Customer Experience and Outcomes Study", November 2020, at https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/968030/SIRA-regulatory-measurement-of-customer-experience-and-outcomes-study.pdf

46 SIRA, "2017 CTP Scheme Performance Report to 30 June 2023", at p 1, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/1217339/SIRA-2017-CTP-Performance-Report-2023.pdf.

- Of approximately 3000 claims per quarter, 800 are not-at-fault, non-threshold claims; 500 are at-fault claims; and 1200-1400 are not-at-fault threshold claims (see p. 6);
- At-fault and not-at-fault threshold claims tend to remain active for roughly 3-4 months post-accident; the number remaining active at 12-18 months post-accident is close to zero (see p. 6);
- Average at-fault claim payment range is $16,000-$25,000; average not-at-fault threshold claim payment range is $5,000-$10,000 – but these numbers are expected to increase because of recent legislative change increasing the maximum benefit period for these types of claims from 6 months to 1 year (see s. 7);
- the expected average amount of damages for claims involving Whole Person Impairment (WPI) is $150,000 for WPI of less than 10%, and $500,000 for WPI of greater than 10% (see p. 7).[47]

D: AUSTRALIAN CAPITAL TERRITORY

Automobile insurance in the Australian Capital Territory is governed by the Motor Accident Injuries Act 2019 ("MAIA"), which sets out a compulsory third party insurance scheme that all vehicle owners must purchase before registering a vehicle. The scheme provides defined benefits for treatment and care, lost income, and quality of life benefits based on permanent incapacity, to anyone injured in a motor vehicle accident for up to five years, regardless of fault. It does not cover damage to vehicles or property.

The scheme is under the oversight of the Motor Accidents Injury Commission ("MAIC"), who characterizes the MAI insurance as a "hybrid defined benefits common law scheme, with people who are more seriously injured being able to receive common law compensation."[48] All insurance policies are provided by private insurers.

47 SIRA website, "2017 CTP Scheme Quarterly Actuarial Monitoring" report dated June 30, 2023, https://www.sira.nsw.gov.au/__data/assets/pdf_file/0008/1208195/CTP-Scheme-2017-Quarterly-Actuarial-Monitoring-30-June-2023-data-EY-Report.pdf.

48 MAIC website, https://www.treasury.act.gov.au/maic/your-mai-insurance.

i. Defined Benefits

Any amounts indicated below are in Australian dollars.

Income replacement

Income replacement benefits are available to anyone injured in a motor vehicle accident who on the date of the accident was at least 15 years old and in paid work or capable of being in paid work (MAIA, s. 89(1)). Benefits are available for up to five years or age of retirement, whichever comes first, as long as the person is unable to return to pre-accident working capacity (MAIA, s. 101).

The amount of the weekly benefit is as follows (MAIA, ss 96-97):

- First 13 weeks after the accident:
    - 100% of the difference between pre and post-accident income (if pre-accident income was less than $800); or
    - 95% of the difference between pre and post-accident income (if pre-accident income was greater than $800), with pre-accident income being capped at $2250;
- 14 weeks to 5 years after the accident:
    - As above, except that for pre-accident incomes between $800 and the $2250 maximum, benefits are 80% of the difference between pre and post accident income.

The above amounts are reduced by the amount of any benefits received from workers compensation (MAIA, s. 98).

A. Treatment and Care Benefits

Defined benefits may include the cost of any of the following types of treatment and care which are reasonable and necessary, except where items are excluded by regulation:

(i) medical treatment (including mental health treatment and pharmaceutical treatment);

(ii) dental treatment;

(iii) rehabilitation;

(iv) ambulance transportation;

(v) respite care;

(vi) attendant care services;

(vii) aids and appliances;

(viii) prostheses;

(ix) education and vocational training;

(x) home and transport modification;

(xi) workplace and educational facility modifications; and

(xii) any other kinds of treatment, care, support or services prescribed by regulation. (MAIA, s. 110)

The determination of whether expenses for treatment and care are "reasonable and necessary" is made by the insurer (MAIA, s. 120), who may require the claimant to attend a health care practitioner for a medical assessment. The Motor Accident Injury (WPI Assessment) Guidelines 2019 ("MAI Guidelines") provide the framework for assessing the level of permanent impairment of an injured person, as well as the treatment and care that is considered reasonable and necessary, and the maximum amount of defined benefits payable for stated treatment and care (MAIA, s. 131).

B: Quality of Life Benefits

Claimants who sustain injuries resulting in a permanent incapacity or whole body impairment ("WPI") greater than 5% may claim quality of life benefits (MAIA, s. 132). Where the claimant was a child on the date of the accident and is still receiving treatment 4.5 years later, that person's WPI is taken to be 10%. That is also the case for an injured person participating in a Lifetime Care and Support Scheme ("LTCS", discussed below) in relation to his/her injuries (MAIA, s. 133(1)).

For all other claimants, WPI is assessed by an authorized IME provider who carries out an assessment in accordance with the MAI Guidelines, paid for by the insurer. However, if the insurer believes the claimant has not suffered a permanent injury, it may decline to make the referral, and the claimant must pursue the assessment at his/her own expense. If the result of the assessment shows a WPI greater than 0%, the insurer is required to reimburse the claimant for the cost (MAIA, s. 139).

Once the injured person's WPI is determined by the medical examiner, the quality of life benefit is determined pursuant to the Quality of Life Tables. According to the October 23, 2023 Table, the maximum benefit for a WPI of 100% is $364,680. WPIs less than 5% are not entitled to benefits.

Entitlement to quality of life benefits may be limited or denied in some circumstances, such as where the claimant is convicted of a criminal offence related to the accident, where the claimant was uninsured or injuries were self-inflicted, or where the claimant is receiving workers compensation benefits (MAIA, s. 132(2)).

Following completion of the medical examiner's WPI report, the insurer is required to make an offer to the claimant proposing a settlement amount. If the claimant accepts the offer, the insurer must provide the payment, and the claimant has no further quality of life claim.

If the claimant does not agree with the WPI assessment and/or the settlement offer, he/she may so notify the insurer and make arrangements for a second WPI assessment. If the second assessment concludes that the claimant's WPI is higher than found by the first assessment, the insurer may ask the first assessor to review the second report. If, upon review, the initial assessor increases his/her assessment, the insurer is bound by the increased assessment (MAIA, s. 159), and makes a final settlement offer to the claimant.

If the claimant's WPI is assessed at 9% or less, the claimant who does not agree with the assessment may apply to the ACT Civil and Administrative Tribunal ("ACAT") for a review (MAIA, ss. 192-193). The claimant does not have recourse to the ordinary courts.

ii. Motor Accident Claims

If a claimant's WPI is assessed at 10% or more, the claimant may refuse or accept a settlement offer received from the insurer, and in either case, may also bring a motor accident claim in the ordinary courts (MAIA, ss 239 and 257ff).

Amounts that may be awarded in a motor accident claim are subject to certain constraints:

- Damages that may be awarded for quality of life are based on the WPI report, plus any additional amount that is not more than 20% of the amount arising from the WPI assessment, if the court considers that the WPI report that the claimant relies on for the motor accident claim did not take into account a particular injury, or a particular effect on the claimant's quality of life;
- The claimant will not be awarded quality of life damages that overlap with quality of life benefits already received;
- Damages for loss of earnings may not be awarded in relation to the first year after the motor accident;
- The claimant will not be double-compensated for benefits received from workers compensation;
- Damages are not be awarded to claimants participating in the LTCS scheme; and
- Ordinary civil law principles such as contributory negligence and mitigation may apply to reduce damages. (MAIA, ss 248)

iii. Lifetime Care and Support Scheme

The Australian Capital Territory also provides a separate scheme under the Lifetime Care and Support (Catastrophic Injuries) Act 2014 ("LTCS Act") which is applicable to persons who have sustained catastrophic injuries as a result of motor vehicle accidents.

The scheme is funded by a levy applied to all MAI insurance policies. For the period up to June 2023, the levy was $60.40 for a 12 month policy.[49]

Persons who have suffered the following catastrophic injuries are eligible to seek benefits under the LTCS scheme:

- traumatic brain injury;
- spinal cord injury;
- amputations;
- burns;
- permanent blindness in both eyes (LTCS Guidelines, s. 2).

Eligibility is determined by the LTCS Commissioner, after considering relevant medical information. An applicant who is found to be eligible will be an interim participant for the first two years (LTCS Act, s. 20), in order to allow for the possibility of recovery and ongoing improvement in the injured person's condition. Before the end of the two year period, eligibility will be reassessed to determine if the person should become a lifetime participant (LTCS Guidelines, Part 1, s. 7).

The LTCS scheme pays for "reasonable and necessary" treatment, rehabilitation, care and support services, which may include:

- medical treatment (including pharmaceutical treatment;
- dental treatment;
- rehabilitation;
- ambulance transportation;
- respite care;
- attendant care services;
- aids and appliances;
- prostheses;
- educational and vocational training;
- home and transport modification;
- workplace and educational facility modifications; and
- any other kinds of treatment, care,support or services prescribed by regulation (LCTS Guidelines, Part 6, s. 1).

In determining if treatment or care is "reasonable and necessary", the LTCS Commissioner will consider:

- Benefit to the participant;
- Appropriateness of the service or request;
- Appropriateness of the provider;
- Relationship of the service or request to the injury sustained in the accident; and
- Cost effectiveness considerations. (LCTS Guidelines, Part 6, s. 1)

The LTCS scheme is required to pay for all "reasonable and necessary" treatment and care that is not excluded by regulation (LTCS Act, ss. 9 and 30(1)).

49 Australian Capital Territory Treasury website, "How is the scheme funded", https://www.treasury.act.gov.au/ltcss/ltcs-scheme/how-is-the-scheme-funded.

iv. Premiums and Statistics

Although MAI premiums are subject to government regulation, they are set by and paid to private insurers. The MAI scheme is a 'community rated' scheme, where motorists in each vehicle class pay the same premium regardless of their individual circumstances and risk of being involved in an accident.[50]

Quarterly reports are available and provide data about claims and outcomes under the MAI scheme. For example, the report dated September 30, 2023, which reflects statistics from the implementation of the scheme in February 2020 through to 30 September 2023 offers the following information:

- Approximately 1642 applications for defined benefits have been filed since the start of the scheme - of those, 97.2% were accepted (at p 1);
- Of the applications rejected, most (24 of 36) were because claims had already been made through the workers compensation scheme (at p 1);
- 80 WPI assessments have been made to date – of those, 47 resulted in a WPI of 5% or higher (at p 2);
- 144 internal reviews by the insurer have been requested (at p 3);
- 33 external reviews by ACAT have been requested (at p 3);
- 12 claims have been launched before the courts (at p 3);
- Out of all monies paid out to date, 49.5% were for treatment and care benefits, 36.4% were for income replacement, 5.4% were for common law claims, 14% were for death benefits, 0.8% was for quality of life payments, and 6.4% was for other expenses (legal, investigative, etc) (at p 4).[51]

The Special Minister of State responsible for the MAI scheme is currently involved in a consultation process for a three-year review of the MAI Act. The period for submissions has now closed. The consultation report has not yet been released.

The Australian Lawyers Alliance (ALA) made a submission to the consultation process.[52] The ALA position was that "there are important reforms needed to the MAI Act and all related legislative instruments, as we are concerned that the MAI Scheme is largely not upholding the objectives underlying the MAI Scheme. This is having a negative impact on injured motorists and their support networks in the ACT" (at p 5).

ALA's submissions highlighted concerns in the following areas:

- significant power imbalances contained in the MAI Act, including during determination of whether treatment is "reasonable and necessary" and whether an injury is "stable" or has reached "maximum medical improvement" and limited opportunity for claimants to be assisted by counsel in matters under the defined benefits scheme;
- drafting issues in the MAI Act, which affect its application and how its provisions interact with other pieces of legislation;
- concerns about the Whole Person Impairment (WPI) assessment framework, including the fundamental objection that WPI is an ineffective way to calculate the pain, suffering, and impact on lifestyle; and artificial separation of physical and psychological injuries, or primary and secondary psychological injuries, is not in claimants' best interests;
- the uncertainty for injured motorists regarding how the MAI Scheme interacts with workers compensation entitlements; and
- the resolution of common law claims.

- END -

50 Australian Capital Territory Treasury website, "How MAI insurers set their premiums", https://www.treasury.act.gov.au/maic/your-mai-insurance/how-mai-insurance-premiums-are-set.

51 Australian Capital Territory Treasury website, "Motor Accident Injuries Scheme — Quarterly Report" July 1 to September 30, 2023, https://www.treasury.act.gov.au/__data/assets/pdf_file/0012/2312103/MAI-Scheme-Quarterly-Report-30-Sep-2023.pdf.

52 Australian Lawyers Alliance, "Three-Year Review of the Motor Accident Injuries Act 2019 (ACT), Submission to the Insurance Branch, Economic and Financial Group, Treasury (ACT Government)", October 5, 2023, https://www.lawyersalliance.com.au/documents/item/2574.