



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2019-258

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	29
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#); [JACS FOI](#)
Cc: [REDACTED]
Subject: FOI Request - CTP Scheme
Date: Monday, 11 November 2019 3:04:12 PM

Good afternoon

I write to request under the *Freedom of Information Act 2016* documents relating to the compulsory third party insurance scheme:

- Between the ACT Government, including Ministers and their offices, and any insurance companies or associated entities and individuals; and
- Briefs, internal correspondence with the Minister or their office, requests for information from Minister's or their offices and advice provided, including across directorates.

Documents may include, but are not limited to, briefs, correspondence, file notes, meeting requests, meeting agendas and minutes or notes, internal working documents, documents provided by insurers, assessments, reviews and any other relevant types of documents.

I ask that any search be undertaken since 18 April 2018.

Should you require any further clarification, please do not hesitate to contact my office on [REDACTED].

Kind regards,






ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2019-258



via email: 

Dear 

FREEDOM OF INFORMATION DECISION NOTICE

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 11 November 2019, in which you sought access to information relating to the CTP Reform (Motor Vehicle Injury Scheme).

Authority

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 6 September 2019. However, due to third party consultation, this timeframe has been extended by 15 working days pursuant to section 38(5) of the Act. The due date for this request is therefore 2 January 2020.

Third Party Consultation

In making this decision, third party consultation was completed in accordance with section 38 of the Act. The views of the identified third party were considered in making this decision.

Decision on access

Searches were completed for relevant documents and 56 documents were identified that fall within the scope of your request. I have decided to grant full access to 9 documents and partial access to 24 documents and exempt 23 documents.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as Attachment B to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the contentions of relevant third parties;
- the content of the documents that fall within the scope of your request; and
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant full access to the identified documents and components of these documents are as follows:

Information in possession of human rights commission (Schedule 1 of the Act)

Document reference numbers 15, 17 and 19 contain information in the possession of the ACT Human Rights Commission that have been obtained or generated in relation to a complaint made under the *Human Rights Commission Act 2005*. Having considered the information contained in the documents, I am satisfied that disclosure of such information contained in documents relating to your access request would be contrary to public interest pursuant to schedule 1 section 1.8 of the Act at this time.

Cabinet information (Schedule 1 of the Act)

Documents 3 (in part), 31 and 39 to 57 have been identified as being within the scope of your request are entirely composed of information that is considered to be contrary to the public interest under section 1.6 of Schedule 1 of the Act as it is Cabinet information. Under section 1.6 of Schedule 1 of the Act, Cabinet information is exempt from release. The purpose of this exemption is to maintain the confidentiality of the cabinet process and to uphold the principle of collective ministerial responsibility. This exemption was discussed in *The Commonwealth v Northern Land Council* [1993] HCA 24; (1993) 176 CLR 604 (21 April 1993). Paragraph 6 of the decision, states that:

... it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made.

The documents that you have requested fall within section 1.6 of the Act as it is information which has been commissioned by the Cabinet to guide it in its decision making and to assist it in its deliberations. It is therefore exempt from release under the Act.

Public Interest Test (Schedule 2 of the Act)

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process I must consider factors favouring disclosure and factors favouring non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test to be applied to determine whether disclosure of information would be contrary to the public interest. The factors referred to in the test are found in subsection 17(2) and Schedule 2 of the Act.

Factors favouring disclosure (Schedule 2 section 2.1)

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factor in favour of disclosure is relevant to determine if release of the information contained within these documents is within the 'public interest'.

(a) disclosure of the information could reasonably be expected to do any of the following:

- (i) promote open discussion of public affairs and enhance the government's accountability.*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may contribute to open discussion of public affairs and enhance the government's accountability. I consider there is a public interest in the operations of the ACT Government particularly in relation to the ACT's CTP reform. The information identified as being within the scope of your request provides this information. I am satisfied that the release of this information is within the public interest as it provides background and context to this matter thereby promoting public discussion.

Factors favouring non-disclosure (Schedule 2 section 2.2)

As required in the public interest test set out in section 17 of the Act, I have also identified the following public interest factors in favour of non-disclosure that I believe are relevant to determine if release of the information contained within these documents is within the 'public interest':

(a) disclosure of the information could reasonably be expected to do any of the following:

- (ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004; and*
- (xi) prejudice trade secrets, business affairs or research of an agency or person.*

Taking into account the submissions put to me by the relevant third party as part of the consultation undertaken in accordance with section 38 of the Act and having reviewed the documents I am of the opinion that release of the contested information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. I am satisfied that this factor favouring non-disclosure should be afforded significant weight as it relates to individuals' privacy. Accordingly, I have decided

to withhold from disclosure the names and contact details of individuals who have not consented to the release of their information.

I have also considered the impact that the release of one part of document 33 may have on the relevant third parties in relation to their business affairs. I have decided to redact the business information contained within the document as the release of this information may prejudice the future business affairs between the ACT Government and these third parties. The remaining information in the documents is released in full.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that is not in the public interest to release, while releasing the rest of the information will ensure the intent of the Act is met and will provide you with access to the majority of information held by CMTEDD within the scope of your request.

Charges

I have waived fees associated with your access application because you are a member of the Legislative Assembly as described in s107(2)(e) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision in response to your access application together with the documents that are being released to you will be published in the CMTEDD disclosure log 3 days after the date of my decision. Your personal contact details will not be published. You may view the CMTEDD disclosure log at: <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made by the Ombudsman under section 82(1), you may apply to the ACAT for a review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or by email at CMTEDDFOI@act.gov.au.

Yours sincerely,

A handwritten signature in grey ink, appearing to read 'P. Dachs', is positioned above the typed name.

Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development
Directorate

20 December 2019



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
CTP Reform (Motor Vehicle Injury Scheme)	CMTEDDFOI2019-258

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
Point 1						
1	1-2	Website Enquiry	23 Apr 2018	Partial release	Section 2.2(a)(ii)	Yes
2	3-4	Website Enquiry	5 Jul 2018	Partial release	Section 2.2(a)(ii)	Yes
3	5-7	Correspondence from the Law Society and the Bar Brief exempt, attachment provided.	14 Aug 2018	Partial release	Schedule 1 1.6 Cabinet Information	Yes
4	8-9	Website Enquiry	24 Sep 2019	Partial release	Section 2.2(a)(ii)	Yes
5	10	Response to Your Say Form Submission	4 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
6	11-12	Another CTP question	4 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
7	13	CTP Problems	5 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
8	14-16	Some important questions	16 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
9	17-18	Website enquiry	23 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
10	19-20	Changes of the CTP	24 Oct 2018	Partial release	Section 2.2(a)(ii)	Yes
11	21-26	Media Response – CTP insurance	15 Nov 2018	Partial release	Section 2.2(a)(ii)	Yes
12	27	On Demand Transport TPI premiums	20 Nov 2018	Partial release	Section 2.2(a)(ii)	Yes
13	28	Website enquiry	28 Nov 2018	Part al release	Section 2.2(a)(ii)	Yes

14	29-33	On Demand Transport TPI premiums	28 Nov 2019	Partial release	Section 2.2(a)(ii)	Yes
15	34-36	Human rights commission complaint about CTP jury	15 Feb 2019	Exempt	Schedule 1, 1.8 Information in possession of human rights commission	
16	37-38	Current Status of the CTP ACT Reform	17 Feb 2019	Partial release	Section 2.2(a)(ii)	Yes
17	39-158	Urgent – ACT Human Rights Commission...	26 Feb 2019	Exempt	Schedule 1, 1.8 Information in possession of human rights commission	
18	159	Website enquiry	27 Feb 2019	Partial release	Section 2.2(a)(ii)	Yes
19	160-161	Signed correspondence Ref: 190214800 – Human Rights Complaint	26 Mar 2019	Exempt	Schedule 1, 1.8 Information in possession of human rights commission	
20	162	Thank you for your email	16 Apr 2019	Partial release	Section 2.2(a)(ii)	Yes
21	163-164	Website enquiry	16 May 2019	Partial release	Section 2.2(a)(ii)	Yes
22	165-172	Letter/email CTP Miscarriage issue	17 May 2019	Partial release	Section 2.2(a)(ii)	Yes
23	173-174	Information regarding Motor Accident Injuries Bill	18 Jul 2019	Partial release	Section 2.2(a)(ii)	Yes
24	175-178	Some important questions	24 Oct 2019	Partial release	Section 2.2(a)(ii)	Yes
25	179-184	Reforms to CTP/Response	30 Apr 2019	Full release	N/A	Yes
Point 2						
26	1-4	CMTEDD2018-5097	26 Sep 2018	Full release	N/A	Yes
27	5-29	CMTEDD20185320	5 Oct 2018	Full release	N/A	Yes
28	30-34	CMTEDD2018-6088 Response to MLAs	9 Nov 2018	Full release	N/A	Yes
29	35-38	Law Society and Bar Association revised	undated	Full release	N/A	Yes
30	39-46	CMTEDD2019-2031 Signed Brief - Government Amendments to MAI Bill 2019	17 Apr 2019	Exempt	Schedule 1 1.6 Cabinet Information	No
31	47-71	CMTEDD2019 2140 signed brief	30 Apr 2019	Full release	N/A	Yes

32	72-75	Meeting with IAG arrangements brief	21 Jun 2019	Partial release	Section 2.2(a)(xi)	Yes
33	76-81	CMTEDD20193328	26 Jun 2019	Full release	N/A	Yes
34	82-87	Signed Brief start date for MAI scheme	25 Jul 2019	Full release	N/A	Yes
35	88-93	CMTEDD2019 4989 signed brief with feedback	27 Sep 2019	Full release	N/A	Yes
36	94-100	CMTEDD20195115	1 Oct 2019	Full release	N/A	Yes
37	101-140	CMTEDD20195114	3 Oct 2019	Full release	N/A	Yes
Cabinet Exempt						
38	N/A	CMTEDD2019/668 – Sensitive: Cabinet	4 Mar 2019	Exempt	Schedule 1 1.6 Cabinet Information	No
39	N/A	CMTEDD2018-4578 - Sensitive: Cabinet	27 Aug 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
40	N/A	CMTEDD2018-4420 - Sensitive: Cabinet	21 Aug 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
41	N/A	CMTEDD2018-5844 - Sensitive: Cabinet	24 Oct 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
42	N/A	CMTEDD2018-5897 - Sensitive: Cabinet	26 Oct 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
43	N/A	CMTEDD2018-5915 - Sensitive: Cabinet	29 Oct 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
44	N/A	CMTEDD2018-6945 - Sensitive: Cabinet	18 Dec 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
45	N/A	CMTEDD2019308 - Sensitive: Cabinet	30 Jan 2019	Exempt	Schedule 1 1.6 Cabinet Information	No
46	N/A	CMTEDD20184745 - Sensitive: Cabinet	12 Sep 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
47	N/A	CMTEDD20186945 - Sensitive: Cabinet	18 Dec 2018	Exempt	Schedule 1 1.6 Cabinet Information	No
48	N/A	CMTEDD20191675 - Sensitive: Cabinet	3 Apr 2019	Exempt	Schedule 1 1.6 Cabinet Information	No
49	N/A	CMTEDD20192189 - Sensitive: Cabinet	1 May 2019	Exempt	Schedule 1 1.6 Cabinet Information	No
50	N/A	CMTEDD2018/3674 - Sensitive: Cabinet	12 Jul 2018	Exempt	Schedule 1 1.6 Cabinet Information	No

51	N/A	CMTEDD2018/399 - Sensitive: Cabinet	30 Jul 2018	Exempt	Schedule 1 1.6 Cabinet Information	No	
52	N/A	CAB2018/224	18 Apr 2018	Exempt	Schedule 1 1.6 Cabinet Information	No	
53	N/A	CAB2018/492	18 Mar 2019	Exempt	Schedule 1 1.6 Cabinet Information	No	
54	N/A	CAB2018/478	14 Sep 2018	Exempt	Schedule 1 1.6 Cabinet Information	No	
55	N/A	CAB2018/399	18 Jul 2018	Exempt	Schedule 1 1.6 Cabinet Information	No	
56	N/A	Email - 18/224 Compulsory Third Party Insurance Citizens' Jury Preferred Model [DLM=Sensitive: Cabinet]	30 Apr 2019	Exempt	Schedule 1 1.6 Cabinet Information	No	
Total No of Docs							
56							

From: 2.2(a)(ii)
Sent: 23/04/2018 5:09 PM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Re: Website enquiry [SEC=UNCLASSIFIED]

...thanks, for nothing. I knew most of what has been rehashed in your reply. And frankly, a parrot could have done better...

But, you failed to address my principal concern. Why is there a duopoly in the CTP market !?

I will refer your latest response to the Ministers responsible. Perhaps an accurate and timely answer will be received. If not, I will happily elevate the matter.

Best regards,

2.2(a)(ii)

> On 23 Apr 2018, at 14:11, YourSayonCTP <YourSayonCTP@act.gov.au> wrote:

>
> Dear 2.2(a)(ii)

>
> Thank you for your email.

>
> CTP insurance covers other people (including pedestrians and passengers) injured in a car accident that is found to be your fault or the fault of someone else driving your car. Without CTP insurance, if you were found to be at fault in a car accident and other people were injured, you would personally be responsible for the compensation costs arising from those injuries. This could amount to many thousands, sometimes hundreds of thousands of dollars. If you could not pay, the injured people could be left without a way to recover their loss and manage their injuries. This is why CTP insurance is compulsory in every state and territory in Australia. The legislation for CTP in the ACT is the Road Transport (Third-Party Insurance) Act 2008. The statutory nature of the ACT's CTP scheme is consistent with other Australian jurisdictions.

>
> The ACT CTP scheme is privately underwritten, with the premiums being set by the individual CTP insurers not the government. There is a Regulator for the scheme that reviews the premiums proposed by insurers to ensure the premium will fully fund the present and likely future liability of the insurer and are not excessive. When you apply for registration of your vehicle, you have the option of selecting your preferred private insurer. Since 1 July 2013, there have been four licensed CTP insurers in the ACT: Insurance Australia Limited (trading as NRMA Insurance), GIO, AAMI and Apia. Other insurers have the option to enter the market. The insurer you select can influence the total amount you pay for the registration of your vehicle as each insurer has a different premium for their CTP insurance. There are also different premiums according to the class of the vehicle (ie type of vehicle). While CTP premiums are collected as part of the registration renewal process to provide motorists a streamlined renewal process, the amount of the CTP premium is passed on in its entirety to your nominated insurer. As part of your registration fees, the CTP Regulator collects a levy to assist with administration. This levy is currently \$1 per registration renewal. Further information on the ACT's current CTP scheme is publicly available at: www.treasury.act.gov.au/compulsorytpi

>
> The ACT Citizens' Jury on CTP was completed on 25 March 2018. More information about this process and the jury's chosen scheme is publicly available at Your Say on CTP: www.yoursay.act.gov.au

>
> Thank you again for your interest in this topic.

>
> Kind regards,

>
> Your Say on CTP Administration Team
> GPO Box 158
> Canberra City ACT 2601
> YourSayonCTP@act.gov.au
> Phone: 13 22 81

>
> -----Original Message-----

> From: 2.2(a)(ii)
> Sent: Tuesday, 17 April 2018 4:15 PM
> To: YourSayonCTP <YourSayonCTP@act.gov.au>
> Subject: Website enquiry

>
> Why is the current system subject to a duopoly !??? The only 'insurers' are 'GIO' and 'NRMA', and the fact that the 'insurance'

is only administered thereby - not underwritten - is not disclosed. Worse, consumers seem utterly ignorant of the fact that the 'insurance' is statutory, which means the entire scheme - including the administration costs for which the government contracts with the above noted general insurers - is a tax payer burden !

> Talk about misleading and deceptive !!!

> And as for the 'new' fiasco being foisted on rate payers thanks to the dim witted 'people's jury'...one can only what they were not told, and if they knew anything about statutory insurance in the first place.

>

> 2.2(a)(ii)

> -----

> This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

> -----

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 05/07/2018 11:03 AM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Website enquiry [SEC=UNCLASSIFIED]

Dear 2.2(a)

Thank you for your email about the proposed new Compulsory Third Party (CTP) insurance scheme.

As you may be aware, the ACT Citizens' Jury on CTP spent three weekends and many hours in between considering the scheme from all perspectives, including hearing from people injured in motor vehicle accidents. The process was supported by many experts and involved those parties with an interest in the scheme through the Stakeholder Reference Group (SRG). The SRG spent almost 30 hours in deliberations to support the development of the four models. The jurors considered this information in their deliberations to choose a preferred model for an improved CTP scheme in the ACT. The Jury selected their chosen model for an improved CTP scheme on 25 March 2018.

Every jurisdiction in Australia has a CTP scheme, but they are difference in design. The NSW CTP scheme which commenced in December 2017 is different to the model chosen by the jury. The model chosen by the jury, if passed through the ACT Legislative Assembly, will deliver the following improvements:

- everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault. This means approximately 40% of injured people who currently can't make a CTP claim will be covered and everyone will have earlier access to benefits after an accident. There will continue to be exclusions for serious criminal offences, in line with other Australian jurisdictions.
- quality of life benefits, which provide compensation for non-financial loss, will be available for all people who meet injury severity thresholds.
- anyone whose injury was caused by someone else's negligence and who is more seriously injured will be able to access additional common law benefits.

When individuals have catastrophic injuries, the cost of treatment and care will continue to be covered by the *Lifetime Care and Support Scheme* introduced in 2014. This scheme is separate from the CTP scheme, is funded by a separate levy and covers everyone who suffers a catastrophic injury in a motor vehicle accident in the ACT, regardless of fault.

Thank you again for your interest in this topic.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Sunday, 17 June 2018 9:50 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Website enquiry

Why don't you speak to someone (innocent) who has recently been subjected to critical road trauma in NSW to better understand the actual consequences of their new legislation.

Kindest

2.2(a)(ii)

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From: "Dianne Ohara" <Dianne.Ohara@actlawsociety.asn.au>
Sent: 14/08/2018 7:07 AM
To: "Holmes, Lisa" <Lisa.Holmes@act.gov.au>
Subject: Correspondence from the Law Society and the Bar
Attachments: 14082018170536-0001.pdf

Dear Ms Holmes

Please find attached joint correspondence from the ACT Bar Association and the ACT Law Society.

Yours sincerely,

Dianne O'Hara

Dianne O'Hara

Chief Executive Officer

T. 02 6274 0300 | E. dianne.ohara@actlawsociety.asn.au

L4/1 Farrell Place Canberra City | GPO Box 1562 Canberra ACT 2601 | DX 5623 Canberra

The logo for actlawsociety, featuring the text "actlawsociety" in a lowercase, sans-serif font. The "act" is in a dark grey color, and "lawsociety" is in a golden-brown color. The logo is positioned at the bottom right of the page, below a large, horizontal, golden-brown graphic element that resembles a stylized ribbon or banner.

THIS COMMUNICATION IS PRIVATE AND CONFIDENTIAL. This email (including any attachments) is intended only to be read or used by the named addressee. It contains information that may be confidential and legally privileged. If you are not the intended addressee, or you have received this email by mistake, you must not read, disclose, copy, distribute, make use of or take any action in reliance upon it (or any attachments) in any way. If you have received this message in error please notify ACT Law Society by return email or call +61 2 6274 0300 and then delete this message and any copies of it. Please also contact us if you have any doubts about the authenticity of this email.

14 August 2018

Ms Lisa Holmes
Director of Financial Framework Management and Insurance
Economic and Financial Group
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
Canberra ACT 2601

Dear Ms Holmes,

I refer to your email dated 1 August 2018 regarding the proposed changes to the ACT's Compulsory Third Party (CTP) Insurance scheme and attaching the document, *Proposed Implementation of a new Compulsory Third Party (CTP) Insurance Scheme* ("the outline document").

We have previously communicated our concerns regarding the timing of this consultation process (refer the Society's email dated 30 July 2018). We do not acknowledge that the jury process was a form of consultation with the law and justice sector or the wider community and for that reason the process of consultation that should take place with the legal profession in relation to the ultimate form of the new scheme is crucial to its ultimate integrity. For that reason, we are disappointed that the outline document has been forwarded to us in such an incomplete form. The omissions are crucial. No detail is provided in relation to dispute resolution processes. Even the identity of the Court or Tribunal that will have responsibility for dispute resolution is not identified. Many important operational aspects of the proposed scheme are said to be explained in, or given effect to, in guidelines. They were not sent to us. Your acknowledgment that "detailed policy settings" are still "being developed" suggests that the scheme is being developed with undue haste with inappropriate levels of consultation.

As you are aware, the legal profession has demonstrated its willingness to participate in the ACT Government's current review of the CTP scheme and was an active participant in the citizen's jury process. However, the legal profession is not able to responsibly provide meaningful commentary on the proposed scheme set out in the outline document given the short time frame allowed for comment, the information gaps evident in the supplied documentation and the undisclosed guidelines. These are no mere matters of detail. They go to the fairness of any proposed scheme and its coherence as a compensation scheme. There must be transparency given to the claim that the proposed scheme will provide effective and fair coverage for motorists (particularly those not at fault) while achieving overall costs savings. From what we have seen thus far, that transparency is not evident.

Our preliminary assessment of what is contained in the outline document confirms our impression that the rights of road accident victims will not be adequately protected under the new scheme and that the interests of insurers are being too readily equated with what is in the community's interests. The following are a few examples:

- the defined benefits application and payment process is replete with triggers for disputation between the injured person (both at fault and not at fault) and the insurers. The notion that injured persons will be able to adequately and repeatedly represent their interests against the claims / legal teams of the insurers while attempting to recover from their injuries is not realistic;

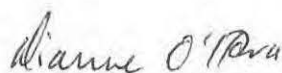
- some elements of the proposed scheme operate contrary to the principles of natural justice and procedural fairness – for example, internal reviews by the insurer are to be performed by a 'knowledgeable' person 'not closely involved with the original decision'; external review is excluded from some decisions and the conflict of interest and bias (actual or perceived) of many of the decisions of the insurers is not appropriately managed;
- well established legal principles are disregarded without explanation. For example, the insurers will have a legislated right to speak directly with an injured person, even where the injured person has elected to retain legal representation. The potential for bullying of claimants is obvious.

The legal profession looks forward to taking an active role through the Legislative Assembly committee process when the full details of the proposed scheme will be more fully disclosed.

Yours sincerely,



Ken Archer
President
ACT Bar Association



Dianne O'Hara
Chief Executive Officer
ACT Law Society

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 24/09/2018 11:43 AM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Website enquiry [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

As promised last Friday, please find below the link to the website where details about the Justice and Community Safety Committee *Inquiry into the Motor Accident Injuries Bill 2018 - Exposure Drafts to the Motor Accident Injuries Bill 2018 and to the Guide to the Bill* are available. You will need to revisit this website to obtain details of the Committee's process for inquiry into the Bill, including any consultation or hearings.

<https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety/motor-accident-injuries-bill-2018exposure-draft-and-guide-to-the-motor-accident-injuries-bill-2018-exposure-draft>

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Friday, 21 September 2018 9:38 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Website enquiry

Guys,

The whole scheme you propose hinges on insurers acting ethically. All the evidence is to the contrary. You provide a monopoly supplier and suggest some internal and external agency will act to ensure compliance of the insurers. They will prevaricate, etc etc when the matter gets elevated they may back down in the process those in the most perilous position in life will suffer further damage or simply lose interest. This is reality, you will be using policy holders funds to provide a mechanism to deny legitimate rights. The WLI medical methodology is designed for workplace injuries. Children have special requirements and no workplace injury replicates the increasing common seat belt syndrome. So your proposed methodology fails to comprehend the reality of a vast number of injuries.

The insurers will run a program based on delay and drip feed which is completely inconsistent with the objective of early and aggressive medical intervention to optimise outcomes. They will do this because their actuarial experts will tell their profits are maximized the more they delay because only a few people will have the tenacity to fight for their rights for complete recovery.

Only common law protection will ensure the insurers act ethically, your model denies this.

Poorly thought through and clear failure in the obligations of government.

2.2(a)(ii)

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el

From: 2.2(a)(ii)
Sent: 24/09/2018 2:45 AM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Re: Thank you for your email

Guys,

Good afternoon. I was trying to find out how to ask questions about the proposed scheme, not solely the process.

I might note I have not received an answer about either.

For your earliest consideration.

2.2(a)(ii)

From: YourSayonCTP <YourSayonCTP@act.gov.au>

Sent: Monday, 24 September 2018 2:07:24 AM

To: 2.2(a)(ii)

Subject: Thank you for your email

Thank you for your email to Your Say on CTP.

If you have asked a question about the process, we will endeavour to respond within 10 business days.

Kindest regards,

Your Say on CTP Administration Team

Phone: 13 22 81 | Email: YourSayonCTP@act.gov.au

GPO Box 158 Canberra ACT 2601 | <https://www.yoursay.act.gov.au/ctp>

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From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 04/10/2018 1:12 PM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Response to Your Say Form Submission [SEC=UNCLASSIFIED]

Good afternoon 2.2(a)(ii)

Thank you for your interest in this topic.

You are correct when you say owners of motor vehicles registered in the ACT have to pay CTP. Please note that CTP insurance covers other people, including pedestrians and passengers, injured in a car accident.

Kind regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au <mailto:YourSayonCTP@act.gov.au>
Phone: 13 22 81

From: "Smith, Charlotte"
Sent: 04/10/2018 12:01 AM
To: "Holmes, Lisa" <Lisa.Holmes@act.gov.au>
Subject: FW: Another CTP question [SEC=UNCLASSIFIED]

From: Holmes, Lisa
Sent: Wednesday, 28 March 2018 10:52 AM
To: Vroombout, Sue <Sue.Vroombout@act.gov.au>
Cc: Smith, Charlotte <Charlotte.Smith@act.gov.au>
Subject: FW: Another CTP question [SEC=UNCLASSIFIED]

FYI another media question

From: Leslie, Nate
Sent: Wednesday, 28 March 2018 10:39 AM
To: Willis, Cecilia <Cecilia.Willis@act.gov.au>; Holmes, Lisa <Lisa.Holmes@act.gov.au>
Subject: FW: Another CTP question [SEC=UNCLASSIFIED]

Good morning,

This has come through this morning. Can you please take a look at it?

Happy to discuss further.

Best,

Nate

From: Hall, Lauren
Sent: Wednesday, 28 March 2018 10:16 AM
To: Stewart-Moore, Karen <Karen.Stewart-Moore@act.gov.au>
Cc: Dolan, Fiona <Fiona.Dolan@act.gov.au>; Leslie, Nate <Nate.Leslie@act.gov.au>
Subject: FW: Another CTP question

Hi Karen and team

Can you please follow up on the below for **2.2(a)(ii)**

Many thanks
Lauren

From: **2.2(a)(ii)**
Sent: Wednesday, 28 March 2018 10:13 AM
To: Hall, Lauren <Lauren.Hall@act.gov.au>
Subject: Another CTP question

Hi again,

I'm hoping to get a response from the government in regards to another CTP yarn I'm working on.

With the jury endorsing Model D, I wanted to know what 10% WPI looked like, and I've managed to find a lady who was rear-ended on Anzac Parade in 2011, smashed her wrist, and was assessed as 1% WPI under AMA4 by the NRMA.

She had to give up her career as a hairdressing teacher, couldn't dress herself for months and is in pain every day.

While she would get treatment and income support under Model D, she (presumably) now would not be eligible for that lump sum.

Can you please tell me:

- Will there be mechanisms built into the new CTP legislation to take into account the impact of injuries on an individual's life, career and hobbies?
- Will there be mechanisms to take into account the deterioration of injuries over time, particularly if the injured parties are children and may carry their injuries for a lot longer?
- How will psychological injuries be looked after under the new scheme?

Thanks so much!

2.2(a)(ii)



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From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 05/10/2018 11:35 AM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: CTP problems [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your interest in this topic and your thoughts.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Thursday, 4 October 2018 4:25 PM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: CTP problems

Re CTP:

Every so often we read reports of irresponsible drivers involved in accidents who are driving unregistered and uninsured vehicles.

THERE IS A SIMPLE REMEDY

The price of petrol already includes Excise. It would require an actuary to work out how many cents per litre increase would be required for this to work, but I am suggesting that an increase to cover the cost of Registration and Third party Insurance in the price of petrol and diesel would obviate the need for the separate payment for Registration and Third Party Insurance fees. An advantage of such a scheme is that the more one uses the roads (with the more opportunity to be involved in accidents), the more one would be paying. A case of User Pays. The Excise is paid by the petrol companies to the Federal Government. No-one would then escape paying for Registration or 3rd Party insurance.

2.2(a)(ii)

From: 2.2(a)(ii)
Sent: 16/10/2018 1:03 AM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Some important questions??

Good morning.

It is unfortunate you did not answer my questions 5,6 and 7.

Below is direct commentary of Work Safe. Clearly note the reference to children.

The number of issues I refer to and I am sure these are not complete include:

1. Radiation exposure for children levels are significantly different than adults. Therefore through on going treatment children either receive doses above recommended limits with increased risk of cancer, or are denied treatment;
2. Core damage, read soft tissue, through seat belt damage is not codified. This means a child will in effect be at future significantly higher risk through core damage, relatively, in any future even minor car crash than an adult; and
3. Even a minor injury, below the 10% threshold, has for children long term consequences far different than adults, losing just one year of schooling can have unbelievable short and long term consequences, curtailing natural development has the potential to deny a multitude of long term career opportunities.

In regards to your comments on the MAI no where do you specifically, definitively, confirm anything. The language you use is will. We know as soon as the legislation is passed then you all will have limited scope to negotiate a sensible outcome as the insurers will hold the whip hand.

In regards to your claims of the robust nature of your decision process, clearly it was either situated or poorly informed as by your own admission the special needs of children appears not to have been codified in any of your submissions, would they have been then I am sure you would have pointed to them.

"With reference to the concept of Maximum Medical Improvement, the determination of the degree of permanent impairment in children may be impossible in some instances due to the natural growth and development of the child (examples are injuries to growth plates of bones or brain damage). In some cases, the effects of the injury may not be considered permanent and the assessment of permanent impairment may be delayed until growth and development is complete."

Noting the timing of legislation it is reasonable to expect a more timely response than over twenty days.

For your earliest consideration.

2.2(a)(ii)

From: YourSayonCTP <YourSayonCTP@act.gov.au>
Sent: Monday, 15 October 2018 5:15:03 AM
To: 2.2(a)(ii)
Cc: YourSayonCTP
Subject: RE: Some important questions?? [SEC=UNCLASSIFIED]
Dear 2.2(a)(ii)

Thank you for your email with questions about the new Motor Accident Injuries (MAI) scheme, which will replace the current Compulsory Third Party Insurance (CTP) scheme.

As part of the CTP Citizens' Jury process, jurors heard from, and asked questions of, a number of expert witnesses including: members of the legal profession, insurers, academics and a health care providers. They also heard from injured people. The process was also supported by the Stakeholder Reference Group who provided input into the model designs.

Under the new scheme, the MAI Commission functions will include monitoring compliance of insurers by collecting and reviewing data on claims. The Commission will monitor claim data and processes used by the insurers and will have a range of enforcement powers if action is required. For example, if there has been

non-payment of benefits, the Commission will have the ability to ask questions of an insurer and may require the payment be made if it is accordance with the required process.

An insurer under the new scheme, when assessing whether an application for treatment and care is reasonable and necessary, will be required to consider whether the treatment and care is: directly related to a person's injury; cost effective; appropriate for the injury; and will benefit the person. Government guidelines will stipulate what constitutes reasonable and necessary care and the evidence required to verify treatment and care needs and costs.

An insurer will generally rely on medical assessments carried out by a person's own doctor or health practitioner when preparing a recovery plan or making decisions about their liability to pay benefits. This will minimise stress on an injured person and avoid the cost of multiple assessments. An insurer may contact a person's doctor so that a medical report can cover specific information required by the insurer. They can also request an independent medical or vocational assessment, if this is considered necessary. Guidelines will stipulate how and when this can happen.

The Whole Person Impairment (WPI) process proposed to be adopted in the new scheme is not specific to workers or solely to adults. The *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA) is the most commonly used assessment of impairment tool in Australia. Where it has been specified for a compensation scheme, you will find that different editions with local (Australian) modifications apply. WPI has long been used by the Victorian CTP scheme. For the new MAI scheme, it is proposed to adopt the Safe Work Australia Guidelines, which modify components of AMA 5th edition (AMA5) to align them with current Australian practice, add further explanations, or clarifying ambiguities. We acknowledge that 'seat belt syndrome' is not listed in AMA5; however, the term 'seat belt syndrome' is a term used to collectively refer to a group of injuries. AMA5 includes the types of injuries that are commonly included in this grouping, and provides tables for combining the different WPI scores of multiple injuries. For example, injuries to urinary systems are assessed using Chapter 7 of AMA5.

Children under the new scheme will have the same eligibility as adults to access treatment and care for up to five years under defined benefits. If the injured child has a WPI score of 10 per cent or more, they will also be eligible to make a common law claim. Common law damages may include loss of opportunity for work and ongoing treatment and care, amongst other matters, to compensate for the ongoing needs of an injured child.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)

Sent: Monday, 24 September 2018 3:46 PM

To: YourSayonCTP <YourSayonCTP@act.gov.au>

Subject: Some important questions??

YourSayonCTP might you please answer the following questions?:

1. In the knowledge of the current Royal Commission into the Banks discovery on insurance companies behaviour, is it possible the 'peoples process' might have come to a different conclusion?;
2. Are you able to confirm what analysis or information informed the 'peoples process' on the real proven behaviours of insurers?;
3. The problem with dealing with insurers is they are in the power equation that controls all agendas, any recourse to independent oversight is lost because when eventually held to account they roll over, this is modus operandi and working on the basis that they will ultimately have to pay just prevaricate and hope people give up. Given this reality what oversight mechanisms do you propose that might curb this behaviour? These need to be able to provide immediate influence, hence the end state importance of legal

support!;

4. Given the power the new regime will provide insurers, what mechanisms will be in place to stop them taking a supposedly informed medical opinion when they are neither competent nor is it part of their business? This is important as the stress in organising complex medical follow up is profound when imposing an insurer obfuscation overlay on it!;
5. Do you acknowledge the special needs of children?;
6. Do you acknowledge the WPI process is fundamentally about an American adult workplace environment?;
7. Do you acknowledge the fact that, particularly in children, that seat belt syndrome (yes seat belts save lives), is a unique injury circumstance not considered within the planning construct of the WPI process?; and
8. How do you think the new scheme might comprehend the unique challenges seal belt syndrome related injuries might present a child for the rest of their lives?

Please understand none of the above questions are hypothetical. They are all real world issues!

For your earliest consideration.

2.2(a)(ii)

From: YourSayonCTP <YourSayonCTP@act.gov.au>

Sent: Monday, 24 September 2018 2:45:12 AM

To: 2.2(a)(ii)

Subject: Thank you for your email

Thank you for your email to Your Say on CTP.

If you have asked a question about the process, we will endeavour to respond within 10 business days.

Kindest regards,

Your Say on CTP Administration Team

Phone: 13 22 81 | Email: YourSayonCTP@act.gov.au

GPO Box 158 Canberra ACT 2601 | <https://www.yoursay.act.gov.au/ctp>

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From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 23/10/2018 2:49 PM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Website enquiry [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii),

Thank you for your email about the new Motor Accident Injuries (MAI) scheme, which will replace the current Compulsory Third Party Insurance (CTP) scheme.

In the ACT, the current CTP scheme doesn't cover everyone injured in a motor vehicle accident and it can take two years or more to get your full payout. Despite this, Canberrans still pay some of the highest premiums in the country. The Government believes our CTP scheme could be improved to better protect Canberrans.

In August 2017, the ACT Government announced we would undertake a deliberative democracy process to consider with the community and other key stakeholders how to improve the scheme so it reflects the priorities of Canberrans. The citizens' jury process gave a group of Canberrans who are representative of our community, the opportunity to look at CTP in depth, hear from experts and injured people, ask questions and consider trade-offs when determining their priorities for an improved CTP scheme. The jury process allowed for a consensus informed recommendation from a randomly selected representative group of the community.

After intensive deliberations and hearing from both experts and people with experience of the current CTP scheme, the jury chose a hybrid no-fault common law scheme. The Government is committed to implementing the jury's chosen model. Under the chosen model, everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault (as in other Australian jurisdictions, there will be some exclusions for people who are committing serious criminal offences at the time of an accident). This means an additional 600 people will be brought into the scheme who are currently not covered because they were at-fault or they were involved in a blameless accident. More information about the CTP Citizens' Jury and the jury's chosen scheme is publicly available at Your Say on CTP: www.yoursay.act.gov.au

The proposed MAI scheme will continue to be privately underwritten and a new regulator, the MAI Commission, will continue to regulate the premiums charged by insurers for the scheme, based on compliance with premium guidelines and independent actuarial advice on whether a premium meets the fully funded test and is not excessive. Guidelines will specify how premiums are to be worked out and what additional information the MAI Commission requires insurers to provide with a premium filing. The guidelines will continue to require information on handling expenses, interest earned on investments, inflation assumptions and return on capital. All these factors are considered by the scheme actuary when assessing premiums.

Thank you again for your interest in this topic.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

-----Original Message-----

From: 2.2(a)(ii)
Sent: Wednesday, 17 October 2018 9:13 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Website enquiry

Why would we change a system that is working, is it just to benefit the Insurance Company's this smells of big business getting more and people who are hurt injured through no fault of their own getting nothing.

We need to look how much these companies are currently profiting from this scheme and also take a look at the track records of insurance companies when have they ever done the right thing, bushfires, floods etc their act of god clause etc and avoiding paying is horrendous why would you pander to these insurance organisations

Just smells of corruption to me Mr Barr, isn't former Labor senator Kate Lundy now on the board of directors at the NRMA ???????

Who is behind these changes !!!!!

Sent from my iPhone

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 24/10/2018 3:18 PM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Changes to the CTP [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your email with questions about the new Motor Accident Injuries (MAI) scheme, which will replace the current Compulsory Third Party Insurance (CTP) scheme.

In your email you mention that you are currently in the process of a CTP claim. The new MAI scheme will cover accidents that occur from a specific implementation date. The current CTP scheme would continue to apply to accidents that happen before this date.

Under the proposed MAI scheme, everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault (as in other Australian jurisdictions, there will be some exclusions for people who are committing serious criminal offences at the time of an accident). This means an additional 600 people will be brought into the scheme who are currently not covered because they were at-fault or they were involved in a blameless accident such as hitting an animal.

The proposed MAI scheme has an emphasis on early recovery and support, and applying the more extensive entitlements of common law and the resources of the court system to those more seriously injured. This means the benefits provided to people who are injured through someone else's negligence will change. Under the new scheme, people injured through someone else's negligence will experience the following advantages:

- earlier access to treatment and care because fault will not need to be established before defined benefits can be paid;
- earlier access to income replacement payments without having to wait for a common law settlement to be negotiated, which can take several years;
- being able to receive the help they need for less serious injuries without the stress of legal action; and
- still being able to make a common law claim if they are more seriously injured and meet the threshold.

The proposed MAI scheme uses a Whole Person Impairment (WPI) assessment to determine access to common law and the amount of Quality of Life benefits available. An assessment must be conducted in accordance with medical guidelines set out in a disallowable instrument. The Safe Work Australia Guidelines for the evaluation of permanent impairment will be adopted for these purposes. These guidelines modify some parts of *The Guides to the Evaluation of Permanent Impairment by the American Medical Association 5th edition (AMA5)* to align them with current Australian practice, add further explanations, or clarifying ambiguities.

The *American Medical Association Guides to the Evaluation of Permanent Impairment (AMA)* is the most commonly used assessment of impairment tool in Australia. WPI has long been used by the Victorian CTP scheme and is also used in the New South Wales CTP scheme.

An assessment of WPI will need to be provided by an independent medical examiner, selected and provided by a medical service provider appointed by the ACT Government. Neither insurers nor legal representatives will play a role in selecting the medical expert to conduct an initial WPI assessment. The MAI Commissioner will authorise service providers with appropriate expertise in arranging independent assessments. A deed of services will set out operational requirements for a service provider and will include a schedule of fees for Whole Person Impairment assessment services.

Under the proposed MAI scheme, psychological injuries will be clinically assessed using the Safe Work Australia National Guidelines to determine a WPI amount. The clinical assessment and calculation for an individual with psychological injuries depends on whether the psychological injuries are the only injury or 1 of multiple injuries.

Thank you for your thoughts on the 5 per cent WPI threshold for quality of life defined benefit payments. The 5 per cent WPI threshold was an aspect of the CTP Citizens' Jury's chosen model for an improved CTP scheme. The Government is committed to implementing the jury's chosen model. The 5 per cent threshold only applies to quality of life defined benefits, it does not impact upon the defined benefits for treatment, care and income replacement.

Thank you again for your interest in this topic.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)

Sent: Friday, 12 October 2018 2:13 PM

To: YourSayonCTP <YourSayonCTP@act.gov.au>

Subject: Changes to the CTP

Hi,

I have only become aware of these proposed changes recently, and wish to comment and no I haven't been living under a rock. I have looked at the proposed model and what concerns me the most is this concept of "Whole Person Impairment" in regards to quality of life. Who decides this impairment level and how impartial are they. Also basing it on an American definition I find quite suspect given the state of their health system for the ordinary person. From what I have read if you are not at least 5% impaired you get NO quality life benefit, or at least that is how I read the comparison table provided. I am ambivalent about a cap but totally agree that you must meet a certain level before being able to access any common law benefits. I understand that there have been/are fraudulent claims, people being what they are. But it seems to me harsh where a legitimate claim where you may not meet some prescribed level of impairment precludes you from accessing common law benefits. Though I am no lawyer so may have missed something there. I also don't recall seeing anything regarding psychological impact resulting from an accident being considered. I would have thought that would factor into a Quality of Life assessment.

Yes, I have a personal interest as I am currently in the process of a claim where the other party and the insurer have admitted fault, backed by the police report where I suffered permanent injury/damage. This has impacted my quality of life and will likely impact future employment opportunities. As far as I can tell the proposed changes will be detrimental to any compensation I may seek.

It seems to me that we are giving up far more than we gain. And the paltry potential reduction in premiums does not compensate for that. It also seems to me that the only ones to benefit are the insurers as it limits their liability.

Regards,

2.2(a)(ii)

From: "Smith, Charlotte"
Sent: 15/11/2018 4:41 AM
To: "Dawson, Cameron" <Cameron.Dawson@act.gov.au>
Subject: FW: For clearance: media enquiry - Canberra Times - CTP [SEC=UNCLASSIFIED]
Attachments: 181114_Media Response - CTP insurance.docx

From: Holmes, Lisa
Sent: Thursday, 15 November 2018 11:14 AM
To: Le, Joanna <Joanna.Le@act.gov.au>
Cc: Linnane, Amy <Amy.Linnane@act.gov.au>; Clark, Nicola <Nicola.Clark@act.gov.au>; Smith, Charlotte <Charlotte.Smith@act.gov.au>
Subject: FW: For clearance: media enquiry - Canberra Times - CTP [SEC=UNCLASSIFIED]

Hi Joanna

David has cleared this with some minor edits that have now been made.

Thanks

Lisa Holmes | Director Financial Framework Management and Insurance
Phone: 6207 0207 | lisa.holmes@act.gov.au
Economic and Financial Group | Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 1 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Le, Joanna
Sent: Wednesday, 14 November 2018 4:52 PM
To: Miners, Stephen <Stephen.Miners@act.gov.au>; Nicol, David <David.Nicol@act.gov.au>
Cc: Cameron, Susan <Susan.Cameron@act.gov.au>; Clark, Nicola <Nicola.Clark@act.gov.au>; Holmes, Lisa <Lisa.Holmes@act.gov.au>; Smith, Charlotte <Charlotte.Smith@act.gov.au>; CMTEDDMedia <CMTEDDMedia@act.gov.au>; Vroombout, Sue <Sue.Vroombout@act.gov.au>
Subject: For clearance: media enquiry - Canberra Times - CTP [SEC=UNCLASSIFIED]

Good afternoon Stephen and David,

Please find attached draft response to an enquiry from the Canberra Times about the Compulsory Third Party scheme. This has been cleared by Sue Vroombout.

Could you please review/clear by 12 noon tomorrow, and I'll provide the final response to the CMO.

Thanks in advance,

Jo

Joanna Le | Deputy Director Strategic Communication, Media and Protocol
P: 02 6205 3240 M: 0402 265 145
CMTEDDMedia@act.gov.au | CMTEDD media number: 0466 937 557
Communications and Engagement | Chief Minister, Treasury and Economic Development Directorate
ACT Government
Level 4, Canberra Nara Centre, 1 Constitution Avenue, Canberra City | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au



ACT
Government

I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.



Minister: Chief Minister Andrew Barr
Date: 14 November 2018

Issue: Compulsory Third Party scheme
Journalist: 2.2(a)(ii)
Media outlet: The Canberra Times
Deadline: 15 November 2018

Enquiry:

G'day guys,

I'm seeking more information about the operation of the new CTP scheme based on your exposure draft and submissions to the ACT Legislative Assembly inquiry into the bill.

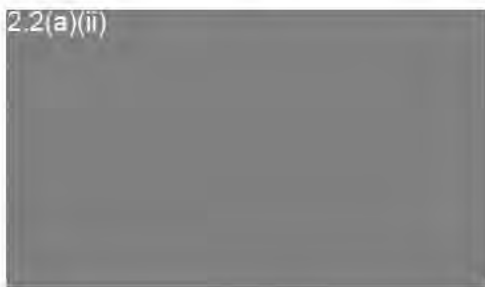
Can you please tell me:

- What will the budget and staffing structure of the MAI Commission be?
- Why will injured people have to pay an excess to counter an insurer's assessment of their injuries? Do you believe this is fair?
- How much will the excess be?
- What rules are there around who can conduct an internal review? How will these rules be enforced?
- What will be the avenue for external review?
- Why are working people aged over 65 locked out of receiving income support benefits?
- Why have you restricted first year wages from common law damages?
- Why are people who accept a defined benefit excluded from making a future common law claim?
- Why will all drivers involved in a multi vehicle no-fault accident would be excluded from making a claim for damages?
- Why is care from family members or relatives excluded under the scheme?
- Why will people be forced to choose between quality of life payments for psychological or physical injuries?

My deadline is 12pm tomorrow. If there are any answers that are cleared sooner, please flick them over.

Thanks for your help.

2.2(a)(ii)



RESPONSE:

What will the budget and staffing structure of the Motor Accident Injuries Commission be?

The new scheme the Motor Accident Injuries Commission will have a stronger education role in providing information to injured people about the scheme and their rights, as well as expanded regulatory and monitoring powers.

There is an expectation that additional staffing will be required for the Motor Accident Injuries Commission to undertake these expanded functions. These staffing requirements will be finalised once the bill is passed by the Legislative Assembly, as the details of the final bill will influence the operations of the Commission under the new scheme.

Why will injured people have to pay an excess to counter an insurer's assessment of their injuries? Do you believe this is fair? How much will the excess be?

A Whole Person Impairment assessment is undertaken by an authorised independent medical examiner. The cost of these assessments can be in the order of thousands of dollars.

Not all injured people will require such an assessment, because their injuries are minor or resolved with suitable early treatment. Where the insurer agrees that a person likely has a permanent impairment as a result of their accident, the Whole Person Impairment assessment is arranged and the injured person is not required to make any payment for the independent assessment.

An excess payment for the independent assessment is only required where the injured person requests the independent assessment even though they are not considered to have any likely permanent impairment as a result of their accident. The excess payment is fully refundable if the injured person's Whole Person Impairment assessment by an authorised independent medical examiner determines the injured person has some permanent impairment (e.g. more than 0 per cent).

Given the specialist nature of Whole Person Impairment assessments, the excess is intended to assist in managing the number of assessments so that people who are seriously injured and with a likely common law claim can be assessed more quickly.

Because the excess is fully refundable, people will not be out of pocket if they pursue an independent assessment which confirms some level of permanent impairment. In the event that this independent assessment confirms that there is no permanent impairment, the majority of the assessment cost will still be covered by the insurer.

The excess for a Whole Person Impairment assessment in these circumstances is proposed to be set at \$500 or one quarter of the assessment fee, whichever is higher.

What rules are there around who can conduct an internal review? How will these rules be enforced?

An injured person can ask the insurer to conduct an internal review of a decision made in relation to defined benefits. A request will generally need to be made within 28 days of an insurer making a decision. It is intended that the review will be carried out by a knowledgeable person who works for the insurer but was not closely involved in the original decision. An exception to the internal review process will be the Whole Person Impairment assessment, which has its' own dedicated dispute process.

The proposed guidelines under the legislation will outline the time the insurer has to make a decision (generally within ten business days); criteria for late review applications; and extension of time criteria for the insurer to make the decision. The Motor Accident Injuries Commission will require an insurer to document and advise it of the process they will use for internal review and act according to the process. The Commission will also monitor the outcomes of internal reviews.

If an applicant is not satisfied with the decision after internal review, they can then take further action through the external review process.

What will be the avenue for external review?

The Government is currently seeking feedback from stakeholders on the suitable avenue for external review. Options identified in the models considered by the CTP Citizens' Jury included ACAT and the ACT Magistrates Court. This matter was part of the terms of reference for the Standing Committee on Justice and Community Safety's inquiry into the *Motor Accident Injuries Bill 2018*.

The Government notes a number of submissions have provided responses on this matter and will consider this further once the Committee has provided its report.

The Government will specify the avenue for external review in the final bill when it is introduced to the Legislative Assembly.

Why are working people aged over 65 locked out of receiving income support benefits?

Income replacement benefits will cease six months after people reach the pension age. This is consistent with statutory motor accident schemes and workers compensation schemes in other jurisdictions, and was included in the model chosen by the Citizens' Jury.

At this point, people can access the Commonwealth age pension and/or their superannuation benefits to provide income.

Older people with more serious injuries, and are not at fault, can still make a common law claim for damages including for any lost income.

Why have you restricted first year wages from common law damages?

The requirement that injured people receive defined benefits for loss of income for the first year after an accident was a design feature of the model chosen by the Citizens' Jury. It aims to ensure that people receive regular income in the initial recovery period immediately after their accident while any common law processes are underway.

After the initial 12 month period, a common law damages settlement can then be paid to cover any expected future lost earnings.

Why are people who accept a defined benefit excluded from making a future common law claim?

This is not correct.

People who are more seriously injured and receive defined benefits will still be able to make a common law claim for damages if they were not at fault in the accident.

The Motor Accident Injuries scheme will provide several categories of benefits to injured people – including treatment, care, income replacement and quality of life benefits.

A person can access defined benefits for treatment, care and income replacement for up to five years or until their injury has stabilised, and then make a common law claim for their future needs if they meet the injury severity threshold.

If a person accepts a defined benefit quality of life payment under the Motor Accident Injury scheme, they will still be able to claim compensation for loss of future earnings and any future treatment and care under common law. They will only be restricted from making a further claim for quality of life compensation under common law.

This was a design feature of the model chosen by the Citizens' Jury, and recognised that some people who are entitled to make a common law claim might be satisfied to accept a defined benefit quality of life payment rather than go through an extensive legal process.

Why will all drivers involved in a multi vehicle no-fault accident be excluded from making a claim for damages?

Drivers injured in any motor vehicle accident will be able to receive defined benefits (along with their passengers) regardless of the number of vehicles involved in the accident and regardless of who was at fault.

Anyone more seriously injured in a motor vehicle accident who was not at fault will be able to make a common law claim, regardless of the number of vehicles in the accident.

In an accident where there is no-one at fault, it is necessary to deem a person (i.e. a driver) as the at fault driver so that a common law claim for damages can be made by others seriously injured in the accident.

The common law deeming provision in the exposure draft of the Bill is currently being reviewed to ensure there are no unintended consequences for drivers of a multi vehicle accident where there is no-one at fault.

Why is care from family members or relatives excluded under the scheme?

Under the Motor Accident Injury scheme, all injured people will be provided respite and attendant care services that are assessed as reasonable and necessary either under defined benefits or as part of a common law claim.

Care must be provided by an appropriately qualified professional or a bona fide service provider. Benefits are not payable if the services are provided on an unpaid basis – for example where they are provided by a spouse or a parent to a child. This allows for family members to be family members, and ensures injured people receive care from qualified professionals.

The jury had explained to them and had robust discussions about the various types of care options included in the models. The exposure draft of the bill reflects the details of the model chosen by the CTP Citizens' Jury, including how care is to be provided.

Why will people be forced to choose between quality of life payments for psychological or physical injuries?

This is not correct.

The quality of life payment does not differentiate between the types of injuries sustained, with the amount of the payment based on a person's assessed Whole Person impairment.

The choice by an injured person only concerns which independent Whole Person Impairment assessment their insurer must arrange and pay for. This can either be an assessment of all physical injuries that includes any psychological component resulting from the primary physical injury (e.g. where the physical injuries has a psychological element, such as depression as a result of the injuries) or an assessment of their primary psychological injuries (e.g. post-traumatic stress disorder as a result of being involved in the accident).

An assessment must be conducted in accordance with medical guidelines set out in a disallowable instrument. The Safe Work Australia Guidelines for the evaluation of permanent impairment will be adopted for these purposes. These guidelines modify some parts of *The Guides to the Evaluation of Permanent Impairment by the American Medical Association 5th edition (AMA5)* to allow for Australian conditions. The Guidelines provide that the results of the different types of assessments cannot be combined.

BACKGROUND/SENSITIVITIES (not for distribution):

N/A

Action officer: Joanna Le

Cleared by (Business Unit Head):

Date: 14 November 2019

Cleared by: TO BE CLEARED

From: 2.2(a)(ii)

Sent: 20/11/2018 5:57 PM

To: "YourSayonCTP" <YourSayonCTP@act.gov.au>

Subject: On Demand Transport TPI premiums

Hi,

I've read through the CTP scheme and it doesn't cover CTP costs to the public, and more importantly to me the On Demand Transport service, specifically Taxis.

Currently in the On Demand Transport industry there's a huge discrepancy between CTP for Taxi operators and the price of CTP for ride share. Currently as a taxi operator in the ACT we pay around \$9000 per car per year. Where as our Queanbeyan counterpart are in NSW they pay \$3085.

Of if we compare the CTP of Taxis with it's RideShare On demand transport service counterparts in the ACT, RideShare are charged about 75% less than taxis, or in monetary terms around \$7000 using the NRMA.

Are you including any reform for the exorbitant TPI expenses faced by the taxi industry in the CTP reform??

regard

2.2(a)(ii)

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 28/11/2018 10:08 AM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Website enquiry [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your email with questions about the new Motor Accident Injuries (MAI) scheme, which will replace the current Compulsory Third Party Insurance (CTP) scheme.

Under the new MAI scheme, people who were injured as a result of a motor vehicle accident and were working at the time of the accident are eligible to receive income replacement benefits for up to five years if they are unable to work as a result of their injuries. Once an injured person reaches age pension age plus six months, they will cease to be eligible to receive income replacement benefits. Therefore if a self-funded pensioner (who is not receiving taxable income from working) were to have a motor vehicle accident and be injured, they would not be entitled to income replacement benefits. This is consistent with statutory motor accident schemes and workers' compensation schemes in other jurisdictions, and was included in the model chosen by the Citizens' Jury.

All injured people regardless of age or fault will be eligible to receive reasonable and necessary treatment and care benefits for up to five years after an accident under the new scheme, including access to rehabilitation and professional, qualified attendant care. They may also be eligible to apply for a quality of life payment if they are assessed as having a Whole Person Impairment score of five per cent or more.

People who are more seriously injured (Whole Person Impairment score of 10 per cent or more) and were injured as a result of someone else's negligence will be eligible to make a common law claim if they choose.

Thank you again for your interest in this topic.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Friday, 16 November 2018 11:05 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Website enquiry

Can you please advise what is proposed for, say a pensioner injured in an accident? The draft indicates that a person would receive up to 5 years wages paid in the event of an accident. If say a self funded pensioner were to have an accident what would be the situation?

Thanking you 2.2(a)(ii)

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 28/11/2018 1:55 PM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: On Demand Transport TPI premiums [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your email to the YourSay on CTP email address.

An ACT taxi plated motor vehicle premium is currently an average of \$8,671.45 (with Input Tax Credit) across the four insurers. The premium is based on historically high frequency and average cost of motor accident claims associated with personal injury involving taxis in motor accidents. If the frequency and costs can be reduced, then the cost of CTP insurance could be expected to fall over time. In essence, insurers assess premiums based on the risk of the vehicle class.

The ACT insurers have assessed the premium for rideshare based on the fact that most rideshare vehicles are ordinarily used privately. However, when used for rideshare the risks increase because of more time on the road, increase in kilometres, more people using the vehicle, and drivers less likely to be familiar with the area they are driving in. As a result, the current premiums for rideshare are more than passenger vehicles but less than taxis.

The current ACT CTP scheme design does not have the same restrictions as NSW, which has seen a reduction in the premium for taxis in that State in the last 12 months (where the average fixed annual premium for a taxi in the Sydney metro area is \$6,400). NSW has also introduced the ability to have CTP insurance paid based on the kilometres driven by taxis and rideshare vehicles.

Changes to premiums being set on a community rating basis and the vehicle classes that apply were not within the remit of the Citizen's Jury, although the parameters did include a requirement that premiums could not rise as a result of any recommended reforms.

Thank you again for raising this matter with us.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Tuesday, 20 November 2018 5:58 PM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: On Demand Transport TPI premiums

Hi,

I've read through the CTP scheme and it doesn't cover CTP costs to the public, and more importantly to me the On Demand Transport service, specifically Taxis.

Currently in the On Demand Transport industry there's a huge discrepancy between CTP for Taxi operators and the price of CTP for ride share. Currently as a taxi operator in the ACT we pay around \$9000 per car per year. Where as our Queanbeyan counterpart are in NSW they pay \$3085. Of if we compare the CTP of Taxis with it's RideShare On demand transport service counterparts in the ACT, RideShare are charged about 75% less than taxis, or in monetary terms around \$7000 using the NRMA.

Are you including any reform for the exorbitant TPI expenses faced by the taxi industry inthe CTP reform??

regard

2.2(a)(ii)

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 06/12/2018 1:49 PM
To: 2.2(a)(i)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: On Demand Transport TPI premiums [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

As previously advised, the Government put a number of parameters around the matters that the Citizen's Jury could consider as part of its deliberations on an improved CTP scheme in the ACT. In particular, the Government made clear that the CTP scheme in the ACT must remain community rated and the types of vehicles for which CTP must be purchased and the way premiums are calculated between vehicle types could not change.

Community rating means everyone in a particular vehicle class pays the same amount as the other person for the same vehicle class. Factors that could lead to differentiation, such as the person's age, postcode, or kilometres driven over a year, are not able to be taken into account in setting the premium. This is in contrast with NSW where a person's age, driving record, claims history, geographic location, ownership and use of the vehicle, and kilometres driven are taken into account in setting the premium, within certain limits set by the regulator. The Government considers that community rating is a central aspect of a CTP scheme.

In relation to geographic location, Queanbeyan is not able to be readily compared as a region to Canberra, with a population of 57,331 in the 2016 census. Queanbeyan is located in the Country zone for NSW's CTP scheme (NSW is divided into five geographical zones: Metropolitan, Outer Metropolitan, Newcastle/Central Coast, Wollongong and Country), which also influences the CTP premium that is charged. As such, comparison is made to the Sydney Metropolitan average price, although we acknowledge this is a much larger population to Canberra.

In the ACT, there is only one vehicle class for all rideshare vehicles with an average premium of \$781.83 per annum (including Input Tax Credits). We understand that UberBLACK is not a full time rideshare service. It provides more luxury black vehicles for Uber users to choose from. Can you please advise when and how you were provided with the \$1,400 per annum figure by Access Canberra? As noted, the average premium is \$781.83, rather than the figure you have provided. It would be appreciated if you could advise the source of the figure so we can provide you with further clarification.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Wednesday, 28 November 2018 3:24 PM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Re: On Demand Transport TPI premiums [SEC=UNCLASSIFIED]

Hi,

Thanks for your reply.

As you've outlined the TPI premiums in the ACT region are extraordinarily high compared to other states. As you've outlined, say the average annual registration cost with TPI in Canberra is about \$9500, where as

in Queanbeyan, our NSW equivalent is roughly a quarter of that at \$2415. Sure Canberra and Sydney are both capitals of their respective states, but in terms of population, traffic congestion, road conditions etc with Sydney having a population of 4.4 Million people and Canberra just over 350 Thousand the risk of TPI claim in Sydney far out ways the risk here. Not only that but AccessCanberra informs me that TPI for Uber Black, which my understanding is full time ride share so taxi equivalent, is only \$1400 py.

Is your email to say that there's no plans in place to align the costing model with the rest of the states and other point to point transport models within Canberra??

Regards

2.2(a)(ii)

On Wed, Nov 28, 2018 at 1:55 PM YourSayonCTP <YourSayonCTP@act.gov.au> wrote:

Dear 2.2(a)(ii)

Thank you for your email to the YourSay on CTP email address.

An ACT tax plated motor vehicle premium is currently an average of \$8,671.45 (with Input Tax Credit) across the four insurers. The premium is based on historically high frequency and average cost of motor accident claims associated with personal injury involving taxis in motor accidents. If the frequency and costs can be reduced, then the cost of CTP insurance could be expected to fall over time. In essence, insurers assess premiums based on the risk of the vehicle class.

The ACT insurers have assessed the premium for rideshare based on the fact that most rideshare vehicles are ordinarily used privately. However, when used for rideshare the risks increase because of more time on the road, increase in kilometres, more people using the vehicle, and drivers less likely to be familiar with the area they are driving in. As a result, the current premiums for rideshare are more than passenger vehicles but less than taxis.

The current ACT CTP scheme design does not have the same restrictions as NSW, which has seen a reduction in the premium for taxis in that State in the last 12 months (where the average fixed annual premium for a taxi in the Sydney metro area is \$6,400). NSW has also introduced the ability to have CTP insurance paid based on the kilometres driven by taxis and rideshare vehicles.

Changes to premiums being set on a community rating basis and the vehicle classes that apply were not within the remit of the Citizen's Jury, although the parameters did include a requirement that premiums could not rise as a result of any recommended reforms.

Thank you again for raising this matter with us.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)

Sent: Tuesday, 20 November 2018 5:58 PM

To: YourSayonCTP <YourSayonCTP@act.gov.au>

Subject: On Demand Transport TPI premiums

Hi,

I've read through the CTP scheme and it doesn't cover CTP costs to the public, and more importantly to me the On Demand Transport service, specifically Taxis.

Currently in the On Demand Transport industry there's a huge discrepancy between CTP for Taxi operators and the price of CTP for ride share. Currently as a taxi operator in the ACT we pay around \$9000 per car per year. Where as our Queanbeyan counterpart are in NSW they pay \$3085.

Of if we compare the CTP of Taxis with it's RideShare On demand transport service counterparts in the ACT, RideShare are charged about 75% less than taxis, or in monetary terms around \$7000 using the NRMA.

Are you including any reform for the exorbitant TPI expenses faced by the taxi industry in the CTP reform??

regard

2.2(a)(ii)

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From: 2.2(a)(ii)
Sent: 17/02/2019 10:55 PM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Current Status of the CTP ACT Reform

Hi,

By when is the government planning to implement the new CTP reform? The content on your website has not changed in the past last 3 months. Please let me know the current status of the plan.

Thank You
2.2(a)(ii)

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 20/02/2019 11:50 AM
To: Schedule 1 1.8 Information in possession of [REDACTED]
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Current Status of the CTP ACT Reform [SEC=UNCLASSIFIED]

Dear [REDACTED]

Thank you for your email to the YourSay on CTP email address.

On 20 September 2018 the government referred the exposure draft of the legislation to the Justice and Community Safety Committee for consideration. The Committee was originally scheduled to table its report in the Legislative Assembly on 1 November 2018. The Assembly subsequently provided the Committee an extension until 14 December 2018 to report.

The Committee publicly released its *Report on the Inquiry into the Exposure Draft of the Motor Accident Injuries Bill 2018* on 14 December 2018, with a dissenting report by the Chair, Mrs Jones MLA. Seventeen recommendations were made, including two made by Mrs Jones MLA. The Government is currently considering the Committee's recommendations before finalising the Bill for introduction in the Legislative Assembly.

The specific commencement date of the new scheme will be confirmed once the Bill has been passed in the Legislative Assembly and will cover accidents that occur from the specific commencement date. The current scheme will continue to apply to accidents that happen before this date.

The YourSay on CTP website will be updated at the next milestone for the project – the introduction of the Bill in the Legislative Assembly.

Thank you again for your interest in this topic.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: [REDACTED]
Sent: Monday, 18 February 2019 9:56 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Current Status of the CTP ACT Reform

Hi,

By when is the government planning to implement the new CTP reform? The content on your website has not changed in the past last 3 months. Please let me know the current status of the plan.

Thank You

[REDACTED]

From: 2.2(a)(ii)
Sent: 27/02/2019 8:55 PM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Cc: 2.2(a)(ii)
Subject: Website enquiry

My name is 2.2(a)(ii)

I grew up in Canberra, was educated there and got my first job in the Nation's Capital. I still visit there regularly. I was appalled to learn the insurance industry are trying to pull the wool over the eyes citizens like they succeeded to do in NSW. In my view an insurance company is no man or woman's friend. It is vital that if a personal is incapacitated as a result of an accident not their fault that they should have access to help and compensation for their loss. Only fools - as seen in NSW - could believe any small alleviation in premiums in the short term could benefit the population in the long term. Canberra is a sophisticated City - I hope the people uphold that sophistication and reject insurance company greed.

From: 2.2(a)(ii)
Sent: 16/04/2019 10:13 PM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Re: Thank you for your email

May I also inquire about the representation of young people on this jury and average age.

Regards

2.2(a)(ii)

On Tue, 16 Apr 2019 at 21:56, YourSayonCTP <YourSayonCTP@act.gov.au> wrote:

Thank you for your email to Your Say on CTP. We will endeavour to respond within 10 business days.

Kindest regards,

Your Say on CTP Administration Team

Phone: 13 22 81 | Email: YourSayonCTP@act.gov.au

GPO Box 158 Canberra ACT 2601 | <https://www.yoursav.act.gov.au/ctp>

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: 2.2(a)(ii)
Sent: 16/05/2019 5:30 PM
To: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: Re: ACT Proposed Motor Accident Injuries Bill [SEC=UNCLASSIFIED]

Hi. Thank you for the prompt reply.

Kind regards,

2.2(a)(ii)

On Thu, May 16, 2019 at 12:10 PM YourSayonCTP <YourSayonCTP@act.gov.au> wrote:

Dear 2.2(a)(ii)

Thank you for your email.

Please see below a link to the Bill.

https://www.legislation.act.gov.au/b/db_59789/

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81


From: 2.2(a)(ii)
Sent: Thursday, 16 May 2019 11:59 AM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Fwd: ACT Proposed Motor Accident Injuries Bill

Hi. Greetings from the Embassy of the 2.2(a)(ii)

May we know where to get a copy of the ACT Proposed Motor Accident Injuries Bill or maybe provide us with the link.

Thank you. We'll look forward to your reply.

2.2(a)(ii)



This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

Dear Mr Richards,

Thank you for your further email of Friday 17 May 2019 posing additional questions. I apologise for the delay responding.

As you will be aware, the *Motor Accident Injuries Act 2019* (MAI Act) uses the same definition of a personal injury as the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act) (see section 9 and section 6 respectively). The government did this to ensure that there was no change in the scope of personal injuries covered with the introduction of the new scheme. As a result, the new scheme covers psychological / psychiatric injuries as well as physical injuries as the current scheme does.

Importantly, under the new MAI scheme, a woman who miscarries or has a still-birth as a result of a motor accident will be able to access immediate defined benefit treatment to help her cope with the loss of her child.

With respect to Whole Person Impairment assessments, during the debate of the MAI Bill, the Legislative Assembly passed amendments that will allow an injured person with both a physical injury and a primary psychological injury resulting from the accident to request two separate Whole Person Impairment assessments (so long as the injured person meets the requirements for a primary psychological assessment).

In addition, where an assessment of physical injuries is being undertaken, the independent medical examiner may consider secondary psychological injuries arising from the physical injury as part of their assessment of that physical injury. It will be for medical experts to determine whether the physical injuries, which might include injuries associated with a miscarriage or still-birth, or a psychological injury is a permanent impairment. An injured woman who suffered a miscarriage may be able to make a common law claim on the basis of a physical Whole Person Impairment assessment if they meet the required threshold.

During the assessment of common law damages, in particular quality of life damages, the court can consider whether the Whole Person Impairment assessment took into account a particular injury, or a particular effect on the injured person's quality of life. If the court considers it appropriate, the court may award the injured person an amount of additional damages that is not more than 20 per cent of the quality of life damages calculated based on the Whole Person Impairment report that the injured person relies on for the motor accident claim (see section 243 of the MAI Act). If an injured woman had physical injuries, but the grief and trauma of a miscarriage or still-birth were not taken into account in the Whole Person Impairment assessment, then the court can award additional quality of life damages of up to 20 per cent. Therefore, it is not the case that the only way an injured woman would be able to receive pain and suffering compensation at common law for losing her child is if she is diagnosed with a permanent clinical psychiatric condition.

The government acknowledges there is no specific reference to loss of a foetus in ACT civil law or criminal law legislation (the *Crimes Act 1900* has provisions for offences against pregnant women). Miles CJ, in the matter of *Samuel Shang Ren Bhnf Shuang Kui Ren v Biswanath Mukerjee and Another* [1996] ACTSC 119, referred to an unreported case where the NSW Court of Criminal Appeal held that a child in utero, injured through the impact of a motor vehicle, who is born and then subsequently dies of those injuries is a person (para 9).

You have indicated that you recall some authorities where people have tried to bring actions on behalf of an unborn child that have failed. The success of such actions is very much dependent on the facts and the timing of events related to the pregnancy, particularly under part 3.2 of the *Civil Law (Wrongs) Act 2002*. In

addition, claims may be settled rather than proceeding to court, and this could be one of the reasons for the limited case law in relation to part 3.2.

Regards,

From: "Rayner, Jennifer" <Jennifer.Rayner@act.gov.au>
Sent: 21/05/2019 10:15 AM
To: "Holmes, Lisa" <Lisa.Holmes@act.gov.au>
Cc: "Clark, Nicola" <Nicola.Clark@act.gov.au>
Subject: FW: CTP Miscarriage issue

Hi Lisa,

Can your team please assist in responding to the relentless Mr Richards? In particular, if there is any case law we could refer him to dealing with this, that would be much appreciated.

Thank you,

Jen

Dr Jennifer Rayner | Director of Policy and Budget
Office of Andrew Barr MLA
Chief Minister
Treasurer
Member for Kurrajong
P. (02) 6207 1201 | M. 2.2(a)(ii) E. jennifer.rayner@act.gov.au



From: David Richards OAM [mailto:richards@blackburnchambers.com.au]
Sent: Friday, 17 May 2019 12:30 PM
To: Rayner, Jennifer <Jennifer.Rayner@act.gov.au>
Cc: Georgeson, Matthew <Matthew.Georgeson@act.gov.au>
Subject: Re: CTP Miscarriage issue

Dear Jen

Thank you for responding. Next week would have been fine. Noting you are out of office there is no need to respond to this email until early next week - but while it is fresh in my mind:

Are you saying that you agree that other than in circumstances where a woman is diagnosed with a clinical psychiatric condition which is likely to last for the rest of her life (permanent under the WPI Guide), a woman who miscarries or has a still birth as a result of an injury in a motor vehicle accident will receive no compensation under the *Motor Accident Injuries Act* which was passed in the assembly yesterday.

1. If this is correct, was it the intention of the Government when passing the legislation yesterday that a mother who miscarries or has a still birth as a result of a motor vehicle accident will very likely receive **no** compensation for pain and suffering for losing her child?
2. If this is correct, isn't this a breach of s 8 the *Human Rights Act* for gender discrimination?

I look forward to your response.

Kind regards

David Richards OAM
Barrister

**Blackburn
Chambers**

Level 12, 1 Hobart Place, Canberra ACT 2601
GPO Box 789 | DX 5654
T: 02 6248 0040 | M: 2.2(a)(ii)
Clerk: 02 6247 5040

blackburnchambers.com.au

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On 17 May 2019, at 11:36 am, Rayner, Jennifer <Jennifer.Rayner@act.gov.au > wrote:

Thanks David.

Given how sure you seem of your opinion, I'm not sure how much value the further information we provide will be. But we'll do our best regardless.

Jen

On 17 May 2019 11:17 am, David Richards OAM <richards@blackburnchambers.com.au > wrote:

Dear Jen

Thank you for your prompt reply. I understand. Early next week is fine. I doubt it will take you very long to confirm the question that Matt and I are asking given your earlier reference to Part 3.2 of the *Civil Law (Wrongs) Act*, as a miscarriage or still birth could not possibly fall within a provision which provides compensation for a mother that loses a child.

Kind regards

David Richards OAM
Barrister

**Blackburn
Chambers**

Level 12, 1 Hobart Place, Canberra ACT 2601
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On 17 May 2019, at 10:04 am, Rayner, Jennifer <Jennifer.Rayner@act.gov.au> wrote:

Hi David,

I'm out of the office today moving house, but we'll get back to you as soon as possible.

Jen

Sent from my iPad

On 17 May 2019, at 9:42 am, David Richards OAM <richards@blackburnchambers.com.au> wrote:

Good morning

Jen, can you please advise when you expect to respond to the below.

Thank you

David Richards OAM
Barrister

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On 16 May 2019, at 3:34 pm, David Richards <richards@blackburnchambers.com.au> wrote:

Hi Jen

I am also very interested in why Government believes that Part 3.2 of the *Civil Law (Wrongs Act) 2002* applies to a woman who miscarries. Please refer me to the appropriate section or definition.

Thank you

Kind regards

David Richards OAM
Barrister

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On 16 May 2019, at 3:22 pm, Georgeson, Matthew <Matthew.Georgeson@act.gov.au> wrote:

Hi both – I think the best way to sort this out would be to put you two in touch – I am just in the way, in the middle.

Jen, see below.

I'm interested in the final answer though.

Matt

From: David Richards OAM
[\[mailto:richards@blackburnchambers.com.au\]](mailto:richards@blackburnchambers.com.au)
Sent: Thursday, 16 May 2019 3:16 PM
To: Georgeson, Matthew
<Matthew.Georgeson@act.gov.au>

That is incorrect Matt. Part 3.2 are Nervous Shock Claims which are very common in the ACT. The definition of a child within Part 3.2 does not extend to an unborn child. There is no any law that I am aware of that defines a foetus as a child. How could it? To be a child you would first have to be born alive, otherwise it is a miscarriage or a still birth. I recall some authorities where people have tried to bring actions on behalf of an unborn child which have failed.

I stand by my opinion.

See below Extracts

Definitions—pt 3.2
In this part:

"child", of a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of the person, or someone to whom the person is acting in place of a parent.

"consequential mental harm", to a person, means mental harm to the person that is a consequence of bodily injury to the person.

"family member", of a person, means —

- (a) a domestic partner;
- (b) a parent or child of the person; or
- (c) a brother, sister, half-brother or

half-sister of the person.

"mental harm", to a person, means impairment of the person's mental condition.

"negligence" means failure to exercise reasonable care and skill.

"parent", of a person, means the father, mother, grandfather, grandmother, stepfather or stepmother of the person, or someone acting in place of a parent to the person.

"pure mental harm", to a person, means mental harm to the person other than consequential mental harm.

CIVIL LAW (WRONGS) ACT 2002 - SECT 36

Extensions of liability under pt 3.2 in certain cases

(1) A person's liability in relation to an injury caused by a wrongful act or omission by which someone else ("A") is killed, injured or put in danger includes liability for injury arising completely or partly from mental or nervous shock received by—

- (a) a parent of A; or
- (b) a domestic partner of A; or
- (c) another family member of A, if A

was killed, injured or put in danger within the sight or hearing of the other family member.

(2) If 2 or more family members bring, or may bring, actions in relation to liability arising under subsection (1) out of the same act or omission, the court may proceed in the way the court considers appropriate and may make the orders the court considers appropriate about—

(a) which family members are parties to the action; and

(b) who is to have the conduct of the action.

(3) The action is for the benefit of all family members who are parties to the action.

(4) The court may award the damages that it considers to be proportional to the damage to the plaintiffs resulting from the wrongful act or omission.

(5) Subsection (4) has effect subject to part 7.1 (Damages for personal injuries—exclusions and limitations).

(6) The amount of damages awarded must, after deducting the costs not recovered from the defendant, be divided between the plaintiffs in the shares the court decides.

David Richards OAM
Barrister

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From: "YourSayonCTP"

Sent: 18/07/2019 3:50 AM

To: 2.2(a)(ii)

Subject: RE: Information regarding Motor Accident Injuries Bill

UNCLASSIFIED

Dear 2.2(a)(ii)

Thank you for your email of 13 May 2019 regarding the effect the Motor Accident Injuries Bill 2019 (Bill) may have on diplomatic cars and personnel. I apologise for the delay in responding

The purchase of a compulsory third-party insurance (CTP) policy is currently included in the payment motorists make to register or re-register their motor vehicle. This insurance provides personal injury protection for motor vehicle accidents on ACT road. It is a requirement for diplomatic or consular plated vehicles to be registered and have a CTP policy.

The Legislative Assembly passed the *Motor Accident Injuries Act 2019* on 16 May 2019. The new Motor Accident Injuries scheme will replace the current CTP scheme (the *Road Transport (Third-Party Insurance) Act 2008*) in early 2020. Under the current scheme only persons who were not at-fault for an accident receive compensation. Under the new scheme any person, regardless of fault, will receive up to five years of treatment, care and income replacement. Persons more seriously injured and not at-fault will still be able to access common law compensation. Once the new MAI scheme commences, any existing CTP policies will transfer to be MAI policies.

The MAI scheme provides benefits of up to five years of treatment, care and income replacement to all persons unless there is an exception or limitation that is provided for in the legislation. One of these exceptions relates to persons who are charged and convicted of a driving offence in relation to the motor accident, for example negligent driving or driving under the influence of an intoxicating liquor or drug. The exceptions and limitations aim to ensure a person at-fault for an accident does not receive full defined benefits when they engage in serious criminal behaviour or put others at risk.

The legislation provides for the circumstances where a person may have diplomatic privileges that prevents, for example, a charge of negligent driving being dealt with by a court of law because of their immunity. The ACT Government was concerned that this may have placed a person with diplomatic immunity in a better position with respect to an application for defined benefits following a motor accident. To address this, the legislation allows insurers to refer a person who has made a claim of immunity that prevents a charge from being finalised to the Motor Accident Injuries Commission for a declaration that their defined benefit entitlement should cease. The Commission will then decide, on the information available including the police report, the entitlement of the person to defined benefits.

This process ensures that an independent assessment occurs, with the Commission's decision being subject to review. Please note, the declaration made by the Commission relates only to the provision of defined benefits under the scheme and where there is an entitlement to diplomatic immunity under the *Diplomatic Privileges and Immunities Act 1967* (Cwlth), applying the *Vienna Convention on Diplomatic Relations* (1961).

We trust the above information addresses your concern.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: 2.2(a)(ii)

Sent: Monday, 13 May 2019 1:46 PM

To: YourSayonCTP <YourSayonCTP@act.gov.au>

Subject: Information regarding Motor Accident Injuries Bill

To whom it may concern,

I write this email to inquire about the effects the bill will have on diplomatic cars and personnel who drive. If you could please kindly send some general information on the specific changes we can expect, that would be much appreciated.

Thanks and kind regards,

Schedule 1 1.8

From: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Sent: 24/10/2018 3:14 PM
To: 2.2(a)(ii)
Cc: "YourSayonCTP" <YourSayonCTP@act.gov.au>
Subject: RE: Some important questions?? [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your comments on the exposure draft of the Motor Accident Injuries Bill 2018.

The response of 15 October 2018 used the word "will" in line with the fact that the bill is currently an exposure draft. Also, as indicated in the guide to the exposure draft of the Motor Accident Injuries Bill 2018, there will be a number of accompanying regulations and guidelines issued by the Government which will provide a further level of operational detail.

As you would be aware, the exposure draft of the bill is currently with the Justice and Community Safety Committee for further scrutiny and community consultation. Members of the community had the opportunity to provide comments via a submission to the Committee. The Committee is due to report to the Legislative Assembly by Thursday 1 November 2018. The Government will consider the Committee's report before finalising the bill for introduction.

Kind Regards,

Your Say on CTP Administration Team
GPO Box 158
Canberra City ACT 2601
YourSayonCTP@act.gov.au
Phone: 13 22 81

From: 2.2(a)(ii)
Sent: Tuesday, 16 October 2018 12:04 PM
To: YourSayonCTP <YourSayonCTP@act.gov.au>
Subject: Some important questions??

Good morning,

It is unfortunate you did not answer my questions 5,6 and 7.

Below is direct commentary of Work Safe. Clearly note the reference to children.

The number of issues I refer to and I am sure these are not complete include:

1. Radiation exposure for children levels are significantly different than adults. Therefore through on going treatment children either receive doses above recommended limits with increased risk of cancer, or are denied treatment;
2. Core damage, read soft tissue, through seat belt damage is not codified. This means a child will in effect be at future significantly higher risk through core damage, relatively, in any future even minor car crash than an adult; and
3. Even a minor injury, below the 10% threshold, has for children long term consequences far different than adults, losing just one year of schooling can have unbelievable short and long term consequences, curtailing natural development has the potential to deny a multitude of long term career opportunities.

In regards to your comments on the MAI no where do you specifically, definitively, confirm anything. The language you use is will. We know as soon as the legislation is passed then you all will have limited scope to negotiate a sensible outcome as the insurers will hold the whip hand.

In regards to your claims of the robust nature of your decision process, clearly it was either situated or

poorly informed as by your own admission the special needs of children appears not to have been codified in any of your submissions, would they have been then I am sure you would have pointed to them.

"With reference to the concept of Maximum Medical Improvement, the determination of the degree of permanent impairment in children may be impossible in some instances due to the natural growth and development of the child (examples are injuries to growth plates of bones or brain damage). In some cases, the effects of the injury may not be considered permanent and the assessment of permanent impairment may be delayed until growth and development is complete."

Noting the timing of legislation it is reasonable to expect a more timely response than over twenty days.

For your earliest consideration.

2.2(a)(ii)

From: YourSayonCTP <YourSayonCTP@act.gov.au>

Sent: Monday, 15 October 2018 5:15:03 AM

To: 2.2(a)(ii)

Cc: YourSayonCTP

Subject: RE: Some important questions?? [SEC=UNCLASSIFIED]

Dear 2.2(a)(ii)

Thank you for your email with questions about the new Motor Accident Injuries (MAI) scheme, which will replace the current Compulsory Third Party Insurance (CTP) scheme.

As part of the CTP Citizens' Jury process, jurors heard from, and asked questions of, a number of expert witnesses including: members of the legal profession, insurers, academics and a health care providers. They also heard from injured people. The process was also supported by the Stakeholder Reference Group who provided input into the model designs.

Under the new scheme, the MAI Commission functions will include monitoring compliance of insurers by collecting and reviewing data on claims. The Commission will monitor claim data and processes used by the insurers and will have a range of enforcement powers if action is required. For example, if there has been non-payment of benefits, the Commission will have the ability to ask questions of an insurer and may require the payment be made if it is accordance with the required process.

An insurer under the new scheme, when assessing whether an application for treatment and care is reasonable and necessary, will be required to consider whether the treatment and care is: directly related to a person's injury; cost effective; appropriate for the injury; and will benefit the person. Government guidelines will stipulate what constitutes reasonable and necessary care and the evidence required to verify treatment and care needs and costs.

An insurer will generally rely on medical assessments carried out by a person's own doctor or health practitioner when preparing a recovery plan or making decisions about their liability to pay benefits. This will minimise stress on an injured person and avoid the cost of multiple assessments. An insurer may contact a person's doctor so that a medical report can cover specific information required by the insurer. They can also request an independent medical or vocational assessment, if this is considered necessary. Guidelines will stipulate how and when this can happen.

The Whole Person Impairment (WPI) process proposed to be adopted in the new scheme is not specific to workers or solely to adults. The *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA) is the most commonly used assessment of impairment tool in Australia. Where it has been specified for a compensation scheme, you will find that different editions with local (Australian) modifications apply. WPI has long been used by the Victorian CTP scheme. For the new MAI scheme, it is proposed to adopt the Safe Work Australia Guidelines, which modify components of AMA 5th edition (AMA5) to align them with current Australian practice, add further explanations, or clarifying ambiguities. We acknowledge that 'seat belt syndrome' is not listed in AMA5; however, the term 'seat belt syndrome' is a term used to collectively refer to a group of injuries. AMA5 includes the types of injuries that are commonly included in this grouping, and provides tables for combining the different WPI scores of multiple injuries. For example, injuries to urinary systems are assessed using Chapter 7 of AMA5.

Children under the new scheme will have the same eligibility as adults to access treatment and care for up to five years under defined benefits. If the injured child has a WPI score of 10 per cent or more, they will also be eligible to make a common law claim. Common law damages may include loss of opportunity for work and ongoing treatment and care, amongst other matters, to compensate for the ongoing needs of an injured child.

Kind Regards,

Your Say on CTP Administration Team

GPO Box 158

Canberra City ACT 2601

YourSayonCTP@act.gov.au

Phone: 13 22 81

From: Schedule 1 1.8 Information in possession of

Sent: Monday, 24 September 2018 3:46 PM

To: YourSayonCTP <YourSayonCTP@act.gov.au>

Subject: Some important questions??

YourSayonCTP might you please answer the following questions?:

1. In the knowledge of the current Royal Commission into the Banks discovery on insurance companies behaviour, is it possible the 'peoples process' might have come to a different conclusion?;
2. Are you able to confirm what analysis or information informed the 'peoples process' on the real proven behaviours of insurers?;
3. The problem with dealing with insurers is they are in the power equation that controls all agendas, any recourse to independent oversight is lost because when eventually held to account they roll over, this is modus operandi and working on the basis that they will ultimately have to pay just prevaricate and hope people give up. Given this reality what oversight mechanisms do you propose that might curb this behaviour? These need to be able to provide immediate influence, hence the end state importance of legal support!;
4. Given the power the new regime will provide insurers, what mechanisms will be in place to stop them taking a supposedly informed medical opinion when they are neither competent nor is it part of their business? This is important as the stress in organising complex medical follow up is profound when imposing an insurer obfuscation overlay on it!;
5. Do you acknowledge the special needs of children?;
6. Do you acknowledge the WPI process is fundamentally about an American adult workplace environment?;
7. Do you acknowledge the fact that, particularly in children, that seat belt syndrome (yes seat belts save lives), is a unique injury circumstance not considered within the planning construct of the WPI process?; and
8. How do you think the new scheme might comprehend the unique challenges seal belt syndrome related injuries might present a child for the rest of their lives?

Please understand none of the above questions are hypothetical. They are all real world issues!

For your earliest consideration.

From: YourSayonCTP <YourSayonCTP@act.gov.au>

Sent: Monday, 24 September 2018 2:45:12 AM

To: 2.2(a)(ii)

Subject: Thank you for your email

Thank you for your email to Your Say on CTP.

If you have asked a question about the process, we will endeavour to respond within 10 business days.

Kindest regards,

Your Say on CTP Administration Team

Phone: 13 22 81 | Email: YourSayonCTP@act.gov.au

GPO Box 158 Canberra ACT 2601 | <https://www.yoursay.act.gov.au/ctp>

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Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Alex White
Secretary
UnionsACT
PO Box 279
Dickson ACT 2600

Dear Mr ~~White~~ ^{Alex},

Thank you for your further correspondence regarding the *Motor Accident Injuries Bill 2019*. The Government appreciates your ongoing engagement on this important reform that will deliver faster, fairer and more comprehensive support for Canberrans who are injured in a motor vehicle accident.

We have considered each of the points raised in your letter, and I can advise the following regarding the Government's intended response.

Election between workers' compensation and the Motor Accident Injuries scheme

Following your discussion with my office about the process for injured workers who are eligible for benefits in both the workers' compensation and MAI schemes, the Government has further considered how this currently works and how it would operate in practice under the proposed new scheme.

At the moment, workers default into workers' compensation in the first instance because there are no defined benefits in CTP. People generally access workers' compensation while their CTP matter is progressed, and if they are successful in securing a settlement, some of this is then used to pay back the workers' compensation scheme.

Under the proposed new scheme, people who are injured on the road while at work will continue to start out in workers' compensation because the trigger for this is an employer notifying their insurer of an accident. The worker then has 13 weeks to 'opt out' of workers' compensation and choose the MAI scheme instead for defined benefits.

However, if an injured person with an accepted application for benefits under a workers' compensation scheme does not choose to withdraw that application, the person continues to be entitled to compensation under the workers' compensation scheme. This scheme offers a longer period of defined benefits income replacement for people who are not eligible for common law;

ACT Legislative assembly

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AndrewBarrMLA



actchiefminister



CANBERRA

workers will therefore not be disadvantaged in the long term if they remain with this 'default' option.

We will strengthen the drafting of the bill to make clear that an application for defined benefits under the MAI scheme is voluntary. This in practice means that there is a default to workers' compensation unless an injured worker chooses to pursue defined benefits through the MAI scheme. We will also clarify that they do not have to make an active choice in order to remain within the workers' compensation scheme after the 13 week election period has elapsed.

If a worker remains with their workers' compensation scheme they will still be able make a claim for common law damages under the MAI scheme at a later date, if the motor accident was caused by someone else's fault and they meet the threshold for eligibility.

Significant Occupational Impact assessment process

The Significant Occupational Impact assessment process has been added to the bill in response to stakeholder concerns – including those raised by UnionsACT – about the significantly different impact injuries can have on an individual depending on their occupation. For example, an injury resulting in an assessed Whole Person Impairment of less than 10 per cent may not present a significant occupational barrier for someone who works in an office, but could well do so for someone who does a more physical job.

The Significant Occupational Impact assessment process provides a mechanism for people who are not assessed as having a Whole Person Impairment of 10 per cent or above to still make a common law claim for support and compensation beyond the defined benefits period, if their injury impairs their ability to work. It achieves one of the priority amendments requested by UnionsACT through your previous discussions with the Government – that being, the need for exemptions to the WPI threshold to ensure the scheme has the flexibility to respond to injured people's individual circumstances.

There will be a specific guideline prepared to support the assessment of Significant Occupational Impact matters. As you may be aware, there are a range of regulations and guidelines that are not intended to be drafted until the legislation has passed, because further consultation is required with relevant stakeholders. This includes the guidelines for the assessment of Significant Occupational Impact. In preparing these, the Government will consult with key stakeholders including medical experts and the unions. This consultation will commence once the legislation has been passed by the Legislative Assembly, as is usually the case for supporting regulations and guidelines.

The Government will also amend the bill to make clear that insurers are required to meet the costs of a Significant Occupational Impact assessment – not the injured person who requires the assessment.

Assessment of physical and psychological injuries

It is important to understand that everyone who is injured in a motor vehicle accident will be entitled to treatment, care and income replacement benefits to support their recovery. This support will be available for up to five years after an accident, and will be provided for both physical and psychological injuries.

Injured people will not need to prove that they meet a particular threshold to access this support – the only criteria is that their physical and/or psychological injuries were caused by the motor vehicle accident.

Quality of life benefits provide additional compensation separate to that provided for treatment, care and lost income. These payments are provided to people who have more serious injuries which have a significant impact on their quality of life. Many people who experience physical or psychological injuries – or both – will recover from these within the five-year defined benefits period, because they are getting the professional help and support they need.

To pursue a claim for quality of life benefits at common law, an injured person will need to be assessed as having a Whole Person Impairment of 10 per cent or more. People who have an assessed Whole Person Impairment of 5 per cent or more can also access a quality of life payment through defined benefits. In asking for this assessment, the injured person is to indicate whether a physical or psychological injury assessment is required – following advice from their treating clinicians.

In making an assessment of physical injuries, an independent medical examiner will consider psychological injuries arising from the physical injury as part of their assessment of that physical injury. For example, if someone experiences depression as a result of having serious physical injuries, this will be included in the assessment of their Whole Person Impairment arising from those physical injuries.

If an injured person has opted to have their psychological injuries assessed (which may include multiple diagnoses such as anxiety and post-traumatic stress disorder), these may also be considered in combination in assessing their level of Whole Person Impairment.

In cases where someone has both a primary physical injury and a primary psychological injury, these cannot be combined in assessing Whole Person Impairment because the nature of impairment created by each injury is different. This is the case in all schemes which use the national Safe Work Australia template for assessing impairment, and relates to the way assessments are conducted by medical professionals. The Government has adopted this national approach which is informed by expert medical advice; it is not a feature that is unique to the proposed ACT scheme.

We acknowledge that the bill and supporting documents would benefit from further clarification of the entitlements for psychological injuries and how different injuries can be assessed in conjunction with each other. We will further strengthen and clarify the wording of the bill as part of a set of Government amendments to be moved during the detail stage of debate in the Legislative Assembly.

It should also be noted that if an injured person is unable to work because their psychological injuries have a significant impact on their employability, but is not assessed as having a Whole Person Impairment of 10 per cent or more, they are able to seek a separate Significant Occupational Impact assessment which provides an alternative pathway to pursue a common law claim for compensation.

Further matters

The Government has considered feedback regarding the adequacy of the sanctions contained in the bill for insurers who do not meet their obligations under the MAI scheme and license conditions. In light of the importance of these sanctions providing a clear behavioural signal against misconduct, the Government will amend the bill to increase the maximum penalty for contravening a condition of

a MAI insurer licence to 200 penalty units. With the penalty unit charge for a corporate entity being \$810, this would double the maximum potential penalties from \$81,000 per contravention to \$162,000.

Furthermore, compliance by licensed insurers will be enforced through their duties and obligations as licensees, and the Motor Accident Injuries Commissioner will also have the power to establish mechanisms for compliance obligations. The Bill also contains provisions for occupational discipline orders in addition to the offence provisions.

The Government also notes your feedback in relation to the use of a 10 per cent Whole Person Impairment threshold. As my office has discussed with you, the inclusion of this Whole Person Impairment threshold is an important part of the scheme design because it supports the objective of channeling a greater share of the total scheme resources to people who are more seriously injured. A 10 per cent Whole Person Impairment threshold represents the lowest such threshold in use in any compulsory third party insurance scheme in Australia. I would also highlight that a 10 per cent threshold is already used in the Comcare workers' compensation scheme which covers tens of thousands of Canberra workers.

Finally, in relation to your request for further consultation with unions on this reform, the Government remains open to input on both the further guidelines and regulations which will be developed to support the scheme, and its implementation details over the coming months. Since mid-2017, the Government has conducted a citizens' jury on the scope and direction of CTP reform, released an exposure draft of the full bill, undertaken a Legislative Assembly inquiry on this exposure draft and held a range of meetings with key stakeholders on this reform – including a number with UnionsACT and union representatives directly.

These discussions have been very valuable in identifying issues relevant specifically to Canberrans who are injured in a motor vehicle accident while at work. They have also contributed to a range of important amendments to the draft bill, as detailed in my prior correspondence to you. We will appreciate your continued engagement as the Government seeks passage of the legislation and moves towards implementation of the new scheme.

Thank you again for taking the time to detail UnionsACT's further feedback on the *Motor Accident Injuries Bill*, and I trust this information is of assistance.

Yours sincerely



Andrew Barr MLA
Chief Minister

30 APR 2019

29 March 2019

Andrew Barr
Chief Minister
GPO Box 1020
Canberra ACT 2601
Via email - barr@act.gov.au

Dear Chief Minister, *Andrew*

Re: Reforms to Compulsory Third-Party Laws and the Proposed Bill

UnionsACT writes with respect to the proposed Motor Injury Accident Bill, which was tabled earlier this month.

Having had time now to review the Bill, UnionsACT advises that we remain unsupportive of the Bill. Nonetheless, our intention is to engage constructively with the Government to improve key elements of the bill relevant to workers' rights. We will provide more detail next week with specific proposals for consideration by the Government.

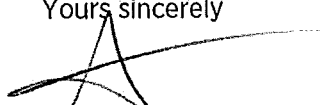
1. Greater time for consultation: UnionsACT proposes that the Government engage in greater consultation with unions on the issues below. This will not only engender good will, but will ensure that appropriate time is taken to 'get the scheme right' with respect to workers' rights.
2. 13 week election period between schemes: UnionsACT views the 13 weeks as punitive and detrimental to the health, recovery, and health and financial interests of workers forced to choose between statutory schemes (either workers compensation or the new MAI scheme). We propose a 24 month election period is more appropriate, notwithstanding our view that any restriction is unnecessary.
3. Significant occupational impact concept: Unions were not consulted on the creation of this new concept. We consider it to be an unnecessary and risky innovation; furthermore, the detail of assessments, appeals and the like are detrimental to the interests of workers injured in a road accident.
4. WPI threshold of 10%: A 10% threshold combined with a very short 5-year statutory scheme will have significant negative impacts on people injured in a road accident. UnionsACT proposes that the threshold for common law claims be lowered to 5%, the same level as the Quality of Life threshold. We also propose that psychological and physical injuries be able to be combined when assessing WPI.
5. Powers and sanctions available to the Commissioner: UnionsACT is concerned that the powers and sanctions of the Commissioner are not sufficient to effectively regulate the duopoly insurance companies. We propose that the sanctions for non-compliance with license conditions be substantially increased, i.e. that the *minimum* sanction be 100 penalty units, with a maximum of 1000 penalty units.

Again, UnionsACT is committed to engaging constructively with the Government to improve core elements of the MAI Bill that affect the rights of working people. Next week, we will

provide more specific proposals for amendments to the Bill. We also intend to engage with the Greens, and the Labor caucus on this matter.

UnionsACT is available to meet on this matter at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alex White', written over a horizontal line.

Alex White
Secretary
UnionsACT

Point 2 documents



ACT
Government

Chief Minister, Treasury and
Economic Development

Date	26 September 2018	File No: CMTEDD2018/5097
To	Minister for Workplace Safety and Industrial Relations	
CC	Treasurer Executive Director, Workplace Safety and Industrial Relations	
From	Director, Financial Framework Management and Insurance	
Subject	Workers' Compensation interactions with the new Motor Accident Injuries Scheme	

Critical date and reason

1. 12 October 2018 - prior to any Committee hearings on the exposure draft of the *Motor Accident Injuries Bill 2018*.

Background

2. You have requested a briefing on the impact the new Motor Accident Injuries scheme may have on workers who are injured in a motor accident while travelling for work or doing work duties as a pedestrian (e.g. as a parking inspector) in the ACT. UnionsACT has raised concern that the proposed changes to the CTP scheme will be detrimental for workers compared with the current scheme.
3. Compulsory Third Party (CTP) Insurance in the ACT is currently regulated by the *Road Transport (Third-Party Insurance) Act 2008* (CTP Act) which has been in effect since 1 October 2008. It is an at-fault common law scheme where an injured person can sue another person for negligence and seek compensation through legal processes.

Issues

4. The Government tabled an exposure draft of the *Motor Accident Injuries Bill 2018* on 20 September 2018 for a new hybrid no-fault common law scheme.
 - a) A key feature of the new Motor Accident Injuries scheme is that it will no longer be necessary to prove another driver was at-fault in order to access benefits following injury in a motor accident.
 - b) The new scheme will provide defined benefits, for treatment, care and income replacement, for up to five years, to anyone who is injured in a motor accident who has not been convicted of certain offences (occurring at the time of the accident). People convicted of driving offences that put others at risk at the time of the accident will be partly or totally excluded for receiving defined benefits under the new scheme.

- c) Quality of Life defined benefits will be payable to people who meet an injury impairment threshold of five per cent or more.
 - d) If a person dies as a result of a motor accident, defined benefits are also available for dependants, and to cover funeral expenses.
 - e) Additional common law benefits will be available to people more seriously injured (meeting a Whole Person Impairment (WPI) threshold of 10 per cent or more) whose injury was caused by someone else's fault.
5. If a worker is injured in a motor vehicle accident, for example during a work related journey in the ACT, they could be eligible for compensation under both their employer's workers' compensation scheme and also under the new Motor Accident Injuries scheme.
6. It is proposed that the final *Motor Accident Injuries Bill 2018* will contain provisions so injured people covered under a workers' compensation scheme will have a choice of receiving statutory (defined) benefits under either their workers' compensation scheme or the new Motor Accident Injuries scheme. A workers' compensation scheme may include a scheme operating under the *Workers Compensation Act 1951*, the *Safety, Rehabilitation and Compensation Act 1988* (Comcare), or a scheme operating under a corresponding law of a State or Territory.
7. If an injured worker chooses to pursue a claim for workers' compensation benefits they will not be able to receive defined benefits under the new Motor Accident Injuries scheme.
- a) An exception will be made if a worker withdraws their workers' compensation claim within one month of their workers' compensation claim being made. The one month window will ensure that an injured worker is not disadvantaged because they were not aware of their choice of compensation scheme at the time they made their workers' compensation claim.
8. In some cases defined benefits available under the new Motor Accident Injuries scheme may be more generous for a worker than statutory benefits available under their workers' compensation scheme. Under the new Motor Accident Injuries scheme, workers will be entitled to a defined benefit quality of life payment if they meet a WPI threshold of five per cent or more. Some workers may not currently be eligible to receive any permanent injury benefits under their workers compensation scheme. For example:
- a) Comcare uses a 10 per cent WPI threshold for most permanent injury benefits.
 - b) Under the ACT private sector workers' compensation scheme, permanent injury defined benefits are generally for the loss of specified body parts with limited allowances for other injuries such as spinal injuries.

9. The new Motor Accident Injuries scheme will also be beneficial for public sector workers who are injured in a motor accident on their way to work, as Comcare does not cover journey claims.
 - a) These workers will no longer need to prove someone else was negligent in order to receive CTP compensation. All public sector workers will now be eligible for early treatment, care and income replacement under the new scheme regardless of who was at fault.
 - i. Under the current scheme, if a worker cannot prove someone else was negligent then they cannot receive CTP compensation (although most people can access \$5,000 for early medical expenses).
 - ii. Those workers who are injured as a result of someone else's negligence, will have earlier access to treatment and care because fault will not need to be established before defined benefits can be paid; and earlier access to income replacement payments without having to wait for a common law settlement to be negotiated, which can take several years.
10. Workers who have more serious injuries that were caused by someone else's fault will continue to be able to sue for top-up, common law damages, under the new Motor Accident Injuries scheme. This will include workers who have already received statutory benefits under a workers' compensation scheme.
 - a) A worker will need to satisfy a WPI threshold of 10 per cent or more to receive common law damages under the new Motor Accident Injuries scheme. The new scheme will also enable workers who were passengers in a vehicle involved in a blameless accident (such as a collision with a kangaroo) to also receive common law damages if they meet this threshold.
 - b) Common law quality of life payments will be based on a whole person impairment assessment. These payments are based on a sliding scale for a given level of impairment with a maximum cap of \$500,000.
 - c) Under the current CTP scheme there is no WPI threshold and no sliding scale for quality of life payments. Quality of life payments (currently called general damages) are negotiated.

Consultation

11. The Workplace Safety and Industrial Relations Division was consulted on the policy around interactions between the workers' compensation schemes and the new Motor Accident Injuries scheme. It supports the policy of an injured person having choice of scheme and retaining a right to top-up damages in common law for more serious injuries. The legislative provisions are to be drafted for the introduction of the bill.

Financial

12. Nil.

Risks/ Sensitivities

13. The need to satisfy a 10 per cent permanent injury threshold may exclude some less seriously injured workers from making a common law top-up claim under the new Motor Accident Injuries scheme. This threshold offsets the cost of the scheme providing defined benefits including early treatment, care and income replacement to anyone injured in a motor accident, regardless of fault.

Work Health and Safety

14. Nil.

Media

15. Media interest has been high in relation to the exposure draft of the *Motor Accident Injuries Bill 2018*.

Recommendations

That you note the above.

NOTED/PLEASE DISCUSS

Lisa Holmes

Director, Financial Framework and Insurance

Action Officer: Erica Lejins

Phone: 55496

Rachel Stephen-Smith MLA

RSS 15/10/18

Does par 6 mean that some workers who could currently pursue a common law claim under private sector workers' comp will no longer be able to do so, but will be restricted to statutory benefits?



ACT
Government

GOVERNMENT SUBMISSION

Justice and Community Safety Committee – *Inquiry into Motor Accident Injuries Bill 2018*

Chief Minister, Treasury and
Economic Development
Directorate

October 2018

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INTRODUCTION

About 290,000 motor vehicles are registered in the ACT each year and there are around 900 claims each year under our current Compulsory Third Party (CTP) insurance scheme. However, the current ACT CTP scheme does not cover everyone injured in a motor vehicle accident, and it can take up to two years or longer to get a payout after an accident. Despite this, Canberrans still pay some of the highest premiums in the country, relative to other jurisdictions.

The Government believes our current CTP scheme can be improved to better protect Canberrans. That is why the Government used a citizens' jury to consider with the community and other key stakeholders how to improve the scheme so it reflects the priorities of Canberrans. In the past, traditional consultation on CTP has largely heard the views of stakeholders that provide services to the scheme.

There is no one right answer to what a CTP scheme should look like. The Government wanted to understand what the community's priorities are for the scheme, given the community both pays CTP premiums and are the beneficiaries of the CTP scheme. A 2016 survey found that many ACT motorists don't understand our CTP scheme. Without a good understanding of the existing scheme, it is difficult for people to think about how the scheme can be improved.

The citizens' jury process gave a group of Canberrans who are representative of our community, the opportunity to look at CTP in depth, hear from experts and injured people, ask questions and consider trade-offs when determining their priorities for an improved CTP scheme. The jury process allowed for a consensus informed recommendation from a randomly selected representative group of the community. At the conclusion of the citizens' jury, the jurors chose their preferred model for a new improved CTP scheme.

In line with the Government's commitment made at the commencement of the deliberative democracy process, the Government is now pursuing the jury's chosen model. The *Motor Accident Injuries Bill 2018* implements the model for the new motor accident injuries scheme chosen by the citizens' jury.

PUBLIC CONSULTATION PRIOR TO THE JURY PROCESS

The Government undertook a broad consultation process on CTP prior to the commencement of the citizen's jury process encompassing public surveys, submissions and comments that were then considered by the jury.

The Government received around 1,435 pieces of feedback, including 725 survey responses, 328 people told us their CTP priorities, 263 online quiz responses and 119 comments and submissions. The jury received the results of the survey and copies of all the feedback to inform their understanding of CTP and their deliberations in determining the objectives for an improved CTP scheme.

THE JURY

Jury selection

The Government brought in expert consultants in deliberative democracy (democracyCo) to run the citizens' jury process and they were responsible for recruiting the jury to ensure it happened at arms' length from government.

Invitations to participate in the CTP citizens' jury were mailed to 6,000 randomly selected households using Australia Post's database. A further 1,500 individuals were randomly selected from the Vote Compass database to receive online invitations. A total of 117 responses were received.

A group of around 50 jurors were chosen from those who responded, with the selection and stratification managed by the jury facilitators, democracyCo. This process ensured the jury was made up of a mix of people according to criteria such as age, gender and location that broadly corresponded with the demographics of the ACT population.

Who was eligible to sit on the jury?

It was important that the jury's deliberations were balanced and not unfairly influenced in any direction by people with a particular stake in the CTP scheme. For this reason, people who received an income from the CTP system, such as a personal injury lawyer, a CTP insurance company employee or a person who works for government in personal injury compensation, or anyone in their households, were not eligible to be on the jury. These professions were represented on the Stakeholder Reference Group (see below).

People who were in the process of having a CTP claim considered and their household members were also unable to participate on the jury. (People who had a finalised CTP claim were able to participate on the jury).

People who had experiences with the CTP scheme – including people who had or were pursuing claims under the current system and those who were ineligible to do so because of its current design – had the opportunity to give evidence before the jury as witnesses. This ensured their views and perspectives were taken into account by the jury as an important part of the deliberations.

The jury's remit

To frame the jury's discussion, the jury had the following remit: *What should the objectives of an improved CTP scheme be to best balance the interests of all road users?*

The ACT Government also put parameters on the jury's work. In summary, these were:

1. The CTP scheme must remain compulsory for all motorists.
2. The scheme must continue to be privately underwritten and the overall scheme design cannot raise the cost of premiums.
3. The CTP scheme in the ACT must remain community-rated.
4. The types of vehicles for which CTP must be purchased and the way premiums are calculated between vehicle types cannot change as part of this process.
5. The scheme must be workable and fit within other legal and regulatory frameworks.
6. The deliberations could not examine the established Lifetime Care and Support Scheme.

The Government committed to pursue the jury's preferred model on the basis it meets the objectives determined by the jury and the above parameters.

THE STAKEHOLDER REFERENCE GROUP

To support the citizens' jury, a Stakeholder Reference Group was created that was facilitated by democracyCo. The Stakeholder Reference Group gave stakeholders with a vested interest a meaningful and influential role in the process.

The Stakeholder Reference Group was made up of people from organisations with expertise or special interest in CTP. Individuals from these professions were not eligible to be on the jury and the Stakeholder Reference Group gave these groups the opportunity to discuss their perspectives with the jury during their deliberations. The group consisted of:

Member	Organisation Name
Lisa Holmes	Representative for the CTP Regulator ACT Government
Richard Glenn	Deputy Directorate General Justice and Community Safety Directorate ACT Government
Mark Blumer	Solicitor Law Society of the ACT
Jamie Ronald	Barrister ACT Bar Association
Madeleine Hibberd	Manager – Regulatory Policy ACT CTP Insurer – Insurance Australia Group (IAG)
Surayez Rahman	Executive Manager – ACT CTP ACT CTP Insurer -Suncorp
Fiona Tito Wheatland	Consumer representative Health Care Consumers Association
Dr Ian Cameron	Professor of Rehabilitation Medicine John Walsh Centre for Rehabilitation Research University of Sydney
Geoff Atkins	Principal at Finity Insurance Scheme Design Expert
Peter McCarthy	Executive Director – Actuary Ernst and Young

JURY STAGE 1 – UNDERSTANDING CTP AND SETTING OBJECTIVES

The Process

The citizens' jury met on 14-15 October 2017 and 28-29 October 2017. On the first weekend the jury members were taught critical-thinking skills to help them ask probing questions and analyse the information they received. The jury learnt about CTP from a scheme design expert, a legal academic and a representative of the CTP Regulator. They also talked to representatives of the legal profession and insurers to gain their perspectives. Results from the public consultation process were presented to the jury and the jury received copies of all the feedback to inform their deliberations in determining the objectives for an improved CTP scheme.

Witness presentations

On the second weekend the jury considered further evidence. A total of 16 witnesses presented to the jury and participated in workshops with the jury. Six people injured in a motor vehicle accident also told their stories to jury members. The 16 witnesses that presented were chosen by the jury, categorised under four themes (developed by the Stakeholder Reference Group), which were:

1. What are the key trade-offs?
2. Who is covered?
3. What benefits are people covered for?
4. Fairness in claim determination.

The witnesses for theme 1 were agreed upon by the Stakeholder Reference Group. Stakeholder Reference Group members were able to nominate witnesses for themes 2 to 4 and the jury then voted on which witnesses they wanted to present to them for these themes. Jury members were also able to nominate witnesses. The jury were provided with a brief biography of each witness to assist in choosing their witnesses.

The diverse group of selected witnesses that presented to the jury on the second weekend in October 2017 were:

Theme	Witness	Organization Name
What are the key trade-offs?	Peter McCarthy	Executive Director – Actuary, Ernst and Young
	Andrew Stone	Barrister, Sir James Martin Chambers
	Estelle Pearson	Principal, Finity
	Dr Genevieve Grant	Monash Law School
	Paul O'Connor	General Manager Risk, National Disability Insurance Scheme
Who is covered?	Jamie Ronald	Barrister, Burley Griffin Chambers
	Michael Eburn	Associate Professor, College of Law, ANU
	David Gifford	Chief Strategy Officer, Transport Accident Commission (TAC), Victoria
	Carmel Franklin	Director, Care Financial Counselling Services; Chair, Financial Counselling Australia; Member of the FOS Consumer Liaison Group
What benefits are people covered for?	Dr Ian Cameron	Head, John Walsh Centre for Rehabilitation Research, University of Sydney
	Noor Blumer (in place of Laura Neil)	Australian Lawyers Alliance
	Estelle Pearson	Principal, Finity
	Fiona Tito Wheatland	Consumer representative Health Care Consumers Association
Fairness in claim determination	John Walsh	Actuary, National Disability Insurance Scheme; and Adjunct Professor, John Walsh Centre for Rehabilitation Research, University of Sydney
	Susie Walford	Executive Manager, ACT Personal Injury, Suncorp
	Andrew Gill	Detective Sergeant, New South Wales Police
	Madeleine Hibberd	Manager, Regulatory Policy, IAG

Jury objectives for an improved CTP scheme

At the end of the second weekend, the jury delivered its report on the objectives for an improved CTP scheme to the Stakeholder Reference Group. In summary, the jury's six objectives were:

Objective	Juror voting
Early access to medical treatment, economic support and rehabilitation services.	All jurors approved of this objective. 84 per cent assessed it to be at least an 8/10 priority.
Equitable cover for all people injured in a motor vehicle accident.	All but two jurors approved of this objective, and one abstained. 82 per cent assessed it to be at least an 8/10 priority.
A value for money and efficient system.	All jurors approved of this objective. 54 per cent assessed it to be at least an 8/10 priority.
Promote broader knowledge of the scheme and safer driver practices.	All jurors approved of this objective. 38 per cent assessed it to be at least an 8/10 priority.
Implement a support system to better navigate the claims process.	All but one juror approved of this objective. 36 per cent assessed it to be at least an 8/10 priority.
A system that strengthens integrity and reduces fraudulent behaviour.	All but one juror approved of this objective. 26 per cent assessed it to be at least an 8/10 priority.

THE DEVELOPMENT OF CTP MODELS

In accordance with the agreed deliberative strategy, four models were developed by an expert scheme designer based on the jury's identified objectives, with detailed input from the Stakeholder Reference Group. The Stakeholder Reference Group spent almost 30 hours in deliberations to support the development of the four models by the scheme designer.

The four models were also costed by an actuary to determine their potential impact on the premiums drivers pay.

The four models developed by the scheme designer canvassed a range of options. Each model was structured and defined by:

- > Benefits which are available to injured people regardless of fault – the 'defined benefits'.
- > Benefits which are available via common law (legal action) for injured people who are not-at-fault.

Once the models were developed, Stakeholder Reference Group members were invited by the facilitators to provide 200 words summarising their views on the models; these comments were provided to the jury prior to the jury meeting in March 2018. Stakeholder Reference Group members were also able to provide additional documentation with their comments, which were provided to the jury.

Of the Stakeholder Reference Group members, the health provider, consumer representative and both insurer members preferred the model ultimately chosen by the jury (model D). The two legal profession representatives did not support the chosen model. Government representatives, the contracted scheme designer and the contracted actuary did not express a preference.

JURY STAGE 2 – CHOOSING A MODEL

The jury met for the final time on 24 and 25 March 2018. Jury members were provided the scheme designer's paper outlining the four models and the contracted actuary's paper costing these models 10 days before the final jury weekend.

The scheme designer presented the four models (that were developed with input from the Stakeholder Reference Group) to the jury, with the contracted actuary providing an indication of the impact on premiums for each model. Jury members were able to ask questions directly to the Stakeholder Reference Group members.

The four models developed by the scheme designer proposed the use of two different injury assessment measures. The jury received information on these two different injury assessment measures. Both the scheme designer and Dr Ian Cameron of the John Walsh Rehabilitation Centre in Sydney (a Stakeholder Reference Group member) also verbally explained the Whole Person Impairment assessment measure and provided examples of injuries and answered jury queries on each of these measures.

Jury members assessed the models based on which model they considered best met the objectives they set in October 2017. On the afternoon of Saturday 24 March 2018, after discussing each of the models in depth, the jurors were asked to pick two models by way of a ballot. On Sunday 25 March 2018, after further exploring and reflecting on the two remaining models, the jury again voted via a ballot. The jury's chosen model was model D, with the final vote 82 per cent.

The jury's chosen model for a new improved scheme

The jury has chosen a new scheme that will deliver improved coverage and will better protect Canberrans. The model chosen by the jury delivers the following improvements:

- > everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault. This means approximately 40 per cent of injured people who currently cannot make a CTP claim (apart from reimbursement of up to \$5,000 for medical expenses) will be covered, about 600 more Canberrans per year;
- > everyone will have earlier access to benefits after an accident. There will continue to be exclusions for serious criminal offences, in line with other Australian jurisdictions;
- > quality of life benefits, which provide compensation for non-financial loss, will be available for all people who meet injury thresholds; and
- > anyone whose injury was caused by someone else's negligence and who is more seriously injured and meets the required injury threshold will still be able to access additional common law benefits.

The jury decided this model best met the objectives they set when they first commenced work in October 2017, including:

- > early access to medical treatment, economic support and rehabilitation services;
- > equitable cover for all people injured in a motor vehicle accident; and
- > greater efficiency and value for money.

Jury members presented their preferred model and their reasoning, together with anything they wanted Canberrans to understand about the scheme, to the Head of Service (acting as a representative of the Government) on Sunday 25 March 2018. A delegation of jury members met with the Chief Minister on Tuesday 27 March 2018 to discuss their final report.

TRANSPARENCY OF THE PROCESS

Sessions from the first weekend were live streamed. In addition, the jury's deliberations were open to the general public with individuals able to register their interest to be an observer at the jury sessions. Members of the Stakeholder Reference Group were present throughout the jury weekends. Observers were able to view the process, both the plenary sessions and the small group discussions. The Government considers that the presence of observers was a key part of the transparency of the process.

Documents relating the citizen's jury process, including those referred to in this submission, are publicly available on the Your Say website www.yoursay.act.gov.au/ctp.

THE DRAFT LEGISLATION

In line with our commitment, the Government is now pursuing the jury's chosen model by developing legislation which closely reflects this for introduction to the ACT Legislative Assembly. The exposure draft of the bill provides the framework, key principles and requirements for the operation of the new Motor Accident Injuries scheme.

One difference from the jury's chosen model is that insurers now have a shorter period from the receipt of a complete application to decide whether to accept or deny a defined benefits application. This period will be set at one month, not three months. A one month period is consistent with the NSW motor accident injuries scheme. This change strengthens the obligations on insurers to resolve applications quickly, provides injured people with certainty sooner about whether they will be eligible for defined benefits and is consistent with the jury's objective of early treatment and care.

As is identified in the guide to the exposure draft, the final bill will include transitional provisions and provisions on the interaction with workers compensation schemes.

The committee inquiry provides a further opportunity for consultation with the community on the detail of the new scheme. Input from the committee will inform the final bill that is set to be introduced to the Legislative Assembly by the end of 2018.



ACT
Government

Chief Minister, Treasury and Economic
Development Directorate

October 2018



Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Yvette Berry MLA
Minister for Education and Early Childhood Development
Minister for Housing and Suburban Development
Minister for the Prevention of Domestic and Family Violence
Minister for Sport and Recreation
Minister for Women
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Minister

Inquiry into Motor Accident Injuries Bill 2018 – Government Submission

On Thursday 20 September 2018, the exposure draft of the *Motor Accident Injuries Bill 2018* was tabled in the Legislative Assembly and referred to the Justice and Community Safety Committee for further community consultation.

The Committee has now called for submissions by Friday 12 October 2018 as part of the *Inquiry into Motor Accident Injuries Bill 2018*. I am proposing to provide a Government Submission summarising the deliberative democracy process and consultation undertaken to date that informed the development of the Bill.

Given the timeframes for submissions precludes a Cabinet process, I have attached a copy of the proposed Government Submission for your consideration and feedback to my office by close of business Tuesday 9 October 2018.

Yours sincerely

Andrew Barr MLA
Chief Minister

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Ms Meegan Fitzharris MLA
Minister for Health and Wellbeing
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Minister for Transport
Minister for Vocational Education and Skills
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Minister for Trade, Industry and Investment

Member for Kurrajong

Mr Mick Gentleman MLA

Minister for the Environment and Heritage

Minister for Planning and Land Management

Minister for Police and Emergency Services

Minister assisting the Chief Minister on Advanced Technology and Space Industries

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Mr Gordon Ramsay MLA
Attorney-General
Minister for the Arts and Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
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Member for Kurrajong

Mr Shane Rattenbury MLA
Minister for Climate Change and Sustainability
Minister for Corrections and Justice Health
Minister for Justice, Consumer Affairs and Road Safety
Minister for Mental Health
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Minister for Disability
Minister for Children, Youth and Families
Minister for Employment and Workplace Safety
Minister for Government Services and Procurement
Minister for Urban Renewal
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Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mr Chris Steel MLA
Minister for City Services
Minister for Community Services and Facilities
Minister for Multicultural Affairs
Minister for Roads
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Minister

Inquiry into Motor Accident Injuries Bill 2018 – Government Submission

On Thursday 20 September 2018, the exposure draft of the *Motor Accident Injuries Bill 2018* was tabled in the Legislative Assembly and referred to the Justice and Community Safety Committee for further community consultation.

The Committee has now called for submissions by Friday 12 October 2018 as part of the *Inquiry into Motor Accident Injuries Bill 2018*. I am proposing to provide a Government Submission summarising the deliberative democracy process and consultation undertaken to date that informed the development of the Bill.

Given the timeframes for submissions precludes a Cabinet process, I have attached a copy of the proposed Government Submission for your consideration and feedback to my office by close of business Tuesday 9 October 2018.

Yours sincerely

Andrew Barr MLA
Chief Minister

ACT Legislative Assembly

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Member for Kurrajong

Ms Elizabeth Lee MLA
Chair
Justice and Community Safety Committee
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Ms Lee MLA

Inquiry into Motor Accident Injuries Bill 2018

Thank you for the opportunity to provide a submission to the Justice and Community Safety Committee on its inquiry into the exposure draft of the *Motor Accident Injuries Bill 2018*.

Please find attached the ACT Government's Submission. The Submission focusses on the process by which the new Motor Accident Injuries scheme was developed, including the close consultation with the Canberra community through the ACT's first citizens' jury process. The Bill reflects the model chosen by the jury as best meeting the objectives they considered an improved scheme should meet.

Yours sincerely

Andrew Barr MLA
Chief Minister

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Terms of Reference for the Justice and Community Safety Committee's Inquiry into the Motor Accident Injuries Bill 2018

At its meeting on Thursday, 20 September 2018, the Assembly passed the following resolution:

“(1) That the Exposure Draft of the Motor Accident Injuries Bill 2018 and the accompanying explanatory guide be referred to the Standing Committee on Justice and Community Safety Committee (the Committee) to inquire into and report on:

(a) the draft bill's alignment with the following objectives for the ACT's Compulsory Third Party (CTP) insurance scheme:

- (i) early access to medical treatment, economic support and rehabilitation services;
- (ii) equitable cover for all people injured in a motor vehicle accident;
- (iii) a value for money and efficient system;
- (iv) promoting broader knowledge of the scheme and safer driver practices;
- (v) implementing a support system to better navigate the claims process; and
- (vi) a system that strengthens integrity and reduces fraudulent behavior;

(b) the draft bill's alignment with the model chosen by the CTP citizens' jury and the detailed design documents underpinning this model;

(c) the draft bill's consistency with other relevant insurance schemes operating in the Territory; and

(d) the most suitable avenues for external review of matters arising between parties under the proposed new Motor Accident Injuries scheme;

(2) the Committee reports by 1 November 2018; and

if the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker or any other Member, who is authorised to give directions for its printing, publishing and circulation.”



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Ms Elizabeth Lee MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Mr Michael Petterson MLA

Mr Andrew Barr MLA
Treasurer
ACT Legislative Assembly
BARR@act.gov.au
Civic Square
CANBERRA ACT 2600

Dear Treasurer,

**Motor Accident Injuries Bill 2018 and Guide to the Motor Accident Injuries Bill 2018–
Exposure Drafts.**

I am writing as Chair of the Standing Committee on Justice and Community Safety (the Committee) to invite you to make a written submission on the above referral referred to the Committee for inquiry and report by 1 November 2018.

As you know, the Exposure Draft documents for the Bill were referred to the Committee on 20 September 2018. The inquiry terms of reference given to the Committee are attached.

Should you wish make a submission as the Minister responsible for the Exposure Draft Bill, the Committee seeks a submission addressing the matters you consider you can comment on, or all of the matters, if appropriate.

Written submissions are to be lodged by **COB Friday, 12 October 2018**. The guidelines to assist individuals and organisations to prepare submissions to Assembly Committees are at - <http://www.parliament.act.gov.au/in-committees/committee-activities>

The Committee asks that submissions are typed and submitted electronically, although handwritten submissions are acceptable. Submissions, including those sent electronically, are to include a postal address and telephone contact number. Submissions are to be forwarded to:

Committee Secretary, JACS Committee, ACT Legislative Assembly.
Email – LACommitteeJCS@parliament.act.gov.au
Postal – GPO Box 1020, CANBERRA ACT 2601

Please contact the committee Secretary, Andrew Snedden, (02 62050199) if this invitation raises any queries or requires further advice and/or information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Lee', written in a cursive style.

Elizabeth Lee MLA

Chair

2 October 2018



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Ms Elizabeth Lee MLA (Chair), Ms Bec Cody MLA (Deputy Chair), Mr Michael Pettersson
MLA

Terms of Reference

Motor Accident Injuries Bill 2018

Exposure Drafts to the Motor Accident Injuries Bill 2018 and to the Guide to the Bill

- “(1) that the Exposure Draft of the Motor Accident Injuries Bill 2018 and the accompanying explanatory guide be referred to the Standing Committee on Justice and Community Safety Committee (the Committee) to inquire into and report on:
- (a) the draft bill’s alignment with the following objectives for the ACT’s Compulsory Third Party (CTP) insurance scheme:
 - (i) early access to medical treatment, economic support and rehabilitation services;
 - (ii) equitable cover for all people injured in a motor vehicle accident;
 - (iii) a value for money and efficient system;
 - (iv) promoting broader knowledge of the scheme and safer driver practices;
 - (v) implementing a support system to better navigate the claims process; and
 - (vi) a system that strengthens integrity and reduces fraudulent behavior;
 - (b) the draft bill’s alignment with the model chosen by the CTP citizens’ jury and the detailed design documents underpinning this model;
 - (c) the draft bill’s consistency with other relevant insurance schemes operating in the Territory; and
 - (d) the most suitable avenues for external review of matters arising between parties under the proposed new Motor Accident Injuries scheme;
- (2) the Committee reports by 1 November 2018; and
- (3) if the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker or any other Member, who is authorised to give directions for its printing, publishing and circulation.”—



Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mr Shane Rattenbury MLA and Ms Caroline Le Couteur MLA
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Shane

Caroline

Dear Mr Rattenbury and Ms Le Couteur

Thank you for your letter of 1 November 2018 about the Exposure Draft of the Motor Accident Injuries Bill 2018. In line with the Government commitment to pursue the CTP Citizens' Jury's chosen model, the Government has developed legislation (the Bill) that closely reflects the chosen model.

Model Choice

When the Government established the citizens' jury, the members were provided with a set of parameters within which to conduct their deliberations. The full list of parameters is available at the Your Say website – this included a requirement that premiums could not rise as a result of any reforms recommended by the jury. Therefore, current premium levels represented the maximum that could be presented to the jury in the models. Within those parameters, the jury identified its objectives for an improved CTP scheme, including that it should be a value for money and efficient system.

The four models provided to the jury were developed by an expert scheme designer with detailed input from the Stakeholder Reference Group (SRG), based on the parameters set by Government and the jury's objectives. The developed models were costed by an experienced actuary. Those costings included the average estimated premium for each of the models and an estimated upper and lower range for premiums reflecting the uncertainty associated with the costings.

The reduction in average premiums compared with the current scheme increased progressively from models A to D, as did the range, reflecting the greater uncertainty as the models moved further away from the current scheme. Model A, which reflected the least change from the current scheme, had an upper bound premium very close to the average premium under the current scheme. Ultimately the jury selected model D, which reflected the greatest reduction in premiums from the current scheme, as best meeting the objectives they had set.

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According to advice by the expert scheme designer, the changes proposed in Model A represented the greatest increase in coverage possible to achieve within the bound of current premium levels. As is clear from an examination of these different models, this represented a less generous expansion of coverage and benefits than the jury's preferred model, Model D.

Thresholds

In the jury's first report on objectives for an improved CTP scheme, they identified a clear distinction between minor and serious injuries. This element was a key factor for including the use of thresholds in the four model options by the expert scheme designer – to direct a greater share of resources to those more seriously injured.

A Whole Person Impairment (WPI) score is an objective and medically based method to determine an injured person's level of permanent impairment. A WPI score is determined by a clinical assessment undertaken by a medical professional. The jury specifically recommended: *“that an independent methodology (for example, a panel arrangement to assess WPI) should be used to neutralise bias and focus on the best health outcomes for injured people”*. This is reflected in the exposure draft of the Bill.

The WPI thresholds reflected in the exposure draft Bill represent the lowest such thresholds of any scheme which uses WPI around Australia. The threshold of 10 per cent or above WPI has been selected on the basis that people with serious injuries associated with motor accidents will meet this threshold and be able to proceed to common law if they so choose.

A narrative test was not included in the model chosen by the jury. Such a test introduces subjectivity, would require assessment by an insurer and raises questions about equity between people with the same injuries. Schemes which do employ a narrative test generally pair this with a significantly higher WPI threshold; for example, the threshold used in the Victorian CTP scheme is 30 per cent WPI. As the ACT's threshold is much lower and intended to ensure that people with serious injuries from vehicle accidents meet this, the Government does not consider a broad narrative test is necessary or appropriate for this proposed scheme.

Under the jury's chosen model, psychological injuries will be clinically assessed using the Safe Work Australia National Guidelines to determine the Whole Person Impairment. The clinical assessment and calculation for an individual with psychological injuries depends on whether the psychological injuries are the only injury or one of multiple injuries.

The potential psychological impact on an injured person pursuing a claim under the Motor Accident Injuries scheme will be mitigated by the provision of early treatment and care under the new scheme. An injured person will be eligible for defined benefits for treatment, care and income replacement shortly after the motor accident without the necessity of proving fault. The injured person will also not have to wait until a claim is finalised before receiving benefits, a process that takes on average 48 months for large claims and 18 months for small claims to finalise under the current scheme.

Rights of Injured Workers

If a worker is injured in a work related motor accident in the ACT they could be eligible for compensation under both their employer's workers' compensation scheme and the new Motor Accident Injuries scheme.

It is currently proposed that a worker must elect to receive defined benefits under either the Motor Accident Injuries scheme or a workers' compensation scheme. It is also proposed that workers have a window to switch schemes so that they are not disadvantaged because they are unaware they could have a choice of compensation scheme at the time they make a workers compensation claim. Following feedback, the Government is considering providing a 13 week period for switching – up from four weeks in the guide to the exposure draft Bill.

The timeframe to switch schemes is intended to minimise disruptions in the treatment and care of an injured worker, so that a choice of scheme is made before an injury management plan and associated approved medical treatments are put in place.

- If a worker switches schemes, a Motor Accident Injuries insurer may need to duplicate the initial work undertaken by the workers' compensation scheme to prepare a new injury management plan and approve treatments in accordance with the Motor Accident Injuries legislation and guidelines.
- Switching schemes interrupts the critical liaison role that a claims manager performs in ensuring co-ordination between stakeholders, for example, treatment providers, the employer and the worker.
- Confusion and potential overlap of services will occur where the workers' compensation insurer has issued approvals for future treatment provision and care before the injured person decides to switch schemes.

These processes only apply in relation to defined benefits. If a worker decides to receive defined benefits under a worker's compensation scheme, they will still be able to sue for common law damages at a later date under the Motor Accident Injuries scheme if their motor accident injury was caused by someone else's fault and they meet the injury threshold of 10 per cent Whole Person Impairment. Similarly, if a worker accesses defined benefits through the Motor Accident Injuries scheme, this will not prevent them from pursuing a common law claim under workers' compensation if negligence on the part of their employer contributed to their accident.

The Motor Accident Injuries scheme will also be beneficial for public sector workers who are injured in a motor accident on their way to work, as Comcare does not cover journey claims (noting that currently only those workers covered by the private sector workers' compensation scheme are covered for journey claims in the ACT). These workers will no longer need to prove someone else was at fault in order to receive compensation. All public sector workers will now be eligible for early treatment, care and income replacement under the new scheme regardless of who was at fault.

Insurance Companies

The current CTP scheme places requirements and duties on insurers including to act in good faith and fairly. This will continue under the Motor Accident Injuries scheme, however, with defined benefits there will be additional requirements on insurers to act expeditiously and provide injured people with information to readily access and navigate through the new scheme.

The Motor Accident Injuries Commission will specify how this information must be provided and the way it is to be provided in its guidelines. For example, if an injured person has a WPI score of 10% or more, insurers will be required to inform the injured person of eligibility to make a common law claim. The insurers will also be required to explain that if a defined benefit quality of life payment is accepted, then the injured person is no longer eligible for a common law quality of life payment;

however, in that case the injured person can still make a common law claim for treatment, care and income replacement.

In their report, the CTP citizen's jury emphasised the need to improve advocacy and information services. The Bill provides for this through the defined benefits information services, where the Motor Accident Injuries Commission will approve entities to be information services. As lawyers are professional service providers they cannot be approved as an information service by the Commission, but they are not prevented by the Bill from providing their professional services to accident victims.

In relation to premiums, the Motor Accident Injuries Commission will continue the CTP Regulator's role of reviewing premium filings. The CTP Regulator currently has the power to approve or reject the premiums that are proposed by licensed insurers. The regulation of the premiums charged by the insurers includes the review of independent actuarial advice on whether a premium meets the fully funded test and is not excessive. The current guidelines are available at:

<https://www.legislation.act.gov.au/ni/2018-376/>.

Under the new scheme, the Motor Accident Injuries Commission will require insurers to report on actual profits, increasing the information the Commission has when considering premium proposals. The Commission will monitor premium proposals and can take steps in relation to premium filings if the fully funded and not excessive tests are not being met. It is important to note that insurers are providing privately underwritten insurance, and therefore are taking on the risk in relation to motor accidents.

The exposure draft Bill contains provisions for an automatic review of the full Motor Accident Injuries scheme within three years of its commencement. The Government proposes to review insurer profits based on actual data under the new scheme arrangements and consider whether further legislative measures are required in relation to these at that time.

Other Issues

The limitation on benefits provided for by clause 49 only arises if there is a motor accident and the cyclist pays or is convicted for an infringement notice for the failure to wear a helmet. In that case, the defined benefit is reduced by 25%. One of the jury's objectives was to promote road safety. The limitation or exclusion of benefits for people who do not comply with road legislation supports this objective.

I would like to take this opportunity to reiterate that the reforms proposed through the exposure draft Bill give effect to the recommendations of the Citizens' Jury on CTP – the first such significant deliberative democratic exercise undertaken by our Government.

The CTP citizens' jury was a demographic representative group of the ACT community. The process was commenced with an open consultation process which invited public feedback on the CTP scheme in writing and through a phone survey, with all feedback provided to the jury. While people with an open CTP claim were not able to sit on the jury, people with a past claim could participate and juror feedback indicates that during deliberations at least one juror did share their past experience of being in a motor vehicle accident. In addition, six witnesses shared their stories as part of the deliberations (via recorded interview with two volunteer jurors); three were nominated by plaintiff lawyers, and three were nominated by insurers.

The Government was clear that we would take forward the reforms recommended by the jury. We believe this commitment played an important role in engendering community support for the deliberative process and ensuring individual jury members participated with a clear understanding of the gravity of their work.

As the first such reform developed in partnership with the community through a deliberative process, we further believe the outcomes of this project will have a significant influence over levels of community support and engagement in future efforts to involve Canberra citizens more actively in public policy processes.

Given our shared commitment to engaging with Canberrans more often and in new ways on matters that affect the future of our community, I hope this will continue to inform your deliberations on the proposed reforms as the Legislative Assembly proceeds with its consideration of the Motor Accident Injuries Bill.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Andrew Barr". The signature is fluid and cursive, written in a professional style.

Andrew Barr MLA
Chief Minister

9 NOV 2018



Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mr Chris Donohue
President
ACT Law Society
1 Farrell Place
CANBERRA ACT 2601

Mr Steve Whybrow
President
ACT Bar Association
5th Floor, AMP Building
1 Hobart Place
CANBERRA ACT 2601

Dear Messrs Donohue and Whybrow

Thank you for your letter of 4 April 2019 about the *Motor Accident Injuries Bill 2019* (the Bill). I note you have also written to the Attorney-General and other members of the Legislative Assembly. I am responding on behalf of the Government to your letter.

The Bill provides everyone who is injured in a motor vehicle accident treatment, care and income replacement benefits to support their recovery. This defined benefit support will be available for up to five years after an accident, and will be provided for both physical and psychological injuries. People who are more seriously injured in an accident where someone else was at fault will still be able to make a claim through the legal system if they need long-term treatment, care and income.

Although the Law Society and the Bar Association continue to oppose this Bill, which is based on the model chosen by the Citizen's Jury, I am pleased you are engaging in the detail of the Bill and have provided constructive comments in your letter to improve the new scheme.

I wish to take this opportunity to respond to key aspects of the Bill and the design of the new Motor Accident Injuries scheme that remain of concern to the legal profession.

Physical and psychological injuries

Your letter raises concerns about a Whole Person Impairment assessment not being able to be combined for physical and psychological injuries including for depression and anxiety resulting from a physical injury.

The ability for people to receive benefits and compensation for psychological injuries is an important aspect of the new scheme. Injured people will not need to prove that they meet a particular threshold to access treatment, care and income replacement benefits – the only criteria is that their physical and/or psychological injuries were caused by the motor vehicle accident. Many people who

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experience physical or psychological injuries – or both – will recover from these within the five-year defined benefits period, because they are getting the professional help and support they need.

Quality of life benefits provide additional compensation beyond that provided for treatment, care and lost income. These payments are provided to people who have more serious permanent injuries that have a significant impact on their quality of life. People who have an assessed Whole Person Impairment of 5 per cent or more can access a quality of life payment through defined benefits. To pursue a claim at common law, including for quality of life benefits, an injured person will need to be assessed as having a Whole Person Impairment of 10 per cent or more.

An injured person with a permanent injury chooses to have a Whole Person Impairment assessment for their primary physical injuries or their primary psychological injuries. Where an injured person has multiple physical injuries these are combined in assessing their level of Whole Person Impairment. In making this assessment of physical injuries, an independent medical examiner will also consider psychological injuries arising from the physical injury as part of their assessment of that physical injury. For example, if someone experiences depression as a result of having serious physical injuries, this will be included in the assessment of their Whole Person Impairment arising from those physical injuries.

If an injured person has chosen to have their psychological injuries assessed (which may include multiple diagnoses such as anxiety and post-traumatic stress disorder), these psychological injuries can also be combined in assessing their level of Whole Person Impairment.

In cases where someone has both a primary physical injury and a primary psychological injury, these cannot be combined in assessing Whole Person Impairment because the nature of impairment created by each injury is different. This is the case in all schemes that use the national Safe Work Australia template for assessing impairment, and relates to the way assessments are conducted by medical professionals.

However, if an injured person proceeds to common law, the court can award additional quality of life damages relating to injuries that did not form part of the Whole Person Impairment assessment.

Furthermore, if an injured person is unable to work because their psychological injuries have a significant impact on their employability, but is not assessed as having a Whole Person Impairment of 10 per cent or more, they are able to seek a separate Significant Occupational Impact assessment which provides an alternative pathway to pursue a common law claim for compensation.

We acknowledge that the Bill and supporting documents would benefit from further clarification of the entitlements for psychological injuries and how different injuries can be assessed in conjunction with each other. We will further strengthen and clarify the wording of the Bill as part of a set of amendments to the Bill that the Government will move during debate.

The impairment threshold and the scale of damages

Your letter made various comments about the impairment threshold and scale of damages being inadequate. This criticism does not acknowledge core aspects of the Bill that will provide everyone who is injured in a motor accident with the treatment, care and income replacement they need to recover from their accident, through the defined benefit component of the scheme. Injured people

will have early access to treatment and care and will no longer have to wait for a common law settlement to receive income replacement.

The Whole Person Impairment thresholds only apply when considering who can make an application for quality of life defined benefits or can proceed through to common law to claim additional compensation. Access to common law will be limited to cases where someone else was at fault for the accident and a medical assessment indicates the person has a Whole Person Impairment of 10 per cent or more. This will help ensure more of the schemes resources are directed to people with serious, ongoing injuries.

The premise of the scale used for the Quality of Life payment is that someone more seriously injured (as reflected by their Whole Person Impairment assessment) should receive a higher payment than someone less seriously injured. The Safe Work Australia template for assessing impairment provides for more than one injury to be combined (other than for primary psychological or psychiatric injuries) using a combined values chart in the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA 5). A person with serious multiple impairments can receive a very high Whole Person Impairment under the combined chart, but this cannot exceed 100 per cent. An additional 20 per cent of the scaled damages amount may also be awarded by a court if a Whole Person Impairment assessment did not take into account a particular injury, or a particular effect on the claimant's quality of life.

Significant Occupational Impact Assessments

Your letter sought further clarification about what a Significant Occupational Impact is and how the assessment process will operate.

The new scheme includes a number of exemptions for people who do not meet the impairment threshold, but have a compelling reason to make a claim for benefits at common law. Workers who have been unable to retrain or return to work because of their injury after 4 1/2 years, will be able to make a common law claim if they are assessed as having a Significant Occupational Impact.

There will be a specific guideline prepared to support the assessment of Significant Occupational Impact matters. As you may be aware, there are a range regulations and guidelines that are not intended to be drafted until the legislation has passed, because further consultation is required with relevant stakeholders. This includes the guidelines for the assessment of Significant Occupational Impact.

The Government will also move an amendment to the Bill to make it clear that insurers are required to meet the costs of a Significant Occupational Impact assessment – not the injured person who requires the assessment.

I have included an attachment to this letter that responds to other comments in your letter. In many instances issues you raised are being addressed by the regulation, Motor Accident Injuries guidelines or by Government amendments that will be moved to the Bill.

I trust that this information will go some way to addressing the legal profession's concerns about the Bill.

Please feel free to contact my office if you require further information or clarification on this Bill.

Yours sincerely

Andrew Barr MLA
Chief Minister

Chief Minister, Treasury and Economic
Development Directorate

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To:	Treasurer	Tracking No.: CMTEDD2019/2140
Date:	30 April 2019	
CC:	Attorney-General	
From:	Executive Branch Manager, Financial Framework Management and Insurance	
Subject:	Government Amendments to the Motor Accident Injuries Bill 2019	
Critical Date:	30 April 2019	
Critical Reason:	To allow the amendments to be considered by the Standing Committee on Justice and Community Safety in accordance with standing order 182A	

- UT 
- EGM .../.../...

Recommendation

That you agree to provide the attached amendments and draft explanatory statement to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) for consideration prior to moving them during detail debate on the *Motor Accident Injuries Bill 2019*.

Agreed / Not Agreed / Please Discuss

Andrew Barr MLA  30/4/19

Minister's Office Feedback

Background

1. On 23 April 2019 you agreed to a set of 16 recommendations for proposed Government amendments to be made to the *Motor Accident Injuries Bill 2019* (see CMTEDD2019/2031).

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Issues

2. The Parliamentary Counsel's Office (PCO) has finalised the changes to the Bill for 15 of the amendments. The amendments are at Attachment A, with a draft explanatory statement to assist the Standing Committee at Attachment B. These amendments can now be provided to the Standing Committee to meet the requirement of Standing Order 182A in relation to the circulation of amendments. In order to meet the advised timelines for scrutiny, this should occur by 30 April 2019, prior to the detail debate in the sitting week commencing 13 May 2019.
3. The outstanding amendment is to clarify that chronic pain can be taken into consideration by the court when awarding up to a 20 per cent additional quality of life payment. PCO have indicated they require more time to draft this amendment as there is a need to redraft another relevant clause of the Bill to address misunderstanding about what can be included in a quality of life payment.
 - a. As the amendment is for clarification purposes only and is therefore minor or technical in nature, we consider that it is not essential for this amendment to be circulated to the Standing Committee prior to being moved in the Legislative Assembly. The leave of the Assembly can be sought to dispense with standing order 182A on the grounds that an amendment is minor or technical in nature.

Financial Implications

4. N/A

Consultation

Internal

5. N/A

Cross Directorate

6. The ACT Courts and Tribunal were consulted on the amendments that affect the courts' processes. The draft amendments for these provisions have been shared with the courts for their comment.

External

7. N/A

Work Health and Safety

8. N/A

Benefits/Sensitivities

9. N/A

Communications, media and engagement implications

10. Media interest has been high in relation to the bill, since its introduction and receiving in-principle agreement by the Assembly.

UNCLASSIFIED

Signatory Name: Lisa Holmes

Phone: 70207

Action Officer: Erica Lejins

Phone: 55496

Attachments

Attachment	Title
Attachment A	Government amendments to the <i>Motor Accident Injuries Bill 2019</i>
Attachment B	Explanatory statement to the Government Amendments
Attachment C	Letter to Standing Committee on Justice and Community Safety

**Australian Capital Territory
Legislative Assembly**

Motor Accident Injuries Bill 2019

Amendments to be moved by the Treasurer

1
Clause 50 (3), proposed new note
Page 36, line 7—

insert

Note If an injured person who has made a successful application for compensation under a workers compensation scheme in relation to a motor accident does not withdraw that application within 13 weeks after the date of the motor accident, the person will continue to be entitled to compensation in accordance with the scheme.

2
Clause 71 (2)
Page 58, line 6—

before

suspects

insert

reasonably

3
Clause 73 (1), proposed new note
Page 59, line 18—

insert

Note There is no requirement for both an application for defined benefits and an application for workers compensation to be made in relation to a motor accident.

4
Clause 73 (4), proposed new note
Page 60, line 13—

insert

Note If an injured person makes a successful application for compensation under a workers compensation scheme in relation to a motor accident and does not withdraw that application within 13 weeks after the date of the motor accident, the injured person is not required to give notice under s (4).

5
Proposed new clause 105 (5)
Page 84, line 25—

insert

- (5) The MAI guidelines may make provision in relation to the following:
- (a) the conduct of medical and other examinations under this section;
 - (b) the information a health practitioner may ask a person injured in a motor accident for in relation to a medical or other examination of the person by the health practitioner under this section;
 - (c) the information a health practitioner may ask the relevant insurer for a motor accident in relation to a medical or other examination of a person injured in the motor accident by the health practitioner under this section;
 - (d) the circumstances in which the relevant insurer for a motor accident may ask for a medical or other examination of a person injured in the motor accident under this section.

6

Clause 110 (1), definition of *treatment and care*, paragraph (a) (i)
Page 88, line 8—

after

including

insert

mental health treatment and

7

Clause 121 (4)
Page 95, line 1—

omit clause 121 (4), substitute

- (4) If the relevant insurer decides to suspend the injured person's treatment and care benefits and income replacement benefits, the insurer must give the injured person written notice (a *suspension notice*) stating—
- (a) the reasons for the suspension; and
 - (b) the actions the injured person may take to avoid the benefits being suspended; and
 - (c) the date the suspension takes effect; and
 - (d) that the injured person may seek internal review of the suspension under part 2.10 (Defined benefits—dispute resolution).
- (5) A suspension notice must be given at least 2 weeks before the date the suspension takes effect.
- (6) The MAI guidelines may make provision in relation to the conduct of assessments under this section.

8

Clause 141 (3) (b)

Page 108, line 9—

omit clause 141 (3) (b), substitute

- (b) for a person who is not a person mentioned in subsection (3A)—
the estimated WPI is taken to be the person’s WPI.

9

Proposed new clause 141 (3A) to (3E)

Page 108, line 12—

insert

- (3A) Subsections (3B) and (3C) apply if—
 - (a) the injured person’s estimated WPI is at least 5%; and
 - (b) the injured person is entitled to make a motor accident claim in relation to the motor accident.
- (3B) The relevant insurer for the motor accident must, within 14 days after receiving the WPI report about the injured person, give the injured person a written notice—
 - (a) including a copy of the report; and
 - (b) telling the person that the person must, within 26 weeks after receiving the notice—
 - (i) accept the estimated WPI as the person’s WPI; or
 - (ii) make a motor accident claim and apply to stay a proceeding on the claim until the person’s injuries have stabilised; and
 - (c) telling the person that if the person decides to take the action mentioned in paragraph (b) (ii)—
 - (i) the person must notify the relevant insurer when the person’s injuries have stabilised; and
 - (ii) that the relevant insurer will refer the person to an authorised IME provider for a second WPI assessment; and

- (iii) that the person is liable for the costs of the second WPI assessment; and
 - (iv) that if the WPI report from the second WPI assessment assesses the person's WPI as less than 10%, the person is not entitled to proceed with the motor accident claim and is liable for their own costs in relation to the claim.
- (3C) The injured person must make a decision under subsection (3B) within 26 weeks after the date the person is notified of the person's estimated WPI.

Note If the injured person's estimated WPI is taken to be the person's WPI, div 2.6.3 and ch 3 apply to the person.
- (3D) If the injured person does not notify the insurer within the 26 weeks, the injured person is taken to have accepted the estimated WPI as the person's WPI.
- (3E) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (3B) within the 26 weeks.

Examples—reasonable steps

- 1 including information in the written notice under s(3B) about the consequences of failing to notify the insurer within the 26 weeks
- 2 sending the injured person a reminder notice before the end of the 26 weeks

10
Proposed new clause 141A
Page 108, line 15—

insert

141A WPI assessment—injured person's injuries stabilised

- (1) This section applies if an injured person to whom section 141 (3A) applies—
 - (a) makes a motor accident claim in relation to the motor accident; and
 - (b) applies to stay a proceeding on the claim until the person's injuries have stabilised.

- (2) The injured person must tell the relevant insurer for the motor accident, in writing, that the person's injuries have stabilised.
- (3) The relevant insurer must refer the injured person to an authorised IME provider for a second WPI assessment.
- (4) The injured person is liable for the costs of the second WPI assessment.

Note The IME provider must give the WPI report about the assessment to the relevant insurer (see s 151).

- (5) If the WPI report assesses the injured person's WPI as 10% or more, the injured person is entitled to proceed with the motor accident claim.
- (6) If the WPI report assesses the injured person's WPI as less than 10%, the relevant insurer must, within 14 days after receiving the report, give the injured person a written notice—
 - (a) stating that the person—
 - (i) is not entitled to proceed with the motor accident claim; and
 - (ii) is liable for their own costs in relation to the motor accident claim; and
 - (iii) is not entitled to a further WPI assessment; and
 - (iv) is not entitled to an SOI assessment; and
 - (b) offering the person the amount of quality of life benefits payable for their WPI under division 2.6.4 (Quality of life benefits—amount payable); and
 - (c) telling the person that the person must, within 28 days after receiving the notice, notify the insurer, in writing, whether they accept the offer.
- (7) If the injured person does not notify the relevant insurer within the 28 days, the person is taken to have accepted the offer.

- (8) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (6) within the 28 days.

Examples—reasonable steps

- 1 including information in the written notice under s (6) about the consequences of failing to notify the insurer within the 28 days
- 2 sending the injured person a reminder notice before the end of the 28 days

- (9) If the injured person accepts (or is taken to accept) the offer—
- (a) the person’s application for quality of life benefits is taken to have been finally dealt with; and
 - (b) the relevant insurer must pay to the person the amount of quality of life benefits payable for their WPI under division 2.6.4.

11

Proposed new clause 146 (1) (e)
Page 110, line 24—

insert

- (e) section 141A (WPI assessment—*injured person’s injuries stabilised*).

12

Proposed new clause 149 (4A)
Page 112, line 26—

insert

- (4A) To remove any doubt, a WPI assessment of a physical injury may include an assessment of a psychological injury that results from the physical injury.

Example—psychological injury that results from physical injury

depression and anxiety as a result of ongoing pain from the physical injury

13

Clause 149 (5), example
Page 113, line 13—

omit

14**Proposed new clause 152 (2A)****Page 114, line 27—***insert*

- (2A) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (1) within the 26 weeks.

Examples—reasonable steps

- 1 including information in the written notice under s (1) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
- 2 sending the injured person a reminder notice before the end of the 26 weeks

15**Proposed new clause 153 (2A)****Page 115, line 24—***insert*

- (2A) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (1) within the 26 weeks.

Examples—reasonable steps

- 1 including information in the written notice under s (1) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
- 2 sending the injured person a reminder notice before the end of the 26 weeks

16

Proposed new clause 154 (3A)

Page 116, line 28—

insert

- (3A) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (2) within the 26 weeks.

Examples—reasonable steps

- 1 including information in the written notice under s (2) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
- 2 sending the injured person a reminder notice before the end of the 26 weeks

17

Proposed new clause 155 (4A)

Page 118, line 17—

insert

- (4A) The relevant insurer must take all reasonable steps to notify the injured person about the due date and the consequences of failing to notify the insurer as stated in the notice under subsection (2) by the due date.

Examples—reasonable steps

- 1 including information in the written notice under s (2) about the due date and the consequences of failing to notify the insurer by the due date
- 2 sending the injured person a reminder notice before the due date

18

Proposed new clause 160 (2A)

Page 122, line 15—

insert

- (2A) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (1) within the 28 days.

Examples—reasonable steps

- 1 including information in the written notice under s (1) about the consequences of failing to notify the insurer within the 28 days
- 2 sending the injured person a reminder notice before the end of the 28 days

19

Proposed new clause 161 (3A)

Page 123, line 27—

insert

- (3A) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (2) within the 28 days.

Examples—reasonable steps

- 1 including information in the written notice under s (2) about the consequences of failing to notify the insurer within the 28 days
- 2 sending the injured person a reminder notice before the 28 days

20

Proposed new clause 162 (4A)

Page 125, line 28—

insert

- (4A) The relevant insurer must take all reasonable steps to notify the injured person about the due date and the consequences of failing to notify the insurer as stated in the notice under subsection (2) by the due date.

Examples—reasonable steps

- 1 including information in the written notice under s (2) about the due date and the consequences of failing to notify the insurer by the due date
- 2 sending the injured person a reminder notice before the due date

21

Proposed new clause 163A

Page 126, line 20—

insert

163A Effect of certain WPI assessments on motor accident claim

Despite the *Limitation Act 1985*, section 16AA (Motor accident claims), a person injured in a motor accident who has had a WPI assessment has 3 months from whichever of the following dates applies:

- (a) if the injured person receives a notice under section 141 (3B) (WPI assessment 4 years 6 months after motor accident)—the date that is 26 weeks after the date of the notice;
- (b) if the injured person receives a notice under section 155 (2) (WPI 10% or more—injured person entitled to make motor accident claim) or section 162 (2) (Final offer WPI 10% or more—injured person entitled to make motor accident claim)—the due date for the notice.

22

Proposed new clause 188 (2A)

Page 144, line 9—

insert

- (2A) A decision by the insurer under subsection (1) takes effect on the day the internally reviewable decision was made.

23

Clause 196 (2) (b)

Page 148, line 26—

omit clause 196 (2) (b), substitute

(b) takes effect—

- (i) for an order relating to an application for external review of an internally reviewable decision—on the day the internally reviewable decision was made, unless the ACAT otherwise orders; and
- (ii) in any other case—on the day the externally reviewable decision was made, unless the ACAT otherwise orders.

24

Proposed new clause 206 (3)

Page 154, line 14—

insert

- (3) The relevant insurer for a motor accident is liable for the costs of an SOI assessment, unless otherwise provided in this chapter.

25

Proposed new clause 255 (1A)

Page 186, line 20—

insert

- (1A) However, if the claimant brings a proceeding based on the claim, and applies to stay the proceeding, under section 141 (3B) (WPI assessment 4 years 6 months after motor accident), the parties to the claim must have a compulsory conference before the proceeding can proceed.

Note The *Civil Law (Wrongs) Act 2002*, s 79 (Need for urgent proceeding) applies to a claimant in relation to a motor accident claim.

26
Clause 376 (1), penalty
Page 267, line 5—

omit the penalty, substitute

Maximum penalty: 200 penalty units.

27
Clause 378, penalty
Page 268, line 2—

omit the penalty, substitute

Maximum penalty: 200 penalty units.

28
Proposed new clause 466 (6) and (7)
Page 335, line 8—

insert

- (6) However, the MAI commission must not publish information relating to a lawyer or stated service provider if publication of the information would disclose information that relates to the practices of the lawyer or service provider (*confidential information*).
- (7) Confidential information about the practices of a lawyer or stated service provider, including the practices of a partnership that includes a lawyer or stated service provider, is taken to be protected information for section 473 (Offences—use or divulge protected information).

29
Schedule 2, part 2.2
Amendment 2.13
Proposed new section 51 (3A) (aa)
Page 364, line 20—

insert

- (aa) if the claimant receives a notice under the *Motor Accident Injuries Act 2019*, section 141 (3B) (WPI assessment 4 years 6 months after motor accident)—the date that is 26 weeks after the date of the notice;

30
Schedule 2, part 2.6
Amendment 2.69
Proposed new section 16AA, note
Page 380, line 20—

omit the note, substitute

Note 1 Under the *Motor Accident Injuries Act 2019*, s 163A, a person who has had a WPI assessment has 3 months from the latest of the following dates to make a motor accident claim:

- (a) if the person receives a notice under that Act, s 141 (3B)—the date that is 26 weeks after the date of the notice;
- (b) if the person receives a notice under that Act, s 155 (2) or s 166 (2)—the due date for the notice.

Note 2 Under the *Motor Accident Injuries Act 2019*, s 217, a person who receives a notice under that Act, s 210 (4) has 3 months from the date of the notice to make a motor accident claim.

2019

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**MOTOR ACCIDENT INJURIES BILL 2019
SUPPLEMENTARY EXPLANTORY STATEMENT**

**Presented by
Andrew Barr MLA
Treasurer**

Background

This supplementary explanatory statement accompanies amendments to be moved by the Treasurer to the Motor Accident Injuries Bill 2019 (the Bill). The amendments address a number of minor and technical issues that have arisen through stakeholder consultation.

The amendments will give greater certainty to injured people about how the new Motor Accident Injuries scheme (MAI scheme) will operate, increase penalties for insurers that contravene licence conditions, and will also ensure that confidential information given by lawyers and other service providers to the MAI Commission is taken to be protected information.

Amendment 1: Clause 50 (3), proposed new note

The amendment inserts a note below clause 50 (3) of the Bill that clarifies that an injured person that has made a successful application for workers' compensation does not need to make an election at 13 weeks to remain in their workers' compensation scheme. This reflects the reality that a workers compensation application occurs close in time to the accident as an employer is obligated to report a workplace accident.

Amendment 2: Clause 71 (2)

Clause 71 of the Bill enables an insurer to refuse to accept liability for an application for defined benefits or reimburse or pay for treatment and care expenses if the insurer suspects the information or request is false and misleading.

The amendment to clause 71 (2) will clarify that an insurer can refuse to accept an application or pay expenses only if the insurer reasonably suspects information in an application or request was false or misleading.

Amendment 3: Clause 73 (1), proposed new note

The amendment inserts a note below clause 73 (1) of the Bill that clarifies that a person that has right to make a claim under the workers' compensation scheme and the MAI scheme does not need to make a defined benefits application under the MAI scheme.

Amendment 4: Clause 73 (4), proposed new note

The amendment inserts a note below clause 73 (4) of the Bill that clarifies that an injured person that has made a successful application for workers' compensation and does not withdraw that application within 13 weeks of a motor accident, is not required to give a notice to an insurer under clause 73 (4) of the Bill.

Amendment 5: Proposed new clause 105 (5)

Clause 105 of the Bill allows an insurer to suspend defined benefits payments if an insurer determines a person failed to comply with a reasonable request to undergo a medical or other examination to assess their fitness for work.

The amendment inserts new clause 105 (5) in the Bill so the MAI guidelines can make provision about the circumstances an insurer may request an assessment of a person's fitness for work and for the conduct of an assessment of a person's fitness for work. This is consistent with clause 121 of the Bill that provides for guidelines for assessments of treatment and care needs.

Amendment 6: Clause 110 (1) definition of treatment and care, paragraph (a)(i)

The amendment clarifies that mental health treatment is medical treatment for the purposes of the definition of treatment and care.

Amendment 7: Clause 121 (4)

The amendment relocates provisions about the suspension of treatment and care and income replacement payments for an injured person that fails to attend an assessment of their treatment and care needs from the MAI guidelines to clauses 121 (4) and (5) the MAI Bill. This will provide transparency about safeguards available to an injured person if an insurer makes a decision to suspend their benefits and will also be consistent with clause 105 of the Bill.

Amendment 8: Clause 141(3)(b)

This clause previously stated that a person's estimated WPI is taken to be the person's WPI if their injuries have not stabilised at the 4 year and 6 month mark. Amendment 9 below now gives an injured person a choice in relation to their estimated WPI when their injuries have not stabilised at the 4 year and 6 month mark.

Amendment 8 substitutes clause 141(3)(b) to now state that for a person who is not mentioned in subsection (3A), i.e. a person who does not meet the threshold of at least 5 per cent and can make a motor accident claim, the injured person's estimated WPI is taken to be the person's WPI.

Amendment 9: Proposed new clause 141(3A) to (3E)

The amendment introduces a choice for an injured person whose injuries have not stabilised at 4 years and 6 months and have a WPI assessment resulting in an estimated WPI. The injured person can either agree to use their estimated WPI, and that estimate is taken to be their WPI, or the injured person can lodge a common law claim and stay proceedings on the basis that their WPI has not stabilised.

Clauses (3B) and (3C) will only apply if the injured person's estimated WPI is at least 5 per cent and the injured person is entitled to make a motor accident claim in relation to the motor accident.

The relevant insurer for the motor accident must, within 14 days after receiving the WPI report about the injured person, give the injured person a written notice including a copy of the report and telling the person that the person must, within 26 weeks after receiving the notice, accept the estimated WPI as the person's WPI or make a motor accident claim and apply to stay a proceeding on the claim until the person's injuries have stabilised.

The insurer must tell the person if the person decides to commence a motor accident claim (being eligible, ie. not at fault) and the application to stay proceedings is successful, the person must notify the relevant insurer when their injuries have stabilised and that the relevant insurer will refer the person to an authorised Independent Medical Examiner (IME) for a second WPI assessment. The insurer is required to tell the injured person they will be liable for the costs of the second WPI assessment and if the WPI report from the second WPI assessment assesses the person's WPI as less than 10 per cent, the person is not able to proceed with the motor accident claim and is liable for their own costs in relation to the claim. The injured person must make their decision within 26 weeks after the date the person is notified of the person's estimated WPI. If the injured person's estimated WPI is taken to be the person's WPI division 2.6.3 and chapter 3 apply to the person.

Where the injured person does not notify the insurer within 26 weeks, the injured person is taken to have accepted the estimated WPI as the person's WPI.

The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice within 26 weeks.

Amendment 10: Proposed new clause 141A

The amendment will apply where an injured person makes a motor accident claim in relation to the motor accident and applies to stay a proceeding on the claim until the person's injuries have stabilised.

The injured person must tell the relevant insurer for the motor accident in writing that the person's injuries have stabilised. The relevant insurer must refer the injured person to an authorised IME provider for a second WPI assessment. The IME provider must give the WPI report about the assessment to the relevant insurer.

Where the WPI report assesses the injured person's WPI as 10 per cent or more, the injured person is entitled to proceed with the motor accident claim.

If the WPI report assesses the injured person's WPI as less than 10 per cent, the relevant insurer must, within 14 days after receiving the report, give the injured person a written notice stating that the person is not entitled to proceed with the motor accident claim, and is liable for their own costs in relation to the motor accident claim, and is not entitled to a further WPI assessment and is not entitled to an SOI assessment.

A further WPI assessment is not permitted, nor is a dispute able to be made, because the period of defined benefits will have ended or is close to ending. It is appropriate to provide for finality with respect to an offer for the defined quality of life benefits.

The insurer must offer the injured person the amount of quality of life benefits payable for their WPI under division 2.6.4 and tell the person that the person must, within 28 days after receiving the notice, notify the insurer in writing whether they accept the offer. If the injured person does not notify the relevant insurer within 28 days, the person is taken to have accepted the offer. The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer within 28 days.

If the injured person accepts (or is taken to accept) the offer, the person's application for quality of life benefits is taken to have been finally dealt with and the relevant insurer must pay to the person the amount of quality of life benefits payable for their WPI under division 2.6.4.

Amendment 11: Proposed new clause 146(1)(e)

This amendment inserts clause 141A for how a WPI assessment is to be arranged where an injured person is referred to an authorised IME provider for a WPI assessment for an injuries stabilised assessment.

Amendment 12 and 13: Proposed new clause 149(4A) and clause 149(5)

This amendment clarifies that a WPI assessment of a physical injury may include an assessment of a psychological injury that results from the physical injury. The amendment also includes an example of a psychological injury that results from the physical injury – depression and anxiety as a result of ongoing pain from the physical injury.

The above amendment clarifies the position and thus the second example has been omitted.

Amendments 14 - 16: Proposed new clause 152(2A), 153(2A), 154(3A)

An offer of an amount of quality of life benefits will be taken to be accepted under clauses 152, 153 and 154 of the bill, if an injured person does not notify an insurer whether they accept or disagree with a WPI report and give the insurer a second WPI report, within 26 weeks.

These amendments will require that the relevant insurer to take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the 2nd WPI report as stated in the notice within 26 weeks. The amendments also include examples of what reasonable steps taken by the insurer may be.

Amendments 17 to 20: Proposed new clause 155 (4A), 160(2A), 161(3A), 162 (4A)

A WPI offer under clause 155 of the bill will be taken to be accepted if an injured person does not notify an insurer by a due date that they accept the offer, or have given the insurer a second WPI report. The amendments will require a relevant insurer to take all reasonable steps to notify the injured person about an upcoming due date and consequences of failing to notify the insurer by the due date.

Clauses 160(2A) and 161(3A) insert a requirement the relevant insurer to take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer within 28 days.

A WPI offer under clause 162 of the Bill will be taken to be accepted if the injured person does not notify an insurer by a due date whether they accept the offer or whether they have applied to ACAT for review of the WPI offer decision. The amendment to clause 162(4A) inserts a requirement the relevant insurer to take all reasonable steps to notify the injured person about the due date and consequences of failing to notify the insurer.

All the amendments include examples of what may constitute reasonable steps by the insurer.

Amendment 21: Proposed new clause 163A

This amendment provides for the effect certain WPI assessments have on motor accident claims and the *Limitation Act 1985*. Despite the *Limitation Act* section 16AA, a person injured in a motor accident who has had a certain WPI assessment has 3 months from whichever of the following dates:

- If the injured person receives a notice under clause 141(3B) – the date that is 26 weeks after the date of the notice;
- If the injured person receives a notice under clause 155(2) or clause 162(2) – the due date of the notice.

This is to ensure an individual is not statute barred from proceeding with a common law claim for the motor vehicle accident.

Amendment 22: Proposed clause 188 (2A)

The amendment will clarify that if an internally reviewable decision is not affirmed by an insurer then a substituted or amended decision will apply from the date of the original reviewable decision. The amendment will ensure an injured person is not disadvantaged where the timing of a decision may affect the injured person's eligibility for a common law claim or a medical treatment payment.

Amendment 23: Proposed clause 196 (2) (b)

The amendment will clarify that if an externally reviewable decision is not affirmed by ACAT then a substituted or amended decision will apply from the date of the original reviewable decision, unless ACAT otherwise orders. The amendment will ensure an injured person is not disadvantaged where the timing of a decision may affect the injured person's eligibility for a common law claim or a medical treatment payment.

Amendment 24: Proposed new clause 206 (3)

The amendment will clarify that an insurer is to pay for the cost of a Significant Occupational Impact assessment, unless otherwise provided by Chapter 3 of the MAI Bill.

Amendment 25: Clause 255(1)

Before a claimant for a motor accident claim brings a court proceeding based on the claim, the parties to the claim must have a conference. This amendment clarifies that where a claimant brings a proceeding based on the claim and applies to stay proceedings based on clause 141(3B), the parties to the claim must have a compulsory conference before the proceeding can commence. This is in recognition that the estimate will mean the proceeding needs to be stayed but in order to commence proceedings there is a requirement to hold the compulsory conference. This requirement is suspended until the stabilised WPI assessment is received by the parties.

The amendment also inserts a note reflecting the *Civil Law (Wrongs) Act 2002*, section 79 (need for urgent proceeding) may apply to a claimant in relation to a motor accident claim.

Amendment 26 and 27: Clause 376 (1) maximum penalty and clause 378 maximum penalty

The amendments to clause 376 (1) and clause 398 will increase the maximum penalty for an offence committed by insurers for contravening a condition of an MAI insurer licence from 100 to 200 penalty units.

Increasing maximum penalties is intended to reinforce compliance with statutory licence conditions under the MAI scheme, particularly conditions that apply to an insurer's conduct and practices in handling applications and claims for injured people. A penalty unit for a corporation is currently \$810.

Amendment 28: Proposed new clause 466 (6) and (7)

The amendment to clause 466 (6) will prohibit the MAI Commission from publishing statistical data based on information the MAI Commission receives from a lawyer or other stated service provider if the publication of that information would disclose confidential information about the practices of the lawyer or service provider. Under clause 466 (7) confidential information about the practices of a lawyer or stated service provider, including the practices of a partnership, will be taken to be protected information for the purposes of the offence in section 473 of the MAI Act.

Amendment 29: Schedule 2, part 2.2, Amendment 2.13, Proposed new section 51 (3A) (aa)

This part deals with consequential amendments made to the *Civil Law (Wrongs) Act 2002*. This amendment inserts in the clause that for a proceeding based on a motor accident claim, the notice must be given within 3 months after the date that is 26 weeks after the date of the notice where a

claimant receives a notice under section 141(3B) (WPI assessment 4 years and 6 months after motor accident) of the *Motor Accident Injuries Act 2019*.

Amendment 30: Schedule 2, part 2.6, Amendment 2.69, Proposed new section 16AA, note

This amendment inserts an additional note into the *Limitation Act 1985*, section 16AA to reflect clause 163 in the *Motor Accident Injuries Act 2019*. Under clause 163A, a person who has had a WPI assessment has 3 months from the latest of the following dates to make a motor accident claim:

- if the person receives a notice under that Act, s 141 (3B)—the date that is 26 weeks after the date of the notice;
- if the person receives a notice under that Act, s 155 (2) or s 166 (2)—the due date for the notice.



Andrew Barr MLA

Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Mrs Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

By email: scrutiny@parliament.act.gov.au

Dear Chair

In accordance with Standing Order 182A, please see attached Government amendments to the Motor Accident Injuries Bill 2019 proposed to be moved during the May sitting week. Also attached is the accompanying supplementary explanatory statement.

The Government Amendments will give greater certainty to injured people about how the new Motor Accident Injuries scheme (MAI scheme) will operate, increase penalties for insurers that contravene licence conditions, and will also ensure any confidential information given by lawyers and other service providers to the MAI Commission is taken to be protected information.

I thank the Committee for their consideration of these amendments.

Yours sincerely

Andrew Barr MLA

Treasurer

ACT Legislative Assembly

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actchiefminister



Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

ARRANGEMENTS BRIEF

FUNCTION:	Meeting with IAG (NRMA) to discuss the Motor Accident Injuries Scheme implementation
VENUE:	Tower Two, Darling Park, 201 Sussex Street, Sydney NSW 2000
HOST:	Name: Christopher Rath Mobile: 0411 011 879
DAY:	Friday
DATE:	21 June 2019
TIME:	11:30am – 12:00pm
TIME COMMITMENT:	30 minutes
CATERING:	Nil
DRESS CODE:	Business
YOUR ROLE:	Discussion with IAG
WHERE TO PARK:	N/a
WHO WILL MEET YOU:	Christopher Rath
ADVISOR ATTENDING:	Dr Jen Rayner, Matt Mison
AUDIENCE:	Christopher Rath, Government Relations Manager Meghan Isley, Senior Manager, Scheme Design & Regulatory Policy Ian Edgell, Executive Manager Consumer Products
VIPs:	N/a
PAST INVOLVEMENT:	N/a
SENSITIVITIES:	N/a

ACT Legislative Assembly

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actchiefminister

Andrew Barr MLA - Arrangements brief

ORDER OF CEREMONIES	N/a
MEDIA:	N/a
SOCIAL MEDIA ACCOUNTS	N/a
OUTSTANDING REGULATORY ISSUES	N/a

Andrew Barr MLA - Arrangements brief


INFORMATION FOR THE MEETING WITH IAG TO DISCUSS THE MOTOR ACCIDENT INJURIES SCHEME IMPLEMENTATION

11.30AM, FRIDAY, 21 JUNE 2019

TOWER TWO, DARLING PARK, 201 SUSSEX STREET, SYDNEY

1. The *Motor Accident Injuries Bill 2019* passed the Legislative Assembly on 16 May 2019. During the debate of the Bill, you publicly stated that the new scheme was expected to commence 1 February 2020.
 - a. The expected start date took into consideration the 9 month implementation timeframe that IAG had previously advised your Office.
 - b. A start date of 1 February 2020 would provide an 8.5 month implementation period. This is in line with the 8 month implementation period that occurred for the new NSW hybrid scheme (between the legislation passing and the new scheme commencing).
 - c. In accordance with the legislation, the actual commencement date for the new scheme will be fixed by yourself by written notice.
2. Senior officials from the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) met with insurers on 23 May 2019 to discuss the implementation of the new scheme, including the commencement date. Your public statement on the expected start date was conveyed to the insurers.

2.2(a)(xi)



5. The work that insurers need to undertake includes:
 - a. ICT system changes to both provide the technical claims handling and management support to their teams, as well as the provision of information monthly to the MAI Commission. The ICT development includes multiple phases including system building and testing;
 - b. Submitting new business plans to the MAI Commission;

Andrew Barr MLA - Arrangements brief

- c. Submitting premium filings to the MAI Commission;
 - d. Process / procedure development for claims staff;
 - e. Training of claims staff.
6. There are a number of CMTEDD implementation tasks that impact the insurer ICT system build such as the finalisation of the guidelines, regulations and application forms. However, the insurers already have considerable information:
 - a. The MAI Act is quite detailed, particularly compared to the NSW legislation;
 - b. Drafts of the key guidelines and regulation were made publicly available prior to the commencement of the debate of the Bill;
 - c. Draft documentation of the MAI Commission's data collection requirements was first provided 4 May 2019, with an update provided 13 June 2019 (while the requirements in the updated draft documentation are not complete we consider it to be over 90 per cent complete).
7. CMTEDD understands that the insurers would prefer to undertake all implementation for the new scheme as a single project prior to the scheme commencing, rather than having to undertake phased multiple ICT projects as was required for the NSW scheme. This means that the insurers are seeking to implement all aspects of the new scheme, prior to its commencement, including those aspects that will not arise for many years such as the significant occupation impact assessment that cannot occur until four years and six months after a person is injured in an accident.
8. To CMTEDD's knowledge, IAG has not yet stood up a project team to undertake the implementation.
 - a. Suncorp put in place an implementation project team some months ago.

Chief Minister, Treasury and Economic
Development Directorate

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To:	Treasurer	Tracking No.: CMTEDD2019/3328
Date:	26 June 2019	
From:	Executive Branch Manager, Financial Framework Management and Insurance	
Subject:	<i>Motor Accident Injuries Act 2019, Minor Amendments</i>	
Critical Date:	2 July 2019	
Critical Reason:	To enable the amendments to be included in the Statute Law Amendment Bill 2019	

Recommendations

That you agree to minor amendments to *Motor Accident Injuries Act 2019* for inclusion in the Statute Law Amendment Bill 2019 to:

1. amend the definition of gross income so it does not include any contributions paid by an employer on behalf of an injured person to a superannuation scheme;

Agreed / Not Agreed / Please Discuss

2. include a superannuation component for low income workers, based on superannuation guarantee eligibility and the superannuation guarantee charge percentage, in the formulas for working out the amount of income replacement benefits for those workers; and

Agreed / Not Agreed / Please Discuss

3. require a private medical examiner undertaking a permanent impairment assessment of an injured person to have both qualifications and experience relevant to a person's injuries.

Agreed / Not Agreed / Please Discuss

Andrew Barr MLA  3/7/19

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Minister's Office Feedback

Background

1. The Motor Accident Injuries Bill 2019 was passed by the Legislative Assembly on the 16 May 2019, with amendments agreed during debate. The new Act (MAI Act) establishes a new motor accident injuries scheme that supports all people injured in a motor vehicle accident in the ACT. You have foreshadowed that the new MAI scheme will commence on 1 February 2020.

Issues

Superannuation for low income earners

2. During the debate of the Bill, the Government gave in principle support to amendments moved by Ms Le Couteur, MLA, to include superannuation in the definition of "gross income" for low-income workers with pre-injury weekly income of less than \$800 so these workers would be paid income replacement covering both lost wages and lost superannuation. The Government noted in the debate that there were technical issues with Ms Le Couteur's amendments.
3. We have identified the following technical issues with Ms Le Couteur's amendments that are now incorporated in section 76 of the MAI Act:
 - a. gross income from employment must be first calculated to determine an injured person's pre-injury income. The amendments made to the meaning of gross income in section 76 are circular, as they include pre-injury income in the definition of gross income, and would require additional calculation rules to work;
 - b. pre-injury income from employment is based on the gross income an injured person was paid in the 52 weeks prior to an accident - working out the actual amounts paid or payable by an employer to a superannuation fund during this this period will not be straightforward for some injured people; and
 - c. the amendments also refer to pre-injury income being AWE adjusted. An AWE adjustment to pre-injury income is only made on the first adjustment day after pre-injury income is determined, not when first calculating pre-injury income.
4. We previously advised you that an insurer cannot step into the shoes of an employer to make compulsory superannuation contributions – this would require changes to Commonwealth legislation.
 - a. Superannuation contribution rules do not recognise "insurer contributions".
 - b. Unlike an employer, an insurer cannot open a default superannuation account on behalf of injured people or pay pre-tax amounts into superannuation on behalf of an injured person.

5. To address these issues, we are proposing that amendments be made to the formulas in sections 96 and 97 of the MAI Act for calculating income replacement benefits, so they include a superannuation related component for low income earners. We are proposing this component be based on the superannuation guarantee percentage and be available to workers with pre-injury weekly income of at least \$100 but less than \$800.
 - a. The proposed minimum weekly income threshold broadly aligns with the eligibility threshold for the superannuation guarantee being earnings of at least \$450 from a given employer in a calendar month.
6. Currently, the formulas in the MAI Act provide for 100 per cent income replacement for workers with pre-injury weekly income of less than \$800, so adding the current superannuation guarantee percentage will pay income replacement of up to 109.5 per cent to these workers (prior to income tax). In the absence of commonwealth legislation, this additional amount of income replacement will be paid to the injured person who may be able to make a voluntary contribution to their superannuation fund.
7. Attachment A sets out further details of the proposed amendments to the income replacement formulas.
8. Ms Le Couteur's amendments to section 76 of the Bill will also need to be reversed, so it is clear that "gross income" does not include any contribution paid or payable on behalf of an injured person by the person's employer to a superannuation scheme for the benefit of the person.

Definition of a private medical examiner

9. The MAI scheme allows an injured person who receives a Whole Person Impairment (WPI) assessment from an independent medical examiner to obtain a second assessment from a private medical examiner. Section 37 of the MAI Act defines a private medical examiner for the purposes of Chapter 2 of the MAI Act as a doctor who meets the requirements of the WPI assessment guidelines to conduct WPI assessments and has qualifications or experience relevant to the nature of the injured person's injuries. Section 145 of the MAI also includes the same definition for the purposes of Division 2.6.3 of the MAI Act.
10. The definitions of a private medical examiner are inconsistent with the template Safe Work Australia guidelines proposed to be adopted as the WPI assessment guidelines of the MAI scheme. These guidelines specifically require an assessor to be a medical practitioner with qualifications, training and experience relevant to the body system being assessed who has undertaken requisite training in the use of the guidelines.

11. To address this inconsistency, we recommend sections 37 and 145 be amended so a private medical examiner will require both qualifications and experience relevant to the nature of a person's injuries.

Other technical amendments identified by Parliamentary Counsel's Office

12. The Parliamentary Counsel's Office (PCO) have also advised that their editors have identified some minor technical corrections required to the Act as a result of compiling the amendments and the Bill in order to publish the MAI Act.
- a. None of the corrections change the substance of the legislation and PCO has the authority to include these corrections in the Statute Law Amendment Bill.

Financial Implications

13. N/A

Consultation

Internal

14. N/A

Cross Directorate

15. PCO has agreed that the proposed amendments are suitable for inclusion in the Statute Law Amendment Bill 2019. The proposed solution to address the superannuation technical issues has also been discussed with PCO.

External

16. N/A

Work Health and Safety

17. N/A

Benefits/Sensitivities

18. The proposed superannuation amendments are more transparent and simpler for insurers to administer than Ms Le Couteur's amendments and will minimise the burden of injured people providing detailed information to insurers about their superannuation.

Communications, media and engagement implications

19. N/A

Signatory Name: Lisa Holmes Phone: 70207
Action Officer: Erica Lejins Phone: 55496

Attachments

Attachment	Title
Attachment A	Proposed amendments to income replacement formulas

PROPOSED AMENDMENTS TO INCOME REPLACEMENT FORMULAS TO INCLUDE A SUPERANNUATION COMPONENT.

Section 96 and 97 of the MAI Act contain formulas for working out an injured person's entitlement to income replacement benefits for a given week.

The formula is:

$$(P - A) \times N$$

Where "P" is an injured person's pre-injury income AWE adjusted, "A" is an injured person's post injury earning capacity, and "N" is the income replacement factor.

Currently in both sections 96 and 97 of the MAI Act, "N" is 1, if an injured person's pre-injury income AWE adjusted is less than \$800 AWE adjusted. This provides full income replacement to low income earners.

The formulas in sections 96 and 97 of the MAI Act will be amended in the circumstances where an injured person's pre-injury income AWE adjusted is more than \$100 AWE adjusted but less than \$800 AWE adjusted so;

N is, $1 + (SG \div 100)$, and

SG is, the Superannuation Guarantee Charge Number for a given year as set out in Subsection 19(2) of the *Superannuation Guarantee (Administration) Act 1992* (CMW). However, if no superannuation for an injured person was paid or payable by an employer during the 52 weeks prior to the motor accident, then SG should be zero.

The $(SG \div 100)$ in the proposed formula converts the superannuation guarantee percentage to a decimal.

By way of example:

Kristin was injured in a motor accident on 1 March 2021. Due to her injuries she was unable to return to her part-time job as a Teacher's Assistant for 8 weeks after the accident and did not perform any other paid work during this period.

She provides a letter from her employer stating her part-time salary was \$36,500 per annum at the time of the accident, and that Kristin had been a part-time employee for 18 months prior to the accident. From this information the insurer calculates Kristin's gross income for the 52 weeks prior to the accident as \$36,400, being $\$36,500 \left(\frac{364}{365}\right)$, and her pre-injury income as \$700 per week.

Kristin also provides her insurer with a copy of the last payslip she received before the accident that shows employer contributions were payable to her chosen superannuation fund for the period. The Superannuation Guarantee Charge Number for the 2020-21 year is 9.5.

Kristin's income replacement factor is therefore worked out as follows:

$$N = 1 + (9.5 \div 100)$$

$$= 1 + .095$$

$$= 1.095$$

Kristin's weekly income replacement payment is therefore calculated at:

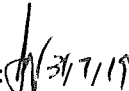
$$\$700 \times 1.095 = \$766.50.$$

This weekly amount, after the deduction of any Pay As You Go tax instalment amounts, will be paid by an insurer directly to Kristin on a fortnightly basis.

Chief Minister, Treasury and Economic
Development Directorate

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To:	Treasurer	Tracking No.: CMTEDD2019/3820
Date:	25 July 2019	
CC:	Attorney-General	
From:	Executive Branch Manager, Financial Framework Management and Insurance	
Subject:	Commencement of <i>Motor Accident Injuries Act 2019</i>	
Critical Date:	8 August 2019	
Critical Reason:	To provide certainty about the start date for the new Motor Accident Injuries Scheme	

UT:  25/7/19
EGM: 25/7/19

Recommendations

That you:

1. Agree to commence the *Motor Accident Injuries Act 2019* on 1 February 2020.

Agreed / Not Agreed / Please Discuss

2. Sign and date the attached Motor Accident Injuries Commencement Notice.

Signed / Not Signed / Please Discuss

Andrew Barr MLA  1 / 8 / 19

Minister's Office Feedback

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Background

1. The *Motor Accident Injuries Bill 2019* (the Bill) was passed by the Legislative Assembly on the 16 May 2019 and was notified on 31 May 2019. During the debate of the Bill you foreshadowed that the new Motor Accident Injuries (MAI) scheme would commence on 1 February 2020.
 - a. This provides an implementation period in line with the 8 month period provided in NSW.
2. Section 2 of the *Motor Accident Injuries Act 2019* (MAI Act) provides that the Act will commence on a day fixed by the Minister by written notice. If no written notice is given the new Act will automatically commence on 1 June 2020, being the day after the end of a 12 month delayed commencement period.
3. You met with licensed insurer, IAG, on 21 June 2019 to discuss the implementation of the new scheme. Our brief for the meeting (CMTEDD2019/2899) outlined the risks identified by IAG associated with a start date of 1 February 2020, IAG's preference for a start date of 1 April 2020, and their acknowledgement that a later start date may not be possible. We understand that at the meeting IAG confirmed they could meet a 1 February 2020 start date if necessary.
4. The second licensed insurer in the ACT, Suncorp has not indicated an issue with a 1 February 2020 start date.

Issues

5. Insurers will need to undertake a range of implementation tasks to be ready for the start of the new MAI scheme. These include:
 - a. An ICT system build and testing to support claims handling and information provisions under the new MAI scheme;
 - b. Submitting new business plans to the MAI Commission;
 - c. Submitting premium filings to the MAI Commission;
 - d. Developing processes and procedures for claims handling; and
 - e. Training claims staff.

Insurers have already been given considerable information, such as draft guidelines and explanatory material.

6. The risk of an insurer not being ready for a 1 February start date can be mitigated through forward planning by the insurer, including by increasing project resources or staging aspects of their system build that are not time critical. There are elements of the new scheme that will not arise immediately, such as the significant occupational impact assessment that cannot occur until 4 years and six months after an accident, and hence do not need to be implemented by insurers immediately.

7. A number of actions will also be required to be undertaken by the CMTEDD implementation team prior to the start date:
 - a. Developing the scheme's regulations, guidelines, administrative arrangements and service provider arrangements (including procurement for information services and Independent Medical Examiner (IME) provider) and undertaking consultation as required;
 - b. Appointing the MAI Commissioner and establishing the MAI Commission, including staffing;
 - c. Determining the MAI levy for the start of the scheme. This is estimated to be \$16 per registration per annum;
 - d. Approving premiums proposed by insurers for the new scheme, based on advice of the scheme's independent actuary;
 - e. Obtaining specialist advice, in particular medical and allied health expertise, as required;
 - f. Working with the ACT Civil and Administrative Tribunal to develop the new external review mechanism for defined benefits disputes, including application processes, fees and procedures; and
 - g. Completing the development of the MAI Commission's claims database and reports.

A number of these activities feed into the implementation tasks required to be undertaken by insurers.

8. The MAI regulations and various legislative instruments will need to be put in place prior to the commencement of the MAI Act, using powers under section 81 of the *Legislation Act 2001*. These will include instruments to appoint the MAI Commissioner, to set the MAI levy and to make key MAI guidelines under the MAI Act. The early making of regulations and instruments will provide certainty to insurers about the regulatory requirements of the new scheme. We will further brief you about making regulations and instruments in the coming months.
9. The powers under section 81 of the Legislation Act will also be relied upon so the MAI Commission can exercise various functions under the MAI Act for the purposes of bringing the new MAI scheme into operation prior to the commencement of the MAI Act.
 - a. The Parliamentary Counsel's Office has advised that subsection 81(5) of the Legislation Act will authorise the Commission to request and action premiums filings from insurers and also require insurers and the nominal defendant to enter into a new insurance industry deed with the Territory, ahead of the commencement of the MAI Act.
10. The CMTEDD implementation team is well progressed with many key tasks such as developing guidelines and application forms for consultation, and the new Commission claims data base.

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- a. This includes having issued draft technical documentation to insurers' ICT teams on the Commission's data collection requirements.
11. We consider that there are minimal risks of the Commission not being ready for a 1 February 2020 start date for the scheme. There are, however, some risks arising from the tight consultation timeframes involved, necessitating targeted consultations to relevant stakeholders; need for procurement activities to be completed in a timely fashion; and the release of a discussion paper on legal costs that is expected to generate considerable comment. A delay in establishing the legal costs regime will not impact on commencement.
12. The current licensed insurers have noted that any delay in CMTEDD's finalisation of the regulations, guidelines and forms, would impact on their having enough time to complete building and testing their systems before 1 February. It is noted that insurers have control of the implementation tasks outlined in paragraph 5 above.
13. We recommend that you fix the start date for the scheme through a commencement instrument as soon as possible. This will provide certainty for insurers of the start date and will allow them to plan how they will meet a 1 February start date. Delaying notification could increase the risk of insurers not actively working to meet the expected start date.
14. Notification of the start date is also needed so the MAI Commission can undertake actions necessary for the implementation of the scheme, such as premium approvals, and setting the MAI Commission levy that rely on a known start date.

Financial Implications

15. NA

Consultation

Internal

16. NA

Cross Directorate

17. NA

External

18. Senior officials from CMTEDD met with insurers on 23 May 2019 to discuss the implementation of the new scheme, including the start date. Your public statement on the expected start date was conveyed to insurers. You met with IAG to discuss their concerns about risks of an early start date for the scheme, on 21 June 2019. At this meeting IAG confirmed they could meet the foreshadowed start date, if necessary.

Work Health and Safety

19. N/A

Benefits/Sensitivities

20. Fixing a start date in a timely manner will provide certainty to all parties involved in the implementation of the MAI scheme. There is a risk that if insurers are not ready for the

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start date and might need to be deferred. This would create confusion for ACT motorists given a communication plan will have started advising of the new scheme and its commencement.

Communications, media and engagement implications

21. N/A

Signatory Name: Lisa Holmes

Phone: 70207

Action Officer: Erica Lejins

Phone: 55496

Attachments

Attachment	Title
Attachment A	Motor Accident Injuries Commencement Notice

Australian Capital Territory

Motor Accident Injuries Commencement Notice 2019

Commencement notice CN2019–

made under the

Motor Accident Injuries Act 2019, s 2 (Commencement)

The *Motor Accident Injuries Act 2019* commences on 1 February 2020.



Andrew Barr
Treasurer

01 AUG 2019

Chief Minister, Treasury and Economic
Development Directorate

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To:	Treasurer	Tracking No.: CMTEDD2019/4989
Date:	27 September 2019	
CC:	Attorney-General	
From:	Executive Branch Manager, Financial Framework Management and Insurance	
Subject:	Alternate approach to regulating legal fees for the Motor Accident Injuries Scheme	
Critical Date:	27 September 2019	
Critical Reason:	Legal costs impact the premiums of the scheme and the premium setting process for the new scheme is underway.	

- UT .../.../...
- EGM EFG .../.../...

Recommendations

That you:

1. Note the financial impacts on premiums contained in this brief;

Noted / Please Discuss

2. Indicate whether you wish to monitor rather than regulate the level of legal fees for the MAI Scheme on commencement of the scheme.

Agreed / Not Agreed / Please Discuss

3. If you wish to monitor the level of legal fees for the MAI Scheme on the commencement of the scheme, indicate whether you agree to the various elements of the monitoring package;
 - a. Regulating that where legal fees and costs are payable by insurers, payment can only occur where insurers have been provided a complete breakdown of the legal costs;

Agreed / Not Agreed / Please Discuss

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- b. Regulating the maximum amount of legal fees and costs able to be awarded as costs in an ACAT dispute;

Agreed / Not Agreed / Please Discuss

- c. The MAI Commission collecting legal fees and cost information from the legal profession with regard to common law claims and ACAT disputes. The collection will include solicitor-client fees and party-party-fees;

Agreed / Not Agreed / Please Discuss

- d. The MAI Commission monitoring and potentially publishing information about the legal fees and costs being charged (on a scheme basis); and

Agreed / Not Agreed / Please Discuss

- e. If the MAI Commission's analysis indicates concern with the legal costs for the scheme then consideration will be given to the ICRC undertaking benchmarking.

Agreed / Not Agreed / Please Discuss

Andrew Barr MLA *Andrew Barr* 27/9/19

Minister's Office Feedback

Review after first year of operation

Background

1. The Citizens' Jury identified that one of the objects of the MAI scheme should be value for money and an efficient system. To achieve this, the *Motor Accident Injuries Act 2019* (MAI Act) has two legal fees and cost provisions, one for defined benefits and one for common law. The provisions were included to enable the regulation of legal costs in association with the Motor Accident Injury (MAI) Scheme, with consideration to be given to the type of regulation following passage of the legislation.
2. Legal advice is one mechanism available for injured people to receive assistance in navigating processes, including applications, claims and disputes, under the scheme. Information about the scheme will also be provided on the Motor Accident Injuries Commission website and a Defined Benefits Information Service will be established by the Commission.

3. **Out of Scope**



4. Your office today requested a brief proposing an alternative price monitoring approach with regard to the legal costs of the scheme. We have developed an option for your consideration, noting that each element is part of a package. In our view, each element is required to be able to monitor most but not all legal costs associated with the scheme and to create incentives to moderate scheme legal costs.

Issues

5. We propose that the MAI Commission collect information from a number of sources on the legal fees and costs that are paid in relation to the scheme:
 - From the legal profession in accordance with section 469 of the MAI Act (Lawyers etc must give information to the MAI Commission). It is proposed this collection of information will include solicitor-client and party-party fees and costs for defined benefit ACAT disputes and common law claims.
 - From insurers who make legal fees and cost payments. It is proposed that insurers will be required to request a breakdown of the legal fees and costs when presented with a request for payment.
6. This will allow most legal fees and costs to be monitored and de-identified information to then potentially be made publicly available in accordance with section 469. For example, the MAI Commission could publish on its website the reasonable range of fees an injured person can expect to pay. This is particularly important as an injured

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person cannot easily compare the costs that law firms charge. This information is not readily available, with an injured person having to individually contact several firms to ascertain their likely fees. In addition, the costs disclosure process required under the Legal Profession Act 2006 occurs after the initial meeting.

7. The MAI Act allows ACAT to award costs in defined benefit disputes. The award of costs should be equitable in that costs can be awarded against either an insurer or an injured person, noting that the MAI Act provides that ACAT must not award costs against an injured person that makes an application in good faith and has an arguable basis for the application. ACAT may be satisfied that an applicant has an arguable basis for an application if the applicant appears without legal representation.
 - a. The purpose of having costs able to be awarded against an insurer by ACAT is to encourage effective primary decision making by insurers.
 - b. Costs being awarded against an injured person provides a regulatory mechanism to discourage reviews being requested where it is apparent that the review will not find fault with the original merit of a decision by an insurer.
 - c. We will consult with ACAT about the drafting of this regulation. ACAT is traditionally a no-cost jurisdiction so there is no precedent to be followed in devising the regulation. It should be noted, that for an award of costs to occur, the dispute must have progressed through the ACAT process to being heard by an ACAT member (e.g. not resolved during an alternative dispute resolution process).
8. We propose that a regulation be made that prescribes when an order for costs can be made, the maximum amount that can be awarded and what may be considered a disbursement. To facilitate this, legal representatives would be required to disclose all legal fees, costs and disbursements where a costs order is requested to be granted by the ACAT. The regulation would allow for some price signalling with respect to legal fees and costs to the legal profession and insurers as to the amount that is considered reasonable. If a regulation is not made with respect to costs in ACAT, this would have an immediate effect on scheme costs and hence premiums. The regulation will assist with discouraging potential over-servicing and will go some way to moderating the costs of the scheme.
9. The collection of information will help establish a baseline of legal fees and costs. The MAI Commission will monitor the information and if the MAI Commission's analysis indicates that there are inconsistencies occurring between legal firms or between ACAT and the courts, this would support a recommendation for the Independent Competition and Regulatory Commission (ICRC) to be tasked with establishing a benchmark for legal fees and costs. To date, the ICRC has not been tasked with regulating prices in the legal profession. Given this, it would be appropriate to advise the legal profession that if, after a period of monitoring, concerns arise, a referral will be considered to the ICRC.
10. The Defined Benefits Information Service is still to be established by the MAI

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Commission. Consideration is being given to how the service is promoted so that people are aware that legal advice is not required because of the availability of information / advice from the Service.

Financial Implications

11. Legal fees and costs that are paid for by the scheme (insurer legal fees and costs and the party-party costs of an injured person where costs are awarded by ACAT or in relation to common law) impact MAI premiums. The behavioral impacts of the legal fees and costs regime can also impact other costs of the scheme, as well as potentially increasing the number of disputes and hence costs of running the ACAT dispute mechanism.
12. An independent actuary estimated a passenger vehicle premium for the MAI scheme of between \$510 and \$425; an estimated reduction of between \$14 and \$99. This estimate was informed by the NSW legal costs regulation, from both the direct legal costs perspective as well as the behavioural impact.
13. Compared to the independent actuary's estimates, no regulation of legal fees and costs will result in insurers setting higher premiums for the MAI scheme than if there is regulation.
 - a. These increases are in addition to the increases that have resulted from amendments to the scheme during debate, such as the inclusion of superannuation in income replacement payments for low income workers, the ability to request two whole person impairment reports and the inclusion of secondary psychological injuries in a physical whole person impairment assessment.
 - b. In addition to the above increases in scheme costs and hence MAI premiums relative to what was estimated at the time of the MAI Bill's introduction, insurers have reduced their CTP premiums since the estimates were made. Both of these factors will reduce the MAI premium reduction estimated by the independent actuary relevant to current CTP premiums. Based on initial discussions with insurers, a reduction in premium for a mature MAI scheme cannot be guaranteed for all insurers.

Consultation

Cross Directorate

14. Due to the timing of this brief, detailed consultation with the Justice and Community Safety Directorate has not occurred. An officer has been informed of the broad outline of the proposal, and a draft of the brief is to be provided to JACS.

External

15. CMTEDD has been approached by the Bar Association for information on the legal cost regime. If you decide not to regulate the level of legal fees on commencement of the scheme, you may wish to advise the legal profession that no regulation of legal fees is proposed at this time, and that the MAI Commission will monitor legal costs and fees. You could also indicate that if the MAI Commission's analysis indicates concern with

the legal costs for the scheme then consideration will be given to the ICRC undertaking benchmarking of legal costs and fees.

Work Health and Safety

16. Nil impact

Benefits/Sensitivities

17. It is expected any regulation of legal costs will be contentious. Prior to debate of the MAI Act, the legal profession questioned the need to regulate legal fees and costs, observing that the *Legal Profession Act 2006* and the *Court Procedures Rules 2006* already regulated these matters. However, the Legal Profession Act only provides a framework for costs disclosure for legal services and the Court Procedures Rules do not apply to ACAT.
18. Similarly, we expect that monitoring of legal costs will also be contentious but not to the same extent as regulation of the level of fees.

Communications, media and engagement implications

19. A communications plan has been developed and approved for the implementation of the new scheme.

Signatory Name: Lisa Holmes

Phone: 70207

Action Officer: Nicola Clark

Phone: 71189



Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To: Treasurer Tracking No.: CMTEDD2019/5115

Date: 01/10/2019

From: Executive Branch Manager, Financial Framework Management and Insurance

Subject: Motor Accident Levy Determination for the Motor Accident Injuries Scheme

Critical Date: 08/10/2019

Critical Reason: To allow rego.act system changes for registrations to be made and for the disallowable period to be completed prior to registration renewals being mailed with the new MAI levy.

- UT *JA* 3/10/19
- EGM .../.../...

Recommendations

That you:

1. Agree to a motor accident levy for a 12-month MAI policy of:
 - \$16.00 for unrestricted vehicles; and
 - \$4.00 for veteran, vintage and historic vehicles;

~~Agreed~~ / Not Agreed / Please Discuss

2. Sign the Motor Accident Levy Determination with effect from notification of the instrument, to apply to MAI policies with effect from 1 February 2020 (at Attachment A); and

~~Signed~~ / Not Signed / Please Discuss

3. Note the explanatory statement for the Motor Accident Levy Determination (at Attachment B).

~~Noted~~ / Please Discuss

Andrew Barr MLA *Andrew Barr* 18./10/19...

Minister's Office Feedback

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Background

1. The *Motor Accident Injuries Act 2019* establishes the Motor Accident Injuries (MAI) Commission, a Territory authority, as the regulator for the new MAI scheme.
2. Section 490 of the MAI Act specifies that the Minister must determine a levy that the Minister believes on reasonable grounds will fund the MAI Commission's functions, including staffing.
3. The levy will fund the expanded operations of the MAI Commission, including the net costs of the ACT Civil and Administrative Tribunal (ACAT) defined benefit dispute mechanism; a new ICT system and information services to support the new MAI scheme:
 - The MAI Commission is required to have a strong compliance and monitoring function to ensure that private sector insurers are meeting their obligations under the MAI legislation, particularly in relation to the provision of defined benefits.
4. The levy will replace the existing Compulsory Third-Party (CTP) Regulator Levy of \$1 and will apply to MAI policies with effect from 1 February 2020, when the new MAI scheme commences. As with the current process for the CTP Regulator Levy, the levy will be collected by Access Canberra on behalf of the Commission as part of the process for registering a motor vehicle and passed on in full to the Commission.

Issues

5. During the 2019-20 budget process you brought forward a business case to set an MAI Commission levy (the levy) of \$16 per annum once the legislation for the new Scheme passed (CMTEDD2019/2189). Budget Cabinet agreed to this initiative and, with the MAI Bill passing the Legislative Assembly in May 2019, the proposed \$16 levy was reflected in the 2019-20 Budget papers.
6. You are now required to formally determine the Motor Accident Levy by way of a disallowable instrument.
7. In line with the Budget Cabinet decision, the proposed \$16 levy will apply to a full-year MAI policy and will be pro-rated for shorter policy periods (i.e. on a 3, 6 or 12 monthly basis). The levy will be refunded on a proportionate basis (section 491 of the MAI Act) if a MAI policy is cancelled on the cancellation of the registration of the motor vehicle to which the policy relates.
8. Owners of veteran, vintage and historic (VVH) vehicles currently pay substantially less in CTP premiums than other vehicle classes (between \$52.30 and \$61.20) due to the nature of these vehicles and the restrictions that apply to them. If the \$16 levy is applied to these vehicles classes there is likely to be criticism that the levy is too high relative to the MAI premium amounts, and is inequitable given the restrictions on

these vehicles and that a number of owners have multiple VVH vehicles for hobby purposes.

- Strong lobbying was received from these clubs when a Lifetime Care and Support (LTCS) Levy of \$34 was first introduced in 2014. A *concessional* LTCS levy (based on 20 per cent of the *unrestricted* LTCS levy) was subsequently introduced in 2016 to apply to VVH vehicles. The policy rationale was that VVH vehicles were subject to strict distance (travel) restrictions, such as attendance at club events and displays, and were lower risk (hence less likely to be involved in catastrophic personal injuries). The 20 per cent is based on the maximum number of kilometres that these vehicles can travel in a year compared to the average for a passenger vehicle.
9. Applying the same policy principles that underpin the concessional LTCS levy, we propose that a *concessional* levy of \$4.00 per annum also be applied to VVH vehicles. This is likely to be well received by the VVH vehicle community.
10. A Motor Accident Levy determination has been drafted for your signature (Attachment A) and an explanatory statement prepared (Attachment B).

Financial Implications

11. The levy is expected to result in a \$1.8 million increase in the 2019-20 Budget from the 2018-19 estimated outcome, as a result of the expected commencement of the MAI Commission being from 1 February 2020 (a part year impact).
12. The \$16 levy equates to full financial year funding of approximately \$4.9 million for the MAI Commission.
- With approximately 1200 VVH vehicles in the ACT, a levy of \$4.00 (rather than \$16.00) would see a reduction of funding of \$14,440 (0.3 per cent of a full year's funding).

Consultation

Internal

13. N/A

Cross Directorate

14. The Road Transport Authority (Road User Services) has been consulted and advised that the Motor Accident Levy Determination can be reflected in rego.act for 1 February 2020.

External

15. N/A

Work Health and Safety

16. N/A

Benefits/Sensitivities

17. The decision to reduce the levy for vintage vehicles should not be controversial and is not expected to draw adverse public comment.

Communications, media and engagement implications

18. A communication strategy for the new MAI scheme has been developed. We are discussing with Access Canberra changes to the registration renewal notice to separately identify the Motor Accident Levy in the government charges breakdown.

Signatory Name: Lisa Holmes Phone: 70207

Action Officer: Alessandra Gallo Phone: 55343

Attachments

Attachment	Title
Attachment A	Motor Accident Levy Determination
Attachment B	Explanatory Statement to the Motor Accident Levy Determination

Australian Capital Territory

Motor Accident Levy Determination 2019 (No 1)

Disallowable instrument NI2019–

made under the

Motor Accident Injuries Act 2019, section 490 (Determination of motor accident levy)

1 Name of instrument

This instrument is the *Motor Accident Levy Determination 2019 (No 1)*.

2 Commencement

This instrument commences the day after its notification and applies in respect of a motor accident injuries (MAI) policy issued under the *Motor Accident Injury Act 2019*.

3 Determination of levy

- (a) I determine that the motor accident levy shall be \$16.00 to apply to all vehicle classes (except the vehicles identified under clause (b) below).

The levy shall be \$16.00 for a 12 month MAI policy.

The levy shall be \$8.00 for a 6 month MAI policy.

The levy shall be \$4.00 for a 3 month MAI policy.

- (b) I determine the motor accident levy shall be \$4.00 set out under this part to apply to vehicles registered under the ACT's Veteran, Vintage and Historic Registration Scheme.

The levy shall be \$4.00 for a 12 month MAI policy.

The levy shall be \$2.00 for a 6 month MAI policy.

The levy shall be \$1.00 for a 3 month MAI policy.

4 Payment of Levy

The motor accident levy to which this determination applies is payable in respect of each MAI policy for a vehicle (other than a trailer) registered by the Road Transport Authority, or in respect of a trader's plate issued by the Road Transport Authority under the provisions of:

1. the *Road Transport (Vehicle Registration) Regulation 2000*, made under the *Road Transport (Vehicle Registration) Act 1999*; or
2. the *Interstate Road Transport Act 1985* of the Commonwealth.

The motor accident levy, payable to the MAI Commission under the *Motor Accident Injury Act 2019*, is collected by the Road Transport Authority on behalf of the MAI Commission. The levy collected by the Road Transport Authority is required to be remitted to the MAI Commission.

5 Refund of levy

Where a MAI policy is cancelled on the cancellation of the registration of the motor vehicle to which the policy relates, the levy will be refunded on a proportionate basis according to the number of whole months remaining on the MAI policy at the date of cancellation.



Andrew Barr MLA

Treasurer

15 October 2019

Australian Capital Territory

Motor Accident Levy Determination 2019 (No 1)

Disallowable instrument DI2019–

made under the

Motor Accident Injuries Act 2019, section 490 (Determination of motor accident levy)

EXPLANATORY STATEMENT

The *Motor Accident Injuries Act 2019* (MAI Act) establishes a new motor accident injuries (MAI) scheme. The MAI Act also establishes the MAI commission, a Territory authority, as regulator for the new scheme with the commission funded by a levy. The MAI commission replaces the existing Compulsory Third-Party (CTP) Regulator with increased functions.

Section 490 of the MAI Act specifies that the Minister must determine a levy (the motor accident levy) that the Minister believes on reasonable grounds will fully fund the MAI commission's functions, including staffing. The motor accident levy of \$16.00 per annum per MAI policy (except for veteran, vintage and historic registration scheme vehicles that have a \$4.00 levy per annum per MAI policy) is the amount that has been estimated to fully fund the MAI Commission.

The CTP Regulator levy is currently applicable to a CTP policy issued under the *Road Transport (Third-Party Insurance) Act 2008*. With the commencement of the MAI scheme the motor accident levy will replace the CTP Regulator levy. The motor accident levy is payable in relation to a MAI policy issued with effect from 1 February 2020.

The levy applies for a full year policy and is pro-rated for shorter registration periods. As such, this instrument determines the motor accident levy payable on 12 month, 6 month and 3 month MAI policies.

This instrument makes clear that if a MAI policy is cancelled on the cancellation of the registration of the motor vehicle to which the policy relates, the levy will be refunded on a proportionate basis (section 491 of the MAI Act).

Chief Minister, Treasury and Economic Development Directorate

UNCLASSIFIED

To: Treasurer Tracking No.: CMTEDD 2019/5114

Date: 03/10/2019

From: Executive Branch Manager, Financial Framework Management and Insurance

Subject: Motor Accident Injuries (Premiums and Administration) Regulation 2019

Critical Date: 08/10/2019

Critical Reason: To enable licensed insurers to provide premium filings to the MAI Commission by 11 November 2019

- UT/DUT *3/10/19*
- EGM 3/10/19

Recommendations

That you:

1. Agree to the Motor Accident Injuries (Premiums and Administration) Regulation 2019 at Attachment A.

Agreed / Not Agreed / Please Discuss

2. Sign, with another member of the Executive, the Regulation; and

Agreed / Not Agreed / Please Discuss

3. Note the Explanatory Statement at Attachment B.

Noted / Please Discuss

Andrew Barr MLA *Andrew Barr* *8/10/19*

Minister's Office Feedback

UNCLASSIFIED

Background

1. The *Motor Accident Injuries Act 2019* (MAI Act) commences on 1 February 2020. The MAI Act will replace the current Compulsory Third-Party Insurance (CTP) scheme with a new Motor Accident Injuries (MAI) scheme.
2. Under section 492 of the MAI Act, the Executive may make regulations for the Act. The regulation is a disallowable instrument and must be presented to the Legislative Assembly. The regulation is being made before commencement of the MAI Act, which is allowed under section 81 of the *Legislation Act 2001* (the making of a statutory instrument may be done even if the authorising law has not commenced). Section 81 of the Legislation Act also enables the MAI commission to exercise powers even if an authorising law has not commenced including doing anything else under the power to bring the authorising law into operation.

Issues

3. Cabinet appointed an MAI Commissioner ahead of the start date for the scheme to allow the Commissioner to make key instruments such as the MAI guidelines, approve premium filings, and settle the insurance industry deed. Regulations necessary for the operation of the new MAI scheme will also need to be made prior to 1 February 2020.
4. The attached regulation covers elements that are essential for the operation and administration of the MAI scheme, including the indexing and parameters for defined benefit payments, MAI premium setting, the nominal defendant fund and MAI insurer licensing.
 - a. Part 4 of the regulation specifies the MAI premium classes and requires a licensed insurer to have an annual premium approved by the MAI commission for each premium class. This part is identical to the current CTP scheme provisions in the *Road Transport (Third-Party Insurance) Regulation 2008*.
 - b. Part 6 of the regulation deals with MAI insurer licences and includes a requirement for the MAI commission to approve the required content for the insurance industry deed, with the approval being a disallowable instrument. The deed is between the MAI commission, nominal defendant and licenced insurers and will regulate the conduct of licensed insurers and the MAI scheme.
5. Insurers have been requested to provide premium filings by 11 November 2019. To enable insurers to provide their filings to the MAI Commission the regulation will first need to be made and notified. Similarly, the regulation will also need to be in place so the instrument approving the content of the insurance industry deed can be made ahead of the commencement of the scheme.

6. Further regulations will be required to regulate ACAT cost orders and to authorise the MAI commission to collect information about the MAI scheme from insurers, lawyers or other stated service providers. These regulations will be settled following consultation with relevant stakeholders.
 - a. The name of the proposed regulation includes a bracketed reference to “Premiums and Administration” to indicate that further principal regulations covering other matters will be made under the MAI Act.

Financial Implications

7. Nil

Consultation

Internal

8. Nil

Cross Directorate

9. Parliamentary Counsel’s Office has drafted the regulation.

External

10. A draft regulation was made publicly available in March 2019, prior to the debate of the MAI Bill. No substantive issues were raised in relation to the matters to be covered by the draft regulation at Attachment A.

Benefits/Sensitivities

11. The proposed regulation will enable insurers to complete premium filings and other aspects of operational planning ahead of the start date of the MAI scheme.

Communications, media and engagement implications

12. A communications plan has been developed and approved for the implementation of the MAI scheme.

Signatory Name: Lisa Holmes Phone: 55343
Action Officer: Erica Lejins Phone: 55496

Attachments

Attachment	Title
Attachment A	Motor Accident Injuries (Premiums and Administration) Regulation 2019
Attachment B	Explanatory Statement for the Motor Accident Injuries (Premiums and Administration) and Regulation 2019

UNCLASSIFIED

Motor Accident Injuries (Premiums and Administration) Regulation 2019

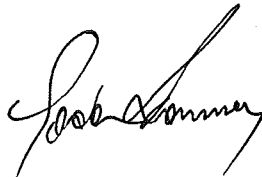
Subordinate Law SL2019-

The Australian Capital Territory Executive makes the following regulation under the *Motor Accident Injuries Act 2019*.

Dated 8 October 2019.



Minister



Minister

Motor Accident Injuries (Premiums and Administration) Regulation 2019

Subordinate Law SL2019-

made under the

Motor Accident Injuries Act 2019

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Motor Accident Injuries (Premiums and Administration) Regulation 2019*.

2 Commencement

This regulation commences on the commencement of the *Motor Accident Injuries Act 2019*, section 3.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*input tax credit*—see the *A New Tax System (Goods and Services) Act 1999* (Cwlth), section 195-1 (Dictionary).’ means that the term ‘input tax credit’ is defined in that section and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Important concepts

6 Average weekly earnings series—Act, s 17, def *average weekly earnings*

The series known as *Persons: fulltime adult total earnings series—seasonally adjusted* for the ACT in *Average Weekly Earnings, Australia* (State and Territory Earnings), issued by the Australian statistician, is prescribed.

Note *Average Weekly Earnings, Australia* is issued in May and November and is available at www.abs.gov.au.

7 Indexation day—Act, s 18, def *AWE indexed*, par (b)

- (1) The indexation days for each amount mentioned in the following sections of the Act that is to be AWE indexed are 1 April and 1 October:
 - (a) section 96 (Amount of income replacement benefits—first payment period);
 - (b) section 97 (Amount of income replacement benefits—second payment period);
 - (c) section 103 (Income replacement benefits—interim weekly payments).
- (2) The indexation day for each amount mentioned in the following sections of the Act that is to be AWE indexed is 1 October:
 - (a) section 139 (5) (a) (Insurer believes injuries stable but no permanent impairment);
 - (b) section 164 (1) (Amount of quality of life benefits payable);
 - (c) section 171 (Amount of death benefits payable);
 - (d) section 178 (Funeral benefits—maximum amount payable);

- (e) section 240 (1) (Quality of life damages—amount that may be awarded);
 - (f) section 241 (2) (Quality of life damages—amount that may be awarded for children);
 - (g) section 273 (1) (Costs—awards of damages over \$50 000).
- (3) Despite subsection (1), the first indexation day after the commencement of the Act for each amount to which subsection (1) applies is 1 October 2020.
- (4) Subsection (3) and this subsection expire 12 months after the day this section commences.

**8 AWE indexation factor—income replacement benefits—
Act, s 19 (3), def *AWE indexation factor***

- (1) This section applies to an amount to be AWE indexed (an *AWE indexed amount*) on an indexation day for the amount under the following sections of the Act:
- (a) section 96 (Amount of income replacement benefits—first payment period);
 - (b) section 97 (Amount of income replacement benefits—second payment period);
 - (c) section 103 (Income replacement benefits—interim weekly payments).
- (2) The AWE indexation factor for an AWE indexed amount on an indexation day is the factor worked out using the following formula and applying subsections (4) and (5):

$$\frac{AWE^1}{AWE^2}$$

AWE¹ means the AWE published for the period ending immediately before the indexation day.

*AWE*² means the AWE published for the period ending 6 months before the indexation day.

- (3) However, if, on an indexation day for an AWE indexed amount, the effect of a negative adjustment is to be offset against an increase in line with an adjustment in the AWE, the AWE indexation factor for the amount is worked out using the following formula and applying subsections (4) and (5):

$$\frac{AWE^1}{AWE^3}$$

*AWE*¹ means the AWE published for the period ending immediately before the indexation day.

*AWE*³ means the AWE published for the period ending 6 months before an indexation day when a negative adjustment that has not been offset first occurred.

Example—offsetting of negative adjustment

The following AWE amounts are published in 2020, 2021 and 2022:

- (a) for May 2020—\$1 680;
- (b) for November 2020—\$1 700;
- (c) for May 2021—\$1 690;
- (c) for November 2021—\$1 695;
- (d) for May 2022—\$1 750.

For the indexation day on 1 October 2021, the AWE indexation factor is \$1 690/\$1 700. Because the AWE indexation factor would be less than 1, the AWE indexation factor for 1 October 2021 is 1.

A negative adjustment applies for the indexation day on 1 April 2022. The indexation factor is \$1 695/\$1 700. Because the AWE indexation factor would be less than 1, the AWE indexation factor for 1 April 2022 is 1.

A negative adjustment also applies for the indexation day on 1 October 2022. The indexation factor is \$1 750/\$1 700. The negative adjustment is now fully offset and the AWE indexation factor for 1 October 2022 is 1.02941 rounded to 1.029.

Note The Act, s 18 sets out what happens if an amount to be AWE indexed would, if adjusted in line with a negative adjustment to the AWE, become smaller.

- (4) The AWE indexation factor for the AWE indexed amount must be—
- (a) worked out to 3 decimal places; and
 - (b) if the 4th decimal place is 5 or more—rounded up.
- (5) If the AWE indexation factor worked out under subsection (2) or (3) would be less than 1, the AWE indexation factor is 1.

9 AWE indexation factor—amounts indexed annually—Act, s 19 (3), def *AWE indexation factor*

- (1) This section applies to an amount to be AWE indexed (an *AWE indexed amount*) on an indexation day for the amount under the following sections of the Act:
- (a) section 139 (5) (a) (Insurer believes injuries stable but no permanent impairment);
 - (b) section 164 (1) (Amount of quality of life benefits payable);
 - (c) section 171 (Amount of death benefits payable);
 - (d) section 178 (Funeral benefits—maximum amount payable);
 - (e) section 240 (1) (Quality of life damages—amount that may be awarded);
 - (f) section 241 (2) (Quality of life damages—amount that may be awarded for children);
 - (g) section 273 (1) (Costs—awards of damages over \$50 000).
- (2) The AWE indexation factor for an AWE indexed amount on an indexation day is the factor worked out using the following formula and applying subsections (4) and (5):

$$\frac{AWE^1}{AWE^2}$$

AWE¹ means the AWE published for the period ending immediately before the indexation day.

*AWE*² means the AWE published for the period ending 12 months before the indexation day.

- (3) However, if, on an indexation day for an AWE indexed amount, the effect of a negative adjustment is to be offset against an increase in line with an adjustment in the AWE, the AWE indexation factor for the amount is worked out using the following formula and applying subsections (4) and (5):

$$\frac{AWE^1}{AWE^3}$$

*AWE*¹ means the AWE published for the period ending immediately before the indexation day.

*AWE*³ means the AWE published for the period ending 12 months before an indexation day when a negative adjustment that has not been offset first occurred.

Note The Act, s 18 sets out what happens if an amount to be AWE indexed would, if adjusted in line with a negative adjustment to the AWE, become smaller.

- (4) The AWE indexation factor for the AWE indexed amount must be—
- (a) worked out to 3 decimal places; and
 - (b) if the 4th decimal place is 5 or more—rounded up.
- (5) If the AWE indexation factor worked out under subsection (2) or (3) would be less than 1, the AWE indexation factor is 1.

10 Adjustment day—Act, s 94 (1), def *AWE adjusted*, par (b)

- (1) The adjustment days for a person's pre-injury income are 1 April and 1 October.
- (2) Despite subsection (1), the first adjustment day after the commencement of the Act is 1 October 2020.

- (3) Subsection (2) and this subsection expire 12 months after the day this section commences.

11 AWE adjustment factor—Act, s 95 (3), def AWE adjustment factor

- (1) The AWE adjustment factor for an amount of pre-injury income to be adjusted on an adjustment day is the factor worked out using the following formula and applying subsections (3) and (4):

$$\frac{AWE^1}{AWE^2}$$

*AWE*¹ means the AWE published for the period ending immediately before the adjustment day.

*AWE*² means the AWE published for the period ending 6 months before the adjustment day.

- (2) However, if, on an adjustment day for an amount of pre-injury income to be adjusted, the effect of a negative adjustment is to be offset against an increase in line with an adjustment in the AWE, the AWE adjustment factor is the factor worked out using the following formula and applying subsections (3) and (4):

$$\frac{AWE^1}{AWE^3}$$

*AWE*¹ means the AWE published for the period ending immediately before the adjustment day.

*AWE*³ means the AWE published for the period ending 6 months before an adjustment day when a negative adjustment that has not been offset first occurred.

Note The Act, s 94 sets out what happens if an amount to be AWE adjusted would, if adjusted in line with a negative adjustment to the AWE, become smaller.

- (3) The AWE adjustment factor for the amount must be—
 - (a) worked out to 3 decimal places; and
 - (b) if the 4th decimal place is 5 or more—rounded up.
- (4) If the AWE adjustment factor worked out under subsection (1) or (2) would be less than 1, the AWE adjustment factor is 1.

Part 3 Income replacement benefits

12 Amount of interim weekly payment—prescribed percentage—Act, s 103 (3)

The amount of the interim weekly payment is 22.5% of \$2 250 AWE indexed.

13 Notice of changed circumstances—Act, s 106 (3)

- (1) Notice may be given orally or in writing.

Note For how documents may be given, see the Legislation Act, pt 19.5.

- (2) If an injured person gives notice orally, the injured person must confirm the notice, in writing, within 10 business days after giving the oral notice.

Part 4 MAI premiums

14 Definitions—pt 4

In this part:

annual MAI premium, for an MAI policy, means the premium payable for insurance under the MAI policy for 1 year.

MAI premium class means a class mentioned in an item in schedule 1, part 1.2, consisting of—

- (a) a class number mentioned in column 2 for the item; and
- (b) a kind of motor vehicle or trader's plate mentioned in column 3 for the item; and
- (c) a case (if any) mentioned in column 4 for the item; and
- (d) an entitlement to an input tax credit mentioned in column 5 for the item.

15 Licensed insurers to have annual MAI premium approved for MAI premium classes

A licensed insurer must have an annual MAI premium approved by the MAI commission under the Act, part 6.7 (MAI premiums), for each MAI premium class.

16 MAI premium if vehicle or plate in multiple classes

- (1) This section applies if a motor vehicle or trader's plate fits into 2 or more MAI premium classes.
- (2) The maximum MAI premium payable for an MAI policy for the vehicle or plate is the higher of the maximum premiums that apply to the vehicle or plate.

Example

Phillipe uses his ute for car sharing. This means the ute fits into both MAI premium class 3 (goods vehicle) and class 25B (personal share vehicle). If the MAI premium is higher for class 25B than class 3, Phillipe must pay the class 25B premium.

17 MAI premiums for policies for less than 1 year

- (1) This section applies if a person—
 - (a) registers a motor vehicle for less than 1 year; or
 - (b) renews the registration of a motor vehicle for less than 1 year; or
 - (c) is issued with a trader's plate for less than 1 year; or
 - (d) enters into an MAI policy for a light rail vehicle for less than 1 year.

Note An MAI premium for an MAI policy must be paid when—

- (a) registering a vehicle (see Act, s 298); and
 - (b) renewing the registration of a vehicle (see Act, s 299); and
 - (c) applying for a trader's plate (see Act, s 300); and
 - (d) intending to use a light rail vehicle (see Act, s 301).
- (2) The maximum MAI premium payable for an MAI policy for the vehicle or plate must be worked out in accordance with the MAI guidelines.

18 Additional MAI premium payable if change in construction or use of vehicle

- (1) This section applies if—
 - (a) an MAI premium (the *original premium*) has been paid for an MAI policy for a motor vehicle; and
 - (b) a change is made in the construction or use of the motor vehicle; and
 - (c) because of the change, a higher MAI premium than the original premium would be payable if a new MAI policy were issued for the motor vehicle.
- (2) The owner of the motor vehicle is liable to pay an additional MAI premium, starting on the day the change happens, worked out in accordance with the MAI guidelines.

Part 5 Nominal defendant

Division 5.1 Nominal defendant's liabilities

19 Circumstances in which motor vehicle has sufficient connection with ACT—Act, s 326 (4)

A motor vehicle has sufficient connection with the ACT if the motor vehicle—

- (a) is usually used and garaged in the ACT; or
- (b) is usually used for a business that has its principal place of business in the ACT; or
- (c) is in the ACT at the time of the motor accident and there is no place outside the ACT where a claim in relation to personal injury could be made against a nominal defendant in relation to the motor accident.

Division 5.2 Nominal defendant fund

20 Collections for nominal defendant fund—prescribed person—Act, s 331 (1) (a)

The following people (each of whom is a *prescribed person*) are prescribed:

- (a) each licensed insurer;
- (b) the Territory;
- (c) the Commonwealth.

**21 Collections for nominal defendant fund—arrangements—
Act, s 331 (1) (b)**

- (1) This section applies if the MAI commission decides an amount to be collected for a financial year under the Act, section 331 (2).
- (2) The MAI commission must decide what proportion of the amount is to be paid by each prescribed person each quarter.
- (3) In deciding a prescribed person's proportion for a quarter, the MAI commission must have regard to—
 - (a) for a licensed insurer—the income received by the insurer for MAI policy premiums in the previous quarter; and
 - (b) for the Territory—the premiums that would have been payable for territory government vehicles in the previous quarter if the vehicles had been insured under MAI policies; and
 - (c) for the Commonwealth—the premiums that would have been payable for commonwealth government vehicles in the previous quarter if the vehicles had been insured under MAI policies.
- (4) In this section:

commonwealth authority means a body, whether or not incorporated, established under a Commonwealth Act.

commonwealth government vehicle means a motor vehicle usually used in the ACT and owned by the Commonwealth or a commonwealth authority.

territory government vehicle means a motor vehicle usually used in the ACT and owned by the Territory or a territory authority.

Note *territory authority*—see the Legislation Act, dictionary, pt 1.

22 Collections for nominal defendant fund—collection notice—Act, s 331 (1) (b)

- (1) The MAI commission must give written notice (a *collection notice*) of a decision under the Act, section 331 (2) to each prescribed person.
- (2) The collection notice must state—
 - (a) the amount payable by the prescribed person; and
 - (b) that the amount must be paid to the nominal defendant fund not later than a stated date (the *due date*).
- (3) The MAI commission may amend or revoke a prescribed person's collection notice by giving written notice to the prescribed person before the due date.
- (4) The due date for a prescribed person's collection notice, or an amended collection notice, must be at least 42 days after the day the collection notice is given to the prescribed person.

23 Offence—failure to pay contribution—Act, s 331 (1) (b)

- (1) A licensed insurer commits an offence if—
 - (a) a collection notice is in force for the licensed insurer; and
 - (b) the licensed insurer does not pay the amount stated in the notice to the nominal defendant fund on or before the due date stated in the collection notice.

Maximum penalty: 20 penalty units.

- (2) If the Magistrates Court convicts a licensed insurer, or finds a licensed insurer guilty, of an offence against this section, the court may order the insurer to pay any unpaid amount to the nominal defendant fund.
- (3) An order under subsection (2) is in addition to a penalty imposed for the offence.

- (4) For the enforcement of payment of the order and the calculation of interest in relation to a judgment, the order is taken to be a final judgment of the Magistrates Court for the amount stated in the order.

Part 6 MAI insurer licences

24 What must be included in an insurance industry deed— Act, s 360 (2)

- (1) The MAI commission must approve the required content for the insurance industry deed.
- (2) An approval is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) The insurance industry deed must be substantially in accordance with the content approved under this section.

25 Application requirements—Act, s 362 (2)

An application for an MAI insurer licence must—

- (a) include the following information:
 - (i) the applicant's trading name;
 - (ii) the address of the applicant's registered office;
 - (iii) the applicant's ABN;
 - (iv) details of reinsurance arrangements proposed to be made for reinsurance for MAI policies to be issued by the applicant; and
- (b) be accompanied by the following:
 - (i) a copy of the applicant's authority to carry on an insurance business under the *Insurance Act 1973* (Cwlth);
 - (ii) if the applicant is licensed to carry on business as a CTP insurer in another Australian jurisdiction—a copy of the licence from the other jurisdiction;

- (iii) if the applicant is not licensed to carry on business as a CTP insurer in another Australian jurisdiction—
 - (A) a copy of all documents given to APRA in applying for authority to carry on an insurance business under the *Insurance Act 1973* (Cwlth); and
 - (B) a copy of the applicant's latest annual financial accounts and annual statement lodged with ASIC; and
 - (C) a copy of all reports and returns lodged with APRA under reporting and prudential standards applying to the applicant's general insurance business in relation to the 12 months before the date of the application.

Schedule 1 MAI premium classes

(see s 14)

Part 1.1 Definitions

1.1 Definitions—sch 1

In this schedule:

ambulance means a motor vehicle built to transport sick or injured people.

breakdown vehicle means a tow truck within the meaning of the *Road Transport (Vehicle Registration) Regulation 2000*.

bus means a motor vehicle used to carry paying passengers but does not include the following:

- (a) a demand responsive service vehicle;
- (b) a taxi;
- (c) a private hire car;
- (d) a restricted hire car;
- (e) a rideshare vehicle;
- (f) a light rail vehicle.

car rental service means a business operating a fleet of 5 or more motor vehicles, under common ownership or management, for hire.

demand responsive service vehicle—see the *Road Transport (Public Passenger Services) Act 2001*, section 81.

drive-yourself vehicle—

- (a) means a motor vehicle let for hire, without the services of a driver, by a car rental service; but
- (b) does not include a motor vehicle let for hire under a lease or hire-purchase agreement.

firefighting vehicle means a motor vehicle used mainly for firefighting.

goods vehicle means a motor vehicle built mainly to transport goods.

GVM, of a vehicle—see the *Road Transport (Vehicle Registration) Act 1999*, dictionary.

hire car—see the *Road Transport (Public Passenger Services) Act 2001*, section 67.

historic vehicle—see the *Duties Act 1999*, section 217 (3).

implement—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

input tax credit entitlement means an entitlement to an input tax credit for the MAI premium for an MAI policy.

miscellaneous vehicle means a tractor or implement but does not include a primary producer's tractor.

mobile crane means a motor vehicle built mainly as a crane but does not include—

- (a) a breakdown vehicle; or
- (b) a tractor.

motorbike—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

motorcycle means a motorbike or motortrike.

motortrike—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

passenger vehicle means a motor vehicle built mainly to carry people but does not include the following:

- (a) an ambulance;
- (b) a bus;
- (c) a demand responsive service vehicle;
- (d) a drive-yourself vehicle;
- (e) a motorcycle;
- (f) a police vehicle;
- (g) a private hire car;
- (h) a rideshare vehicle;
- (i) a personal share vehicle;
- (j) a taxi;
- (k) a light rail vehicle.

personal share vehicle—

- (a) means a passenger vehicle, a goods vehicle with a GVM not over 4.5t or a motorcycle let for hire without the services of a driver; but
- (b) does not include a vehicle let for hire by a car rental service.

police vehicle—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

primary producer's tractor means a tractor used by a primary producer for the producer's operations as a primary producer.

private hire car means a hire car that is not a restricted hire car.

restricted hire car—see the *Road Transport (Public Passenger Services) Act 2001*, section 68.

rideshare vehicle—see the *Road Transport (Public Passenger Services) Act 2001*, section 60A.

tractor—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

undertaker's vehicle means a motor vehicle used only as an undertaker's hearse.

veteran vehicle—see the *Duties Act 1999*, section 217 (3).

vintage vehicle—see the *Duties Act 1999*, section 217 (3).

Part 1.2 MAI premium classes

column 1 item	column 2 class number	column 3 kind of motor vehicle or trader's plate	column 4 case (if any)	column 5 input tax credit entitlement
1	1	passenger vehicle		not entitled
2	1	passenger vehicle		entitled
3	3	goods vehicle	GVM not over 4.5t	not entitled
4	3	goods vehicle	GVM not over 4.5t	entitled
5	4	goods vehicle	GVM over 4.5t	not entitled
6	4	goods vehicle	GVM over 4.5t	entitled
7	5A	bus or demand responsive service vehicle	vehicle has seating for more than 16 adults (including driver)	not entitled
8	5A	bus or demand responsive service vehicle	vehicle has seating for more than 16 adults (including driver)	entitled
9	5B	bus or demand responsive service vehicle	vehicle has seating for not more than 16 adults (including driver)	not entitled
10	5B	bus or demand responsive service vehicle	vehicle has seating for not more than 16 adults (including driver)	entitled
11	6	taxi		not entitled
12	6	taxi		entitled
13	7	private hire car		not entitled
14	7	private hire car		entitled

column 1 item	column 2 class number	column 3 kind of motor vehicle or trader's plate	column 4 case (if any)	column 5 input tax credit entitlement
15	8	drive-yourself vehicle		not entitled
16	8	drive-yourself vehicle		entitled
17	9A	motorcycle	engine capacity over 600cc	not entitled
18	9A	motorcycle	engine capacity over 600cc	entitled
19	9B	motorcycle	engine capacity over 300cc but not over 600cc	not entitled
20	9B	motorcycle	engine capacity over 300cc but not over 600cc	entitled
21	9C	motorcycle	engine capacity not over 300cc	not entitled
22	9C	motorcycle	engine capacity not over 300cc	entitled
23	9D	motorcycle	electrically powered motor	not entitled
24	9D	motorcycle	electrically powered motor	entitled
25	10	firefighting vehicle		not entitled
26	10	firefighting vehicle		entitled
27	11	undertaker's vehicle		not entitled
28	11	undertaker's vehicle		entitled
29	12	breakdown vehicle		not entitled
30	12	breakdown vehicle		entitled
31	14	miscellaneous vehicle		not entitled
32	14	miscellaneous vehicle		entitled

Schedule 1
Part 1.2

MAI premium classes
MAI premium classes

column 1 item	column 2 class number	column 3 kind of motor vehicle or trader's plate	column 4 case (if any)	column 5 input tax credit entitlement
33	15	primary producer's tractor		not entitled
34	15	primary producer's tractor		entitled
35	16	mobile crane		not entitled
36	16	mobile crane		entitled
37	17	trader's plate	to be attached to a motorcycle	not entitled
38	17	trader's plate	to be attached to a motorcycle	entitled
39	18	trader's plate	to be attached to a motor vehicle other than a motorcycle	not entitled
40	18	trader's plate	to be attached to a motor vehicle other than a motorcycle	entitled
41	18D	trader's plate	to be attached to a registrable vehicle other than a motor vehicle	not entitled
42	18D	trader's plate	to be attached to a registrable vehicle other than a motor vehicle	entitled
43	19	veteran vehicle		not entitled
44	19	veteran vehicle		entitled
45	20	vintage vehicle		not entitled
46	20	vintage vehicle		entitled
47	21	historic vehicle		not entitled

column 1 item	column 2 class number	column 3 kind of motor vehicle or trader's plate	column 4 case (if any)	column 5 input tax credit entitlement
48	21	historic vehicle		entitled
49	22	ambulance		not entitled
50	22	ambulance		entitled
51	23	police vehicle		not entitled
52	23	police vehicle		entitled
53	25A	rideshare vehicle		not entitled
54	25A	rideshare vehicle		entitled
55	25B	personal share vehicle		not entitled
56	25B	personal share vehicle		entitled
57	26	light rail vehicle		not entitled
58	26	light rail vehicle		entitled

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Commonwealth
- Criminal Code
- disallowable instrument (see s 9)
- in relation to
- quarter
- the Territory.

Note 3 Terms used in this regulation have the same meaning that they have in the *Motor Accident Injuries Act 2019* (see Legislation Act, s 148). For example, the following terms are defined in the *Motor Accident Injuries Act 2019*, dict:

- APRA
- ASIC
- AWE (see s 17)
- AWE adjusted
- AWE indexed
- Commonwealth authority
- defined benefits (see s 33)
- income replacement benefit payment
- insurance industry deed (see s 359)
- insurer
- licensed insurer
- MAI commission
- MAI guidelines
- MAI insurer (see s 287)
- MAI policy (see s 286)
- MAI premium (see s 314)
- motor accident (see s 10)

- motor accident claim (see s 228)
- nominal defendant (see s 16).

Note 4 The *Road Transport (General) Act 1999* contains definitions relevant to this Regulation. For example, the following terms are defined in the *Road Transport (General) Act 1999*, dictionary:

- driver
- jurisdiction
- light rail vehicle
- motor vehicle
- taxi
- trader's plate
- vehicle.

ambulance, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

annual MAI premium, for an MAI policy, for part 4 (MAI premiums)—see section 14.

breakdown vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

bus, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

car rental service, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

collection notice—see section 22.

demand responsive service vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

drive-yourself vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

due date—see section 22.

firefighting vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

goods vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

GVM, of a vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

hire car, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

historic vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

implement, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

input tax credit—see the *A New Tax System (Goods and Services) Act 1999* (Cwlth), section 195-1 (Dictionary).

input tax credit entitlement, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

MAI premium class, for part 4 (MAI premiums)—see section 14.

miscellaneous vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

mobile crane, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

motorbike, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

motorcycle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

motor trike, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

passenger vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

personal share vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

police vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

prescribed person—see section 20.

primary producer's tractor, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

private hire car, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

restricted hire car, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

rideshare vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

tractor, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

undertaker's vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

veteran vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

vintage vehicle, for schedule 1 (MAI premium classes)—see schedule 1, section 1.1.

Endnotes

1 Notification

Notified under the Legislation Act on 2019.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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