

Australian CTP Insurance Schemes: A national overview and cross-jurisdictional guide

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In Australia, Compulsory Third Party (CTP) insurance can, at times, be a complex area of law. While the market for CTP insurance is a national one, the schemes and respective statutory regimes vary from state to state. Some schemes are governed and administered by one statutory body, others are managed by various licensed insurers. As Australia heads towards a planned national approach to autonomous vehicle law in 2026¹, it is timely to review the CTP schemes in each state and the interplay between them.

The determination of issues such as indemnity, liability and compensation are not consistent across the country and can be impacted by a multitude of factors. With the increase in cross-jurisdictional living, travelling, and working, understanding the interplay between each jurisdiction has become increasingly important, and with advancements in driverless/driver assist technology and an increase in fraudulent claims, CTP insurance is poised to become increasingly intricate.

This cross-jurisdictional guide provides a detailed overview of each state's CTP insurance scheme across Australia, including demonstrating the similarities, differences and the unique intricacies of the schemes, and highlighting the cross-jurisdictional interplay in each jurisdiction.

Our National CTP Team

At Barry Nilsson (BN), our national CTP team assists insurers with cross-jurisdictional claims, including collisions involving vehicles registered in other states.

Our expertise covers claims management, legal advice, and conduct for all CTP claims, from straightforward to complex. Our team has extensive experience in:

- Fraud
- Complex liability and quantum claims
- Dependency and fatal accident claims
- Nominal Defendants claims
- Catastrophic claims
- Judicial review of administrative decisions
- Recoveries
- Infant claims
- Alternative dispute resolution & mediation
- Time limitation claims
- Complex procedural matters
- Claims farming matters
- Business losses
- Claims with multiple respondents.

We recognise that CTP claims require unique management. Small, consistent changes across a portfolio can lead to significant savings. This focus, as well as the energy we bring to every claim, is central to our CTP edge.

The Policy, Scheme and Legislation: An overview of each Australian jurisdiction

New South Wales

The State Insurance Regulatory Authority (SIRA) is responsible for the administration of the New South Wales (NSW) CTP scheme which is funded from CTP premiums payable upon registration. The insurers that manage the scheme (collecting premiums - 'green slips' - and handling claims) are also allocated their share of the Nominal Defendant scheme claims by SIRA. The Nominal Defendant scheme is otherwise similar to Queensland. The insurers licensed under the NSW CTP scheme include AAI Limited (trading as AAMI and GIO), Allianz Australia Insurance Limited, IAG Limited (trading as NRMA), QBE Insurance (Australia) Limited and Youi Pty Ltd.

In NSW, if you are severely injured (e.g. quadriplegic) then the NSW Government pays for your treatment, care, equipment and home modifications on a no-fault basis: *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW)². Otherwise the NSW CTP scheme is largely fault-based but since the introduction of the *Motor Accident Injuries Act 2017* (NSW)³ (MAI Act), claimants are entitled on a no-fault basis to some benefits. In addition to the statutory benefits scheme, claimants can bring a common law claim seeking damages for non-economic loss and economic loss. In addition to the MAI Act, the insurers and claimants must comply with the SIRA issued Motor Accident Guidelines.

The NSW Personal Injury Commission (PIC) took effect in March 2021, and was set up as an independent tribunal to resolve disputes relating to injuries arising in motor accidents and workplaces in NSW. The relevant legislation governing the PIC is the *Personal Injury Commission Act 2020* (NSW)⁴ and the *Personal Injury Commission Rules 2021* (NSW)⁵. Some examples of the disputes the PIC oversees include medical issues (e.g. whether the claimant's injury exceeds the 10% whole person impairment threshold to entitle an award for non-economic loss) and assessment of common law damages. Where a claimant is not satisfied with the PIC's decision on a medical issue, they can seek review by the PIC's Review Panel. As these are administrative decisions, judicial review is also available, but only on the usual grounds for error of law, not on the merits. A notable element of the scheme is that if the claimant is dissatisfied with the PIC damages award, the claimant can seek a re-hearing with a fresh assessment in the District Court. The PIC must determine the dispute first, but some disputes can be exempt from this (e.g. on grounds of complexity or if the claimant is under a legal incapacity) and proceed to the District Court.

Queensland

Queensland first introduced a common law fault-based CTP insurance scheme in 1936. The scheme provides motor vehicle owners and other insured persons with an insurance policy covering their liability for personal injury caused by, through or in connection with the use of a motor vehicle in incidents, which the *Motor Accident and Insurance Act 1994* (Qld)⁶ (MAIA) applies. The scheme also provides access to a common law right to seek monetary compensation from the person at-fault for the personal injury and other losses.

The Queensland CTP insurance scheme is regulated and monitored by the Motor Accident Insurance Commission (MAIC). MAIC also administers the Nominal Defendant; the statutory body to compensate injured persons in accidents involving an unidentified/uninsured vehicle. Both MAIC and the ND are funded by a statutory levy payable with the CTP insurance premium upon registration.

Currently, only three insurers are licensed in Queensland – AAI Limited (trading as Suncorp Insurance), Allianz Australia Insurance Limited and QBE Insurance (Australia) Limited.

The schedule to the MAIA provides the standard policy of insurance adopted by the licensed insurers. The standard policy of insurance details the extent of the cover provided by the licensed insurers, the meaning of the term "insured person", and relevant exclusions.



South Australia

Until 30 June 2016, all CTP policies in South Australia (SA) were underwritten by the Motor Accident Commission, a state government statutory insurer. From 1 July 2016, there are now four privately underwritten insurers writing CTP insurance, including IAG, QBE, Allianz and Suncorp, and on 1 July 2022, a fifth insurer, Youi, joined the market. The cost of the CTP policy is incorporated into the cost of registration, allowing owners to choose from the five insurers when registering their vehicle. All vehicles are insured at the time of registration.

Details of the SA CTP Policy are found in Part 4 of the *Motor Vehicles Act 1959 (SA)*⁷ (MVA) and in the policy document issued by the CTP Regulator, which oversees the approved CTP insurers. The same policy wording applies to all CTP policies issued by any of the CTP insurers in SA. The SA CTP Policy covers owners, drivers and passengers in vehicles registered in SA for all liability that may be incurred by the owner or other person in relation to the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle.

If the claim involves any unidentified or uninsured vehicles in SA, s 115 and s 116 of the MVA provide for claims against the Nominal Defendant. Such claims are allocated to the approved CTP insurers by the CTP Regulator.

SA has a fault-based scheme, with the exceptions of:

- children under the age of 16 years (at the time of the accident) who are entitled to care and treatment expenses for life if the accident occurred in SA (even once they are over the age of 16 years – s 127B(2) of the MVA), and
- catastrophically injured people who, if they meet the injury criteria (i.e. moderate to severe brain injury, amputation, spinal cord injury, blindness and severe burns), are eligible for treatment and care expenses from the Lifetime Support Agency (LSA) under the Lifetime Support Scheme (LSS), regardless of fault, if the accident occurred in SA. When an injured person is a participant in the LSS, the CTP insurer is not liable for their care or treatment costs, but may still be liable for other heads of damages if there is an entitlement to a common law claim.

Tasmania

The Tasmanian CTP scheme is governed by the *Motor Accidents (Liabilities and Compensation) Act 1973 (Tas)*⁸ (MAA) and the *Motor Accidents (Liabilities and Compensation) Regulations 2020 (Tas)*⁹ (MAAR). The scheme is administered by the Motor Accidents Insurance Board (MAIB), a Tasmanian Government

Enterprise. There are no private insurers involved in the scheme. The scheme provides scheduled benefits (e.g. medical and income benefits) on a no-fault basis to people injured as a result of a motor vehicle accident, and also allows for common law claims to be made against at-fault drivers where a person has suffered a personal injury. The cost of the scheme is included in a person's vehicle registration fee. Access to the scheme, whether that be via scheduled benefits or common law, requires the personal injury to have resulted directly from a motor accident (see s 2 of the MAA for the definition of motor accident and motor vehicle).

Victoria

In Victoria, the CTP scheme is set out in the *Transport Accident Act 1986 (Vic)*¹⁰ (TAA). The Transport Accident Commission (TAC) is a statutory authority which is responsible for managing all claims under the TAA and ensuring appropriate compensation is delivered. Section 3 of the TAA defines 'transport accident' as "an incident directly caused by the driving of a motor car or motor vehicle, railway train or tram". To fall within the scope of the TAA, a claimant must identify a single discernible event which constitutes a transport accident.

The TAA allows for a number of 'no-fault benefits' which are payable by the TAC no matter who was at-fault in the transport accident. The TAA also allows for fault-based common law damages payments to be made to claimants who have suffered a 'serious injury'.

Western Australia

Similar to Tasmania, CTP insurance in Western Australia (WA) is provided for by the government, with no private insurers for CTP in WA. The Insurance Commission of Western Australia (ICWA or the Commission) manages CTP claims and is the government insurer. The Motor Injury Insurance Scheme (MIIS) is split into two main areas of insurance – CTP and the Catastrophic Injuries Support Scheme (CISS). The latter relates to the lifetime care and support of certain people who are catastrophically injured in a motor vehicle accident. The cost of both schemes of insurance are included in people's vehicle registration fee.

Indemnity / Liability

New South Wales

In NSW, the MAI Act provides for benefits for treatment and paid care, as well as weekly benefits for loss of income. However, these benefits cease after 52 weeks if the claimant's injuries are threshold injuries (which include categories such as adjustment disorder or soft tissue injury with no radiculopathy), or if the accident causing the alleged injuries was "mostly the fault" of the claimant, which is defined as greater than 61% contributory negligence. These benefits are only claimable if the accident occurred in NSW.

A claimant is also entitled to bring a common law damages claim if fault is established, and injuries sustained are non-threshold injuries.

In circumstances where an accident is found to be a no-fault accident (which is one not caused by the fault of the owner or driver of any motor vehicle involved in an accident in the use or operation of the vehicle and not caused by the fault of any other person), the owner or driver of the vehicle is deemed at-fault subject to reduction of any contributory negligence of the claimant. That contributory negligence in this 'no-fault' accident is assessed by comparing the conduct of the claimant to that of a reasonable person in the claimant's position.

Queensland

Queensland's common law fault-based CTP insurance scheme requires an injured person to establish negligence or fault against another party in order to access compensation. As a result, there are circumstances which prevent an injured person from receiving compensation. For example, a driver wholly at-fault for an accident will be unable to issue a claim for damages because there is no negligent party against whom a claim can be made.

The relevant provision of the MAIA with respect to liability is s 5. Section 5(1) provides that the MAIA will apply to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury:

- is the result of:
 - the driving of the motor vehicle, or
 - a collision or action taken to avoid a collision with a motor vehicle, or
 - the motor vehicle running out of control, or
 - a defect in the motor vehicle causing loss of control of the vehicle while it is being driven, and

- is caused, wholly or partly, by a wrongful act or omission in the motor vehicle by a person other than the injured person.

If an injured person contributed to the accident by failing to take precautions against the risk of harm, they may still claim damages for personal injury, however the damages will be reduced in amounts proportional to the amount the court considers just and equitable, having regard to the extent of the defendant's responsibility for the loss or damage. For example, if a person was contributorily negligent to the extent of 25%, their damages will be reduced by 25% for contributory negligence.

Where more than one vehicle has caused or contributed to an accident resulting in personal injuries, licensed insurers may share the claim costs in accordance with the Sharing Deed dated 20 September 2011. Where sharing applies, there will be one managing insurer who will have responsibility for running the claim. Notice of sharing must be given by the managing insurer to the other relevant licensed insurers.

An injured person is not entitled to damages if a court is satisfied on the balance of probabilities that the injured person suffered the harm while engaged in conduct which amounts to an indictable offence, and that conduct materially contributed to the risk of harm.

South Australia

In SA, the policy indemnifies the owner, driver and passenger (where 'passenger' includes any person in or on the vehicle whether or not the person is travelling, has travelled or is proposing to travel in or on the vehicle) for liability that may be incurred by the owner or other person in the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in any part of the Commonwealth.

However, the above is subject to some limitations and exceptions, including:

- section 99(3) of the MVA requires the death or bodily injury to be a *direct consequence* of: the driving of the vehicle; the vehicle running out of control; or a person travelling on a road colliding with the vehicle when the vehicle is stationary; or action taken to avoid a collision,
- if the vehicle is conditionally registered (e.g. a forklift or tractor), the policy will only indemnify if the accident occurred on a road or a road-related area, and

- there is no indemnity where the accident resulted from an act of terrorism, or for liability arising from the death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

Tasmania

In Tasmania, there are two separate indemnity tests depending on whether the injured person is:

- claiming scheduled benefits, or
- making a claim for common law damages.

Section 14 of the MAA deals with indemnity from a common law perspective, and s 23 deals with indemnity for scheduled benefits. The indemnity under s 14(1) is broad - in general terms (subject to exceptions therein) the MAIB will indemnify an owner or user of a motor vehicle for any liability (not being a contractual liability) for a personal injury to a person resulting directly from a motor accident provided the accident occurs in Tasmania.

Section 23 will provide coverage for scheduled benefits to a resident of Tasmania who suffers a personal injury resulting directly from a motor accident, if the accident occurs in Tasmania or the accident occurred interstate in a Tasmanian registered vehicle. Indemnity is also provided to interstate residents if the accident occurs in Tasmania and involves a Tasmanian-registered vehicle. The MAIB will also pay medical and disability benefits (and benefits to family members for counselling services), to an interstate resident provided:

- the accident occurred in Tasmania,
- the accident involved an interstate motor vehicle, and
- the injured person requires daily care.

The MAA also sets out circumstances where the MAIB is not required to indemnify a person under s 14 of the MAA, including where an alternative policy of insurance is in place or where the accident involved a motor vehicle race. The MAIB is also not required to indemnify where the at-fault driver was driving a permitted out-of-state vehicle (s 19 and Schedule 2).

Section 24 of the MAA sets out the basis upon which a person is excluded from scheduled benefits under the MAA, including but not limited to, circumstances where no premium has been paid (provided the injured person was the driver of the vehicle and knew or ought to have known no premium had been paid, or was the owner of the vehicle), where the injury has resulted from an intentional act to cause injury, where there is an alternative policy of insurance in place, where the accident involved a motor vehicle race, and

where the injury to the person has been sustained in circumstances which resulted in the person being convicted of particular offences (e.g. manslaughter or dangerous driving causing death).

Victoria

In Victoria, s 94 of the TAA provides the TAC will indemnify the owner and/or driver of a Victorian registered motor vehicle for any liability directly caused by the driving of a registered vehicle, or arising out of the use of a registered vehicle. An owner or driver will be entitled to indemnity under the TAA if the vehicle was registered in Victoria at the time of the accident.

To be eligible for indemnity, the vehicle's registration simply needs to have been paid. If the at-fault vehicle was registered in another state or territory at the time of the accident and the accident occurred in Victoria, the TAA will still apply. However, the relevant interstate insurer would be liable to indemnify the owner or driver of the at-fault vehicle.

Western Australia

In WA, s 7(1) entitles any person who has suffered death or injury because of another driver's negligence, and has obtained a judgment confirming this, to recover, from ICWA, any legal costs or money payable in accordance with the judgment which remains unsatisfied. Additionally, in certain circumstances, a person who has suffered death or injury from a motor vehicle accident and obtained judgment may be able to recover from ICWA the amount they could have recovered against the other driver. This includes where the other driver has died or cannot be served with process (s 7(2)), or where the identity of the other driver's vehicle cannot be ascertained (s 7(3)).

The ICWA may pay for treatment and other expenses, including past and future economic loss, depending on the type and severity of the injury. This can be in the form of either a lump sum, periodical payments or a lump sum and periodical payments (s 16(4)(a)). The cost of damage to vehicles or property from a motor accident is not claimable. To make a claim, an injured person must establish that the driver or owner of a motor vehicle was at-fault, either completely or partly, for their injury (unless relating to a catastrophic injury).

Compensation

New South Wales

In NSW, under the MAI Act, statutory benefits are paid on a no-fault basis for the first 52 weeks for treatment, paid care, travel and accommodation reasonably needed to obtain treatment and care, and also weekly benefits for loss of income. Exceptions include that there is no entitlement to statutory benefits if workers compensation is payable relating to the accident or if the claimant commits a serious driving offence. Mental harm provisions under the *Civil Liability Act 2002* (NSW)¹¹ also apply.

After 52 weeks, if the claimant has suffered non-threshold injuries or is not wholly or mostly (more than 61%) at-fault, then the CTP insurer continues to pay statutory benefits until five years after the accident. After that, CTP Care manages the payment of these needs administered through the NSW Lifetime Care and Support Authority. Contributory negligence does apply from 12 months after the accident.

In addition to statutory benefits, a claim can be made for common law damages, including for the two principle heads of damage: non-economic loss and economic loss. This is fault-based and contributory negligence also applies.

Weekly benefits paid for past income loss are deducted from any award of past economic loss as the claimant has already had the benefit. Entitlement to non-economic loss is limited to claimants who suffer injury that exceeds 10% whole person impairment. There are no benefits available for gratuitous care nor can this form part of the common law claim. There are regulated maximum limits to the amount of non-economic loss and to the weekly amount of earnings on which economic loss is based.

Queensland

Damages for personal injury claims in Queensland are regulated by the *Civil Liability Act 2003* (Qld)¹² (CLA) and *Civil Liability Regulations 2014* (Qld)¹³ (CLR) in conjunction with common law. The CLA and CLR should be read with the MAIA.

General damages are calculated by assigning an Injury Scale Value (ISV) from 0 to 100. This scale reflects 100 equal gradations of harm depending on the type, nature, and severity of the claimant's injury. The ISVs are set out in the CLR. Interest on general damages is not permissible pursuant to the CLA.

Pursuant to s 54 of the CLA, damages for economic loss are limited to the value of three times the average weekly earnings per week in Australia for the period of the loss.

To be awarded damages for past and/or future gratuitous care and assistance, an injured person must meet the statutory threshold set out in s 59 of the CLA of six hours of care per week for six months. The care may be provided over different periods. A claimant also must establish that the care provided was required. It is not enough that care was provided to the injured person, there must be a need for the services. If a person does not meet the threshold for gratuitous care and assistance, they may still claim damages for commercial care.

Exemplary, punitive or aggravated damages are not to be awarded in relation to personal injury claims in Queensland unless the act which gave rise to the personal injury:

- was an unlawful intentional act done with an intent to cause personal injury, or
- was an unlawful sexual assault or other unlawful sexual misconduct.

South Australia

Damages in SA are governed by common law principles and the provisions of the *Civil Liability Act 1936* (SA)¹⁴ and the *Civil Liability Regulations 2013* (SA)¹⁵.

There are several statutory criteria, thresholds and limitations on damages, particularly since 1 July 2013, some of which include:

- like Queensland, injuries arising from motor vehicle accidents are assessed on an ISV prescribed by the Regulations. The ISV determined for the injuries must exceed 10 for an entitlement to damages for non-economic loss, voluntary services and loss of consortium, and must exceed 7 for an entitlement to a claim for future economic loss (with limited exceptions which have yet to be applied by the Courts),
- there are additional thresholds and criteria which apply to voluntary services, including a minimum hours threshold, compensation limited to services provided by a parent (which includes a step-parent or grandparent) spouse or domestic partner (as defined under the *Family Relationships Act 1975* (SA)¹⁶) or child (including step-child or grandchild), caps on the amount of services, and applicable prescribed rates,
- economic loss claims are subject to a 20% reduction in addition to any other reductions which might apply at common law, and future economic loss has a prescribed maximum. In assessing

damages for loss or impairment of future earning capacity, a court cannot take into account any inference as to a circumstance where the court is unable to evaluate the chance of it occurring or where the change has a less than 20% chance of occurring. These provisions also apply to loss of financial dependency in claims arising from a death caused by a motor vehicle accident, and

- superannuation is limited to the superannuation guarantee percentage, and pre-judgment interest is not payable on non-economic loss.

In relation to liability, there are significant statutory reductions which apply under the *Civil Liability Act 1936* for:

- failure to wear a seatbelt (25%),
- failing to travel in the passenger compartment of a vehicle (25% if this contributed to the collision or extent of injuries),
- failing to wear a helmet (25% if this contributed to the extent of the injury),
- being intoxicated (25% or greater, or 50% if the driver and a BAC over 0.15), or
- travelling in a vehicle with a driver who is intoxicated (25% or 50% depending on the level of intoxication of the driver).

Legal costs payable on claims are limited by s 127C of the MVA. If total damages (including any amounts paid prior to settlement for treatment) do not exceed \$25,000, then no legal costs or disbursements can be recovered by the claimant. If the total damages exceed \$25,000 but do not exceed \$100,000 then only lower court costs are recoverable (which limits costs to a percentage of the damages and excludes most Counsel fees).

Tasmania

In Tasmania, damages are governed, where applicable, by the *Civil Liability Act 2002 (Tas)*¹⁷ (CLA). Importantly, damages for gratuitous services are not claimable in motor vehicle accident claims (however claimants are still able to make a claim for paid care). General damages are not capped in Tasmania, however there are limitations on economic loss claims under the CLA in that damages must not be greater than three times the adult average weekly earnings as last published by the Australian Bureau of Statistics before damages are awarded. Any scheduled benefits paid to date by the MAIB are accounted for and contributed to any claim for past loss of income or out of pocket/medical expenses. Section 22 of the MAA provides that if a person suffers a personal injury while not wearing a seatbelt

(that is properly adjusted and fastened) in contravention of the *Road Rules*, the court must reduce damages by 15% or such higher percentage as the court considers just and equitable (this is a mandatory deduction).

Victoria

In Victoria, all claims for common law damages must be brought under the TAA. If a claimant wishes to bring a claim for common law damages under the TAA, they must establish they have sustained a 'serious injury'. The 'serious injury' threshold is set out in s 93 of the TAA which prescribes a narrative test defining 'serious injury' as '*permanent impairment or loss of a body function; permanent serious disfigurement; permanent severe mental or permanent severe behavioural disturbance or disorder; loss of a foetus*'. Section 93 also prescribes an impairment-based threshold, which is 30% or more whole person impairment established through an impairment assessment under the American Medical Association Guide's 4th Edition. If a claimant has a serious injury, they can claim damages for pain and suffering and loss of earnings (both past and future). Importantly, a claimant is not permitted to claim medical and like expenses or gratuitous care as part of their common law damages claim. This is on the basis that those expenses may be claimed as 'no-fault benefits' under the TAA.

Western Australia

In WA, claims for common law damages must be brought under the *Motor Vehicle (Third Party Insurance) Act 1943 (WA)*¹⁸. There are restrictions on the amount of damages claimed for non-pecuniary loss (general damages) and restrictions for the award of damages for the provision of home care services such as those of a domestic or gratuitous nature (ss 3C-3D). Depending on when the accident occurred, there may be restrictions for loss of earning capacity (s 3F). Section 3FB states that if the person has suffered a catastrophic injury, there can be no deduction made for any contributory negligence of the person in relation to the catastrophic injury to which the damages relate.

Residency Requirements

New South Wales

There is no residency requirement for a CTP claim in NSW. The test of whether the legislative CTP scheme applies is if the accident occurred in NSW. Whether the injured claimant is from overseas or interstate does not prevent the scheme applying. Vehicles registered and CTP insured in other states and territories are subject to the NSW CTP legislation if the accident occurred in NSW.

Queensland

Vehicles registered in other states and territories will be subject to Queensland legislation if the accident occurs in Queensland. If a vehicle registered in another state or territory travels to Queensland, the owner must transfer their registration to Queensland within 14 days of establishing a garaging address in Queensland. After that, the vehicle will be considered unregistered and the owner may be fined. Section 23(2)(b) of the MAIA provides for a 30-day period of grace after expiry of the CTP insurance. This means that a vehicle is only deemed uninsured 30 days after the registration status expires.

If a vehicle insured in Queensland is involved in an accident in another state or territory, that state's legislation will be applicable, with damages payable by the relevant licensed Queensland insurer.

South Australia

There is no residency requirement for a CTP claim in SA. If an interstate resident is involved in a collision, they will be covered if a SA registered vehicle is at-fault or if the vehicle is unidentified or not registered (by the Nominal Defendant scheme). Vehicles registered in other states or territories will be subject to SA legislation if the accident occurs in SA. They will not be covered by the SA-approved insurers or the Nominal Defendant scheme if the vehicle at-fault is registered interstate.

For vehicles registered in SA, there is a grace period that applies for 30 days after a registration/CTP policy has expired, meaning that the CTP Policy continues to apply for 30 days after the policy has lapsed (s 99A(8) of the MVA). This is similar to the Queensland scheme. An interstate registered vehicle owner is required to transfer their registration/CTP policy to SA within 90 days of the garaging address being in SA (s 19A of the MVA). All SA full CTP insured vehicles are covered by their relevant SA CTP insurer in any part of the Commonwealth.

In relation to benefits available under the LSS, the injury must have been caused by or arisen out of the

use of a motor vehicle, and the relevant motor vehicle accident must have occurred in SA. It also must not have been suffered by a participant in a road race, or be a work injury under the *Return to Work Act 2014* (SA)¹⁹.

Tasmania

The MAIB will not indemnify permitted out of state vehicles. Section 2 of the MAA provides that a permitted out of state vehicle is a vehicle that is registered elsewhere than in Tasmania or for which a permit issued elsewhere than in Tasmania is in force, and may lawfully be driven or used on a public street in Tasmania without being registered under the *Vehicle and Traffic Act 1999* (Tas)²⁰. Under that Act, a vehicle is not required to be registered in Tasmania if it is registered in another jurisdiction (s 28). However, there may be a potential exemption to this within the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas)²¹. In essence, it states that the exemption for interstate vehicles lapses if the vehicle has been in Tasmania for more than three months, unless the person has a residential address or ordinarily resides in a place other than in Tasmania (or the vehicle was not being used for a commercial purpose). This has potential to raise indemnity and recovery questions for some claims.

Victoria

The TAA applies to all motor vehicle accidents occurring within Victoria after 1 January 1987. The TAA also applies to motor vehicle accidents that occur outside Victoria but involve a Victorian registered vehicle. This is set out in s 35 of the TAA.

For example, if someone is driving a Victorian registered vehicle in Tasmania and suffers an injury in a transport accident, they will be permitted to make a claim for no-fault benefits under the TAA. However, the common law damages claim would be brought under the law of Tasmania.

Western Australia

If the driver at-fault has their vehicle registered in another state or territory, a claimant should contact the relevant state or territory's CTP insurer. However, a claim may still be made if the driver at-fault is unidentified or unregistered, such as a hit and run situation. Section 17 of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA) requires the motor vehicles of those visiting the state to be adequately insured against possible third-party liability before a temporary license (which allows a visitor to drive in WA) can be granted.

Unique Aspects of the Schemes

New South Wales

One unique aspect of the NSW CTP scheme is its hybrid no-fault and fault-based entitlement to compensation. Statutory benefits for treatment, paid care and loss of income exist on a no-fault basis for the first 52 weeks after the accident. After that, there are statutory requirements which stop entitlements if the claimant was wholly or mostly at-fault (more than 61% contributory negligence), or if they only suffered from a threshold injury (soft tissue injury with no radiculopathy or adjustment disorder).

The Lifetime Care and Support Scheme and CTP Care are two other important elements. The first provides seriously injured claimants with treatment, care, equipment and home modifications for their lifetime. CTP Care covers any claimant who was entitled to statutory benefits for treatment and paid care from five years after the accident for their lifetime (the CTP insurer covers this reasonable need up to the five years).

The PIC is also unique in its role assessing liability, medical and damages disputes, with claimants who are exempt from the PIC (e.g. due to a legal incapacity) or are unhappy with the liability or damages assessment, able to seek a fresh assessment by a District Court Judge. Otherwise, CTP insurers are bound by the PIC's damages assessment, subject to rights of judicial review.

Initially, concerns arose as to whether the PIC had the power to make decisions in matters involving claimants from one state or territory and insurers from another. The PIC was and is unable to determine a matter if it involves the exercise of *federal jurisdiction*, in accordance with the principles outlined in [Attorney General for NSW v Gatsby \[2018\] NSWCA 254](#).

However, it has been clarified that the majority of the functions exercised by the PIC are *administrative* rather than *judicial*, hence removing the concern that the PIC was *automatically* disqualified from hearing any matters involving parties from different states or territories. In [Searle v McGregor \[2022\] NSWCA 213](#), the Court observed that the PIC would fall into error if it automatically dismissed claims simply because there may be a potential issue of diversity of jurisdiction.

Another unusual feature which has arisen since the commencement of the PIC is the question of whether an insurer is a state. This is important given the definition of federal jurisdiction discussed above. The PIC has accepted that from 22 July 2022 they have '*judicial authority*' to determine matters involving an interstate CTP insurer whose insured vehicle causes injury in NSW in a motor vehicle accident.

What is the Nominal Defendant, however? Unlike an insurance company, it is not a private company. In accordance with the decision in [Matthew Ritchie v the Nominal Defendant District Court No 2021/117151](#), the *Nominal Defendant* is considered by the PIC to be part of a state. Presumably, Nominal Defendant Claims in NSW which involve an interstate resident will continue to be dismissed by the PIC and referred to the District Court for decision. The PIC's view appears to be that, in these instances, dealing with the matter on any level regarding any dispute would necessarily involve an exercise of the judicial rather than administrative function.

Queensland

The MAIA requires there to be a conference of the parties (a compulsory conference) before the claimant can bring an action in court for damages for personal injury arising from a motor vehicle accident. If the claim is not settled at the compulsory conference, each party must (unless the court has dispensed with this obligation) exchange written final offers at the conference or within 14 days after the date of the agreement or order dispensing with the compulsory conference. Proceedings may only be issued once the written offers have expired.

Since 1994, the Queensland CTP insurance scheme has shown an increased focus on rehabilitation of injured persons. Pursuant to the MAIA, insurers have positive obligations to make rehabilitation services available to appropriate claimants. Rehabilitation services may be made available before or after an insurer has admitted liability. If rehabilitation services are made available, an insurer is not taken to have admitted liability for that reason. Finally, an insurer may request that a court take the cost of rehabilitation services into account when assessing damages.

South Australia

In SA, the policy of insurance and approved insurers are regulated by the CTP Regulator. In addition to the policy of insurance, the CTP Regulator has rules to which the insurers and claimants must adhere. These include (but are not limited to) rules regarding privacy, timeframes for service of documents obtained with the claimant's authority, contacting claimants, determining liability and medical assessments.

For a claim to be compliant under the SA CTP Scheme, notice must be provided to the relevant insurer within six months of the accident (or to the Nominal Defendant as soon as possible for an unidentified vehicle). This notice includes specific

criteria such as an authority, police report, medical and economic loss evidence. If the notice is not provided within this timeframe, an insurer may decline to deal with it (i.e. not make payment of accounts) and proceedings cannot be issued, or continued if already issued, while the claim remains non-compliant (see s 126A of the MVA). This is in addition to the time limits under the *Limitations of Actions Act 1936* (SA)²².

Tasmania

Under rule 383(4) of the *Supreme Court Rules 2000* (Tas)²³, a defendant in a motor vehicle accident claim is not required to make discovery unless a court or judge orders otherwise.

In circumstances where the at-fault driver is deceased or cannot be identified, a claimant is able to bring a claim for damages against the MAIB directly (s 16 of the MAA). To bring such a claim, the claimant

needs to notify the MAIB of their intention to do so within three months after the accident. This period of time can be extended by application to the court (see s 16 of the MAA for further details).

Western Australia

The MIIS is relatively narrow in its scope for providing indemnity to drivers and/or persons who suffer death or injuries as a result of a motor vehicle accident. Injured persons must first pursue claims against the driver at-fault for the accident before they can turn to the ICWA for compensation.

The indemnity provided by the MIIS to victims of catastrophic injuries resulting from motor vehicle accidents is also a unique feature of the WA scheme not shared by other jurisdictions.

Recovery

New South Wales

There are a variety of recovery avenues under the MAI Act, which provide that:

- an insurer may recover any money paid or costs incurred in relation to a claim from an unauthorised driver of a motor vehicle (s 2.16),
- an insurer or the Nominal Defendant may recover the amount of statutory benefits properly paid from the relevant insurer liable to make those payments, along with the costs associated with handling the statutory benefits claim (s 3.2(8)). This may occur in circumstances where the at-fault motor vehicle was initially unidentified and managed by the Nominal Defendant and the vehicle was later identified,
- an insurer may seek recovery from the at-fault driver/owner for any amount properly paid resulting from the at-fault driver/owner if the vehicle which caused injury to any person was uninsured (s 3.36), and
- an insurer may recover from the claimant the amount of financial benefit obtained through false or misleading conduct including any costs incurred in connection with the claim (s 6.42).

Queensland

Pursuant to s 58 of the MAIA, a licensed insurer may seek recovery of costs reasonably incurred by the insurer from an insured person if:

- the insured person was using the motor vehicle without the owner's authority, without lawful justification and excuse, and without reasonable grounds to believe that the insured person had the owner's authority to use the motor vehicle,
- the insured person intended to injure the claimant or some other person,
- the insured person was, at the time of the accident, unable to exercise effective control of the motor vehicle due to the consumption of:
 - alcohol,
 - non-medicinal drug or drugs, or
 - a combination of alcohol and non-medicinal drug or drugs.

Section 58 of the MAIA also allows an insurer to recover monies reasonably incurred if the motor vehicle accident was, in whole or in part, attributable to a defect in the motor vehicle and the defect arose from the wrongful act or omission of either the manufacturer or repairer of the motor vehicle.

South Australia

Under the MVA, the CTP insurers can recover from the insured driver or owner (as applicable) if:

- the vehicle was driven without authorisation,
- the insured driver or owner was driving with the intention of causing death or bodily injury, or damage to another's property, or with reckless indifference as to whether that results, or
- the insured driver or owner was driving a motor vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle, or driving a motor vehicle with a BAC of 0.1 or more.

CTP insurers may also be able to recover, in whole or in part, from the driver if they can establish prejudice resulting from:

- a failure to stop and render assistance after involvement in the accident,
- contravention of any other term of the policy (such as driving an unroadworthy vehicle), or
- contravention of their duties under the MVA to co-operate with the insurer (s 124) or the duty not to negotiate, settle, or admit liability without the insurer's approval (s 126).

Tasmania

There are a variety of avenues for recovery by the MAIB under the MAA. The key provisions exist under s 18, s 28B and s 28C of the MAA (note there are some recovery entitlements under Schedule 2 of the MAA), which provide that:

- In relation to common law claims: The MAIB may recover from the owner of a vehicle or the person driving the vehicle if no premium had been paid at the time of the accident. This is a premium that has been paid to the MAIB. There is also the ability to recover where the owner or user of a motor vehicle is convicted of particular offences set out within the MAA, or where the driver of the motor vehicle was driving the vehicle without the authority or acquiescence of the owner.
- In relation to scheduled benefits: The MAIB may recover from an indemnified owner of a motor vehicle if the vehicle was not a permitted out of state vehicle, was not a trailer of a kind prescribed under the Act, and at the time no premium or interstate premium had been paid. Recovery can also occur if a person is convicted of particular offences as set out in the MAA, if a person intentionally causes an accident, or where the driver of the motor vehicle was driving the vehicle

without the authority or acquiescence of the owner. The MAIB also has a right of recovery from non-indemnifiable persons (that is, persons who are not indemnified by MAIB).

Victoria

If 'no-fault benefits' have been paid to or on behalf of an injured claimant by the TAC, and the at-fault vehicle was registered in another state or territory, the TAC may seek recovery from the relevant interstate insurer pursuant to s 104 of the TAA.

Western Australia

Several circumstances exist under which the ICWA may recover money against certain parties pursuant to the provisions of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA).

Under s 7(5), the ICWA can recover from an insured person who is liable for an accident if the relevant policy of insurance was obtained by any misstatement or non-disclosure, or if the insured person has failed to comply with the policy of insurance in any other way. This recovery can be done by either a separate action or by means of third-party procedure in the action against the ICWA.

The ICWA may also recover from an insured person, owner or driver of an uninsured vehicle if they fail to comply with the provisions of s 10, including where a person fails to provide notice of a claim against them to the ICWA or its particulars.

Finally, the ICWA has different rights of recovery against drivers of uninsured vehicles and unauthorised drivers of vehicles. Under s 14, the ICWA can recover the cost of any payment for emergency treatment from drivers of uninsured vehicles where the driver has directly caused the injuries in question. Under s 15, the ICWA can recover the cost of discharging any liability for injury where those injuries were directly caused by a person who was driving an insured vehicle without the authority of the owner.

Your BN Contacts



Henry Silvester
Principal, Sydney

henry.silvester@bnlaw.com.au
+61 2 8031 2622

[View Online Profile](#)



Jacob Luca
Principal, Melbourne

jacob.luca@bnlaw.com.au
+61 3 9909 6342

[View Online Profile](#)



Stewart Boland
Principal, Brisbane

stewart.boland@bnlaw.com.au
+61 7 3099 7313

[View Online Profile](#)



Zoe Forrester
Senior Associate, Adelaide

zoe.forrester@bnlaw.com.au
+61 8 8128 7709

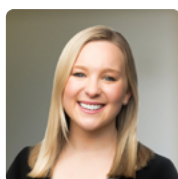
[View Online Profile](#)



Colby Treasure
Principal, Perth

colby.treasure@bnlaw.com.au
+61 8 6424 0414

[View Online Profile](#)



Demi Peters
Senior Associate, Hobart

demi.peters@bnlaw.com.au
+61 3 6218 8816

[View Online Profile](#)

1 'Automated vehicle safety reforms' National Transport Commission, public consultation paper April 2024

2 *Motor Accidents (Lifetime Care and Support) Act 2006* (NSW)

3 *Motor Accident Injuries Act 2017* (NSW)

4 *Personal Injury Commission Act 2020* (NSW)

5 *Personal Injury Commission Rules 2021* (NSW)

6 *Motor Accident and Insurance Act 1994* (Qld)

7 *Motor Vehicles Act 1959* (SA)

8 *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas)

9 *Motor Accidents (Liabilities and Compensation) Regulations 2020* (Tas)

10 *Transport Accident Act 1986* (Vic)

11 *Civil Liability Act 2002* (NSW)

12 *Civil Liability Act 2003* (Qld)

13 *Civil Liability Regulations 2014* (Qld)

14 *Civil Liability Act 1936* (SA)

15 *Civil Liability Regulations 2013* (SA)

16 *Family Relationships Act 1975* (SA)

17 *Civil Liability Act 2002* (Tas)

18 *Motor Vehicle (Third Party Insurance) Act 1943* (WA)

19 *Return to Work Act 2014* (SA)

20 *Vehicle and Traffic Act 1999* (Tas)

21 *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas)

22 *Limitations of Actions Act 1936* (SA)

23 *Supreme Court Rules 2000* (Tas)

Australian CTP Insurance Schemes: National Comparison Matrix

National Comparison Matrix

	NSW	Qld	SA	Tas	Vic	WA
Policy, Legislation & Scheme	<ul style="list-style-type: none"> → Mixture fault and no-fault CTP. → Compensation split into statutory benefits and common law damages. → <i>Motor Accident Injuries Act 2017</i>. → Private insurers administer CTP scheme regulated by the NSW State Insurance Regulatory Authority. 	<ul style="list-style-type: none"> → Fault-based CTP. → <i>Motor Accident and Insurance Act 1994</i> (MAIA). → Standard policy of insurance adopted by the licensed insurers provided for in the schedule to the MAIA. → Regulated by Motor Accident Insurance Commission. → <i>Civil Liability Act 2003</i> and <i>Civil Liability Regulation 2014</i> should be read in conjunction with MAIA. 	<ul style="list-style-type: none"> → Generally fault-based CTP. → <i>Motor Vehicles Act 1959</i> (SA). → Was previously administered by Motor Accident Commission. Now privately underwritten insurers. 	<ul style="list-style-type: none"> → No-fault CTP scheme in respect of scheduled benefits. → Regulated by the <i>Motor Accidents (Liabilities and Compensation) Act 1973</i> (Tas) (MAA) and <i>Motor Accidents (Liabilities and Compensation) Regulations 2020</i> (Tas) (MAAR). → Tasmanian Government Enterprise. 	<ul style="list-style-type: none"> → No-fault CTP scheme. → <i>Transport Accident Act 1986</i> (Vic) (TAA). → Transport Accident Commission (TAC) is a statutory authority. 	<ul style="list-style-type: none"> → Fault-based CTP insurance scheme. → <i>Motor Vehicle (Third Party Insurance) Act 1943</i>. → The Insurance Commission of Western Australia (ICWA) manages CTP claims and is the government insurer.
Indemnity / Liability	<ul style="list-style-type: none"> → Applies to the death of or injury to a person that results from the use or operation of a motor vehicle (includes a 'dangerous situation caused by the driving of a vehicle' e.g. an oil spill). → The first 52 weeks are no-fault for benefits (after that see exclusions below) and must establish negligence for common law damages. → Very serious injuries (e.g. spinal cord injuries, severe brain damage, amputations) have treatment, care, equipment and home modifications paid on a no-fault basis by the NSW government under the <i>Motor Accidents (Lifetime</i> 	<ul style="list-style-type: none"> → Injured person to establish negligence or fault against another party on the balance of probabilities to access compensation. → An injured person who contributed to the accident may still claim damages, however their damages may be reduced for contributory negligence. → If more than one vehicle is involved in the collision, licensed insurers may share the claim costs in accordance with the Sharing Deed dated 20 September 2011. 	<ul style="list-style-type: none"> → Indemnifies the owner, driver and passenger for liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle. 	<ul style="list-style-type: none"> → Common Law: the MAIB will indemnify an owner or user of a motor vehicle for a personal injury to a person resulting directly from a motor accident provided the accident occurs in Tasmania (note: the vehicle does not need to be registered). → Scheduled benefits: MAIB provides coverage for scheduled benefits to a resident of Tasmania, if the accident occurs in Tasmania or the accident occurred interstate in a Tasmanian registered vehicle. Coverage for benefits is also provided to interstate residents if the accident occurred in Tasmania and involved a Tasmanian registered vehicle or where the accident occurred in 	<ul style="list-style-type: none"> → The TAA allows for several 'no-fault benefits' which are payable by the TAC no matter who was at-fault with respect to the transport accident. The TAA also allows for fault-based common law damages payments to be made to claimants who have suffered a 'serious injury'. 	<ul style="list-style-type: none"> → Any person who has suffered death or injury because of another driver's negligence, and has obtained a judgment confirming this, to recover, from ICWA, any legal costs or money payable pursuant to the judgment which remains unsatisfied.

Australian CTP Insurance Schemes: National Comparison Matrix

	NSW	Qld	SA	Tas	Vic	WA
	<p><i>Care and Support) Act 2006.</i></p> <p>→ In a no-fault accident (one not caused by the fault of the owner or driver of any motor vehicle in the use or operation of the vehicle and not caused by the fault of any other person), the owner or driver of the vehicle is deemed at-fault subject to reduction of any contributory negligence of the claimant.</p>			<p>Tasmania but involved an interstate vehicle, and the injured person requires daily care. Scheduled benefits are as regulated by Schedule 1 of the MAAR include, medical, funeral, death, disability, and counselling benefits.</p>		
Exclusions	<p>→ Workers' compensation payable.</p> <p>→ After first 52 weeks after the accident no benefits if claimant at-fault (more than 61% responsible) and/or only injuries are threshold injuries (e.g. soft tissue with no radiculopathy, adjustment disorder).</p> <p>→ No benefits or common law damages for gratuitous care/voluntary services.</p> <p>→ No benefits if claimant driving an uninsured vehicle or commits serious driving offence related to the motor accident.</p> <p>→ No common law damages for threshold injuries.</p>	<p>→ Workers' compensation payable.</p> <p>→ Exemplary, punitive or aggravated damages are not payable.</p> <p>→ Does not insure for damages for an injury that arises gradually from a series of events.</p> <p>→ Persons engaged in conduct amounting to an indictable offence at the time of the accident are not entitled to damages if the conduct materially contributed to the risk of harm.</p> <p>→ Accident must fall within section 5 of the MAIA.</p>	<p>→ Death or bodily injury to be a direct consequence.</p> <p>→ If conditionally registered, will only indemnify if occurred on road or related area.</p> <p>→ Acts of terrorism or road races.</p>	<p>→ Schedule benefits: including but not limited to, intentionally causing injury, alternative policy or scheme in place (e.g. workers compensation), trail bike (or farm bike or breach buggy) and where a premium has not been paid, injury results from a motor vehicle race, injury sustained whilst committing an offence of dishonesty, premium has not been paid, injury resulting from various offences (including not having a licence).</p> <p>→ Common law: Alternative policy in place, involved a motor vehicle race, act of terrorism, at-fault driver was driving a permitted out of state vehicle.</p>	<p>→ Workers' compensation payable.</p> <p>→ Report is not made to police officer.</p> <p>→ Railway tram/train report is not made.</p> <p>→ Certain criminal offences (intent).</p> <p>→ Commission of a crime.</p> <p>→ Intoxication.</p> <p>→ Preparation for sports events.</p> <p>→ Unregistered on private land.</p>	<p>→ Employers still liable to pay workers' compensation.</p> <p>→ Vehicle must not be used for any other purpose other than stated by the owner in the application for the policy.</p> <p>→ Driven in an unsafe of damaged condition.</p> <p>→ Driven by owner/another person who is intoxicated.</p> <p>→ Driven by unlicensed person.</p>
Damages	<p>→ Entitled to only economic and non-economic (general damages) loss.</p> <p>→ Regulated by the <i>Motor Accident Injuries Act 2017</i>, <i>Motor Accident Injuries Regulation 2017</i>,</p>	<p>→ Regulated by the <i>Civil Liability Act 2003</i> (Qld) (CLA) and <i>Civil Liability Regulation 2014</i> (Qld) (CLR).</p> <p>→ General damages are calculated by assigning</p>	<p>→ Governed by common law principles, and by the provisions of the <i>Civil Liability Act 1936</i> and the <i>Civil Liability Regulations</i>.</p> <p>→ General damages are calculated by assigning</p>	<p>→ Regulated by the <i>Civil Liability Act 2002</i> (Tas).</p> <p>→ Mandatory deduction for failing to wear a seatbelt in s 22 of the MAA.</p>	<p>→ May recover damages for pain and suffering and loss of earnings (past and future) if the claimant has a serious injury.</p>	<p>→ Damages regulated within <i>Motor Vehicle (Third Party Insurance) Act 1943</i>.</p>

Australian CTP Insurance Schemes: National Comparison Matrix

	NSW	Qld	SA	Tas	Vic	WA
	<p><i>Motor Accident Guidelines</i> (published by the regulator) and <i>Motor Accident Injuries (Indexation) Order</i>.</p> <p>→ General damages awarded by discretionary consideration up to a regulated maximum but no entitlement unless permanent whole person impairment exceeds 10%.</p>	<p>an Injury Scale Value from zero to 100.</p> <p>→ To access damages for gratuitous care, a person must meet the statutory threshold of six hours of care per week for six months.</p>	<p>an Injury Scale Value from zero to 100.</p>			
Caps on Damages	<p>→ Past loss weekly benefits already received are deducted from any award of past economic loss.</p> <p>→ Non-economic loss and economic loss have statutory capped maximums.</p> <p>→ No entitlement to voluntary/gratuitous care.</p>	<p>→ Damages for economic loss are limited to the three times the average weekly earnings in Australia.</p>	<p>→ Economic loss has an additional 20% reduction.</p> <p>→ Future economic loss has prescribed maximum.</p> <p>→ Cap applies to voluntary/gratuitous services.</p> <p>→ Thresholds apply for general damages, voluntary services, future economic loss, loss of consortium.</p>	<p>→ Cap on economic loss (three times the average weekly earnings).</p> <p>→ No restriction on general damages.</p> <p>→ No entitlement to voluntary/gratuitous care.</p>	<p>→ Statutory maximum for general damages is currently \$639,200.</p> <p>→ Statutory maximum for loss of earnings is currently \$1,438,310.</p>	<p>→ Caps on non-economic damages.</p> <p>→ Caps on loss of earning capacity.</p>
Limitation Period	<p>→ Statutory benefits claim within three months after the accident, can apply late if criteria met.</p> <p>→ Common law damages three years from date of accident, can apply late if criteria met.</p> <p>→ <i>Limitation Act 1969</i> (NSW) does not apply.</p>	<p>→ Three years from date the cause of action arise.</p> <p>→ One year extension in limited circumstances.</p> <p>→ Claimant must lodge claim within nine months of the accident, unless there is a reasonable excuse for delay.</p>	<p>→ Three years after the cause of action (unless a latent injury).</p> <p>→ There is discretion by court to extend but this requires a new material fact to be ascertained and proceedings to be issued within one year of that ascertainment.</p>	<p>→ Common Law: three years (+ three-year discretionary extension).</p> <p>→ Scheduled Benefits: one year (after either the date of the accident, the date the expense was incurred or the date the care was provided) (however this can be extended up to 5 years).</p>	<p>→ A claim for no-fault benefits must be lodged one year after injury first manifests.</p> <p>→ TAC may accept claim before three years if reasonable grounds.</p> <p>→ A common law damages claim must be made within six years of the cause of action having accrued. However, the limitation period may be extended in certain circumstances.</p>	<p>→ Must give notice to ICWA.</p> <p>→ Then must commence proceedings within six months.</p>
Residency Requirements	<p>→ No residency requirements.</p> <p>→ Interstate or overseas resident injured person</p>	<p>→ If moving states, owner must transfer registration with 14 days of establishing garaging address.</p>	<p>→ No residency requirements.</p> <p>→ Interstate resident is covered if SA vehicle is at-fault. Vehicles</p>	<p>→ Out of state vehicles have three months to change their registration over unless the person has a residential address or</p>	<p>→ The TAC will indemnify the owner and/or driver of a Victorian-registered motor vehicle for any liability directly caused by</p>	<p>→ If the driver at-fault has their vehicle registered in another state or territory, a claimant should contact the relevant state or</p>

Australian CTP Insurance Schemes: National Comparison Matrix

	NSW	Qld	SA	Tas	Vic	WA
	<p>covered if accident occurred in NSW.</p> <p>→ Vehicles registered in other states or territories subject to NSW CTP legislation if occurred in NSW.</p>	<p>→ Vehicles registered in other states or territories will be subject to Qld legislation if occurred in Qld.</p> <p>→ 30-day grace period after expiry of CTP insurance.</p>	<p>registered in other states or territories subject to SA legislation if occurred in SA.</p> <p>→ 30-day grace period after expiry.</p>	<p>ordinarily resides in a place other than Tas, or the vehicle was not being used for a commercial purpose (note: this is not determinative of indemnity or recovery but is a matter for consideration).</p>	<p>the driving of a registered vehicle or arising out of the use of a registered vehicle.</p> <p>→ Owner entitled to indemnity if vehicle was registered.</p>	<p>territory's CTP insurer. However, a claim may still be made if the driver at-fault is unidentified or unregistered, such as in a hit and run situation. Section 17 of the Act requires the motor vehicles of those visiting the state to be adequately insured against possible third-party liability before a temporary licence (which allows a visitor to drive in Western Australia) can be granted.</p>
Unique Aspects	<p>→ Hybrid no-fault and fault-based with statutory benefits and common law damages.</p> <p>→ Ongoing entitlement to statutory benefits for treatment – first five years covered by CTP insurer and after that by CTP Care run by the NSW government.</p> <p>→ Seriously injured claimant suffering injuries such as quadriplegia, brain and other injury that meets criteria covered for life through the Lifetime Care and Support scheme.</p> <p>→ Split administrative tribunal/court process.</p>	<p>→ Requirement of compulsory conference before claimant can bring an action.</p> <p>→ If the claim does not settle, each party must generally exchange final offers at the conference or within 14 days.</p> <p>→ Proceedings may only be issued once mandatory final offers expire.</p> <p>→ Increased schemes focus on rehabilitation.</p> <p>→ If the at-fault vehicle is uninsured or cannot be identified, the Nominal Defendant becomes responsible for management of the claim.</p>	<p>→ Policy of insurance and approved insurers are regulated by the CTP regulator.</p> <p>→ For a claim to be compliant under SA CTP scheme, notice is to be provided to insurer within six months of accident.</p>	<p>→ Defendant does not have to make discovery.</p> <p>→ Mandatory reduction of 15% for failing to wear a seatbelt (s 22 MAA).</p> <p>→ Proceedings can be issued against MAIB directly in circumstances where the at-fault driver is deceased or cannot be identified – however for a claimant to bring a claim against MAB in these circumstances there are specific notice requirements (s 16 MAA).</p>	<p>→ Medical expenses and gratuitous care cannot be claimed as part of common law damages claim.</p>	<p>→ Injured persons must first pursue claims against the driver at-fault for the accident before they can turn to the ICWA for compensation.</p>
Recovery	<p>→ Insurer may recover from unauthorised driver.</p> <p>→ Where the Nominal Defendant identifies the at-fault vehicle, recovery from that vehicle's CTP insurer.</p> <p>→ Insurer may recover from at-fault driver/owner if</p>	<p>→ Insurer may recover from: driver without owners' authority, intentional acts, unable to exercise effective control (alcohol, drugs, combination of both).</p> <p>→ Insurer may also recover monies if the accident was attributable to a</p>	<p>→ Insurer may recover from: driver without owners' authority, intentional acts, unable to exercise effective control (alcohol, drugs, combination of both).</p> <p>→ Insurer may also recover monies if the accident was attributable to failure</p>	<p>→ Can recover both scheduled benefits and common law damages from indemnified persons (in certain circumstances e.g. where a person is convicted of a particular offence), intentionally caused the accident (SB recovery only), or where</p>	<p>→ If 'no-fault benefits' have been paid to or on behalf of an injured claimant by the TAC, and the at-fault vehicle was registered in another state, the TAC may seek recovery from the relevant interstate insurer.</p>	<p>→ ICWA can recover from an insured person who is liable if policy of insurance was obtained by misstatement/non-disclosure or failure to comply.</p> <p>→ ICWA can recover from an insured person, owner or driver of an uninsured</p>

Australian CTP Insurance Schemes: National Comparison Matrix

	NSW	Qld	SA	Tas	Vic	WA
	<p>the vehicle was uninsured.</p> <p>→ Insurer may recover from claimant amount obtained through false or misleading conduct.</p>	<p>defect in the vehicle or the defect arose from a wrongful act or omission of either the manufacturer or repairer of the motor vehicle.</p>	<p>to stop and render assistance, contravention of other term of the policy, contravention of duties to cooperate with insurer (duty to not negotiate/settle/admit liability).</p>	<p>no premium to the MAIB (registration) has been paid.</p> <p>→ The MAIB can also recover scheduled benefits from non-indemnified persons in certain circumstances.</p>		<p>vehicle if they fail to provide notice of claim against them to the Commission.</p> <p>→ ICWA can recover cost of any payment for emergency treatment from drivers of uninsured vehicles.</p>
Insurers / Government	<p>→ AAI Limited</p> <p>→ Allianz</p> <p>→ IAG</p> <p>→ QBE</p> <p>→ Youi</p>	<p>→ AAI Limited</p> <p>→ Allianz</p> <p>→ QBE</p> <p>→ Nominal Defendant</p>	<p>→ AAI Limited</p> <p>→ Allianz</p> <p>→ IAG</p> <p>→ QBE</p> <p>→ Youi</p>	<p>→ Motor Accidents Insurance Board (MAIB)</p>	<p>→ Transport Accident Commission (TAC)</p>	<p>→ The Insurance Commission of Western Australia (ICWA)</p>