ACT Government

Motor Accident Injuries Act 2019

Discussion Paper – Three Year Review

Chief Minister, Treasury and Economic Development Directorate

Introduction

The Special Minister of State is required by the *Motor Accident Injuries Act 2019* to review the legislation every three years. The Minister has established Terms of Reference for the review into the operation of the Motor Accident Injuries (MAI) Scheme and to report on the extent the legislation is working in practice (available at www.treasury.act.gov.au/maic/consultations). In setting the Terms of Reference, regard was given to the requirements of section 493(2) and the objects in section 6. The Insurance Branch, Economic and Financial Group, Treasury is tasked by the Minister to undertake the review in accordance with the Minister's terms of reference.

The MAI Scheme's defined benefits are available for up to five years and the scheme has only been in operation for just over three years. In addition, there are a few aspects of the scheme that are still to be implemented in full. As a result, the scheme is still in its infancy and hence the focus of the review is on how the new Scheme has been implemented and is working in practice. Recent driving behaviour and associated road safety issues are outside the Terms of Reference.

This discussion paper has been prepared to assist you preparing your feedback about how the scheme has operated to date. The series of questions included with this paper are intended as prompts rather than seeking a detailed response to each of the questions. Consider them an aid to support your response.

Index

What is motor accident injuries insurance?

The MAI Scheme commenced on 1 February 2020, replacing the previous Compulsory Third-party (CTP) Insurance Scheme. The previous CTP Scheme had largely been operating since 1947 and was based in common law. Both the MAI and the CTP schemes provide compulsory insurance cover for people who are injured in motor accidents on ACT roads. Prior to 2020, the legislation was called the *Road Transport (Third-party Insurance) Act 2008*, and the last substantive changes made to the CTP Scheme was in 2012.

MAI premiums are collected as part of the ACT's one-stop registration process and are paid in full to the motorist's selected insurer. There are four licensed MAI insurers – AAMI, APIA, GIO and NRMA. Premiums collected in a given year are to cover the current and future costs of personal injuries from motor accidents that occur in that year. For example, the premiums collected in 2022 are paid out over many years until all the 2022 personal injury accident applications and claims are finalised. The insurers consider scheme design; estimates of the number of injured people applying to the scheme for assistance due to a motor vehicle accident during the premium period, their level of injury and their estimated associated costs; operational costs including claims handling; and profit margin to work out the quantum of funds they will need to cover all the personal injuries from accidents that may happen in any given year. Due to the long tail nature of motor accident injuries insurance, insurers invest their premiums, with the estimated investment revenue also built into the premium. All premiums require approval by the MAI Commission. Comparing premiums with other States is not possible because of different scheme designs, including that some are single insurer schemes (ie. government run). While the ACT MAI Scheme has similarities with some elements of other jurisdictions' schemes, in its entirety it is a unique scheme.

Developing the MAI Scheme

In August 2017, the ACT Government announced it would ask a Citizen's Jury to deliberate on an improved CTP insurance scheme, and to choose the insurance model that best reflected the priorities of Canberrans. Under the CTP Scheme the amount of compensation an injured person received, and the length of time taken to receive this compensation, depended on the individual circumstances of the injured person. Final amounts were negotiated between insurers and injured people. It was not uncommon for no payment to be made for years after the accident, other than a small early payment for medical expenses up to $5000 and payments towards necessary surgery. No income support would be paid until the claim settled.

Invitations were randomly sent out across Canberra households inviting participation in the deliberative democracy process, and from this fifty Canberrans from all walks of life were selected. The CTP Citizen's Jury explored in depth all the issues and trade-offs associated with the different approaches to providing insurance for personal injury arising from motor accidents. The jury considered the benefits that a person injured in a motor vehicle accident should receive in any redesign of the CTP scheme, as well as the associated affordability of premiums that are paid by all motorists to cover scheme costs. The Government specified that any scheme redesign could not result in an increase in premiums.

The ACT Government committed to pursuing the model that the Jury preferred on the basis that it met the community's values. The four models presented to the Citizen's Jury had a mixture of defined benefits and common law. Models A and B provided some benefits for everyone and access to common law compensation for those injured by the negligence of someone else. Models C and D provided greater defined benefits for everyone and access to common law compensation for those

who are more seriously injured by the negligence of someone else. All models were costed by an actuary to determine their potential impact on the premiums Canberra motorists pay, with the estimates compared to the then existing CTP scheme. The Jury members chose Model D on the basis "it provides early access to all people regardless of fault" and provided equitable cover. The Jury called for an increased focus on road safety; for an independent methodology for the whole person impairment assessment; and for sufficient information and assistance be provided to individuals in accessing and moving around the future scheme.

The Motor Accident Injuries Bill 2018 Exposure Draft was tabled in the Legislative Assembly and was referred to the Standing Committee on Justice and Community Safety for inquiry in September 2018. Further refinements were made to the proposed legislation following the Committee process and the Bill was introduced in March 2019, and debated and passed on 16 May 2019.

Scheme overview

The Act established entitlements to defined benefits for injuries or death caused by a motor vehicle accident in the ACT. These benefits are for:

- treatment and care;
- income replacement;
- loss of quality of life;
- funeral expenses and death benefits.

Defined benefits for reasonable and necessary treatment and care and income replacement are payable for up to five years after an accident, and more seriously injured people who were not at fault, can make a common law claim.

There are some exclusions and limitations to the entitlements to defined benefits including where an injured driver has been convicted of breaking the law. The removal of benefits from a person following conviction for charges causally connected to the motor accident is intended to assist the person recognise that their driving behaviour has consequences.

The following case study provides an example of the injury support that can be provided by the MAI Scheme, compared to the previous CTP Scheme:

> Jane was driving along Parkes Way, towards the city at the speed limit. She went to change lanes on her left and collided with the car being driven by Sam. Jane had her 16 year old son, Tim, in the car. Sam was travelling alone.
>
> Jane's left side of the car hits the wall in the tunnel after the collision with Sam. Jane injures her legs and her back. Tim injured his back and neck, with damage to his left hand that required emergency surgery. Sam's neck was hurt. All three were taken to Canberra Hospital for treatment.
>
> Jane, Tim and Sam make their personal injuries application to the MAI insurer for Jane's car, as Jane failed to keep a proper look out and collided with Sam. Below is a description of the journey each of them would take from the first few weeks up to five years under the MAI Scheme and how it is different to the CTP Scheme.
>
> This is a simplified case study, and not intended to reflect any actual accident on Parkes Way.

MAI scheme

0-6 months

Jane, **Tim** and **Sam** receive reimbursement of some early treatment and care expenses. Some physiotherapy and GP appointments are pre-approved while the insurer considers liability.

The insurer accepts liability for all three applications, and approves Jane, Tim and Sam to receive income replacement for the days of work lost since the motor accident. They all requested and receive physiotherapy treatment.

6-12 months

Jane continues to take some time off work because of back pain. The insurer pays her for the hours she is not able to work. Jane continues with paid physiotherapy and has her pain medication paid for.

The insurer pays for **Tim** to have a second hand surgery and occupational therapy. He only needs three weeks off work for which he receives income replacement but after that he no longer needs income support.

Sam has finished his physiotherapy for his neck, with no permanent injury, and took only four weeks off from work. Sam doesn't require further support but knows his file can be reopened if needed.

12-24 months

Jane still experiences back pain. Her injuries have stabilised so she makes an application for the quality of life (QOL) benefit. She is assessed for her back injury and gets 10% whole person impairment (WPI). Being at fault, Jane is paid the benefit as she is not eligible for common law. She is able to work full time but continues to have her pain medication paid for by the insurer.

Tim continues to receive paid occupational therapy sessions.

24-36 months

Tim's injuries have stabilised. Tim applies for the QOL benefit, knowing that if he is over 10% he can make a common law claim. He is assessed for his back, neck and hand. He receives a WPI of 12% and lodges a Notice of Claim to start the process for his common law claim.

36-48 months

The insurer makes an offer to **Tim** to settle his claim. He accepts the offer.

60 months

The entitlement to defined benefits ends.

Previous scheme

0-6 months

Jane, **Tim** and **Sam** receive support for their treatment and care for the first six months (up to $5000). No income support is payable.

Tim and **Sam** lodge a Notice of Claim with the insurer to claim common law damages for their injuries.

Jane is found to be at fault and exits the scheme. She will need to fund her own treatment and care or rely on Medicare/private health insurance.

6-12 months

The insurer accepts liability for the claim made by **Tim** and **Sam**.

Tim outlines his claim – future hand surgery, physiotherapy, pain medication, and for some lost wages for his casual job.

Sam outlines his claim – physiotherapy and four weeks' loss of pay, plus a claim for possible future needs.

12-24 months

Tim asks the insurer to pay for some of his later treatment and care. The insurer agrees and pays for the second surgery on Tim's hand and limited occupational therapy post-surgery for two weeks.

Sam is made an offer to settle his claim and he decides to accept.

24-36 months

The insurer makes an offer to **Tim** to settle his claim. Tim does not like the offer and starts legal proceedings.

48 months

The court awards **Tim** damages, reduced by the amount the insurer paid earlier for his surgery and physiotherapy.

Application process

Applying to the scheme is through an application made to an MAI insurer. The application period for personal injury defined benefits is within 13 weeks of the date of the motor vehicle accident. This timeframe is to encourage earlier treatment and care through engagement with a MAI Insurer. There is flexibility for people who may not be able to meet this timeframe with a MAI insurer able to accept a late application, with a full and satisfactory explanation, up to two years from the date of the accident. A MAI insurer has an obligation on first contact to provide information on applying for defined benefits.

The insurer with whom the application is lodged is required to provide an acknowledgement of their receipt of the application, along with a required information packet. There is also an obligation on a MAI insurer to assist the applicant in the event they have provided their application to the incorrect insurer. While the MAI Scheme is a no-fault scheme, the insurer for an accident must be for the at-fault motor vehicle (referred to as the relevant insurer), as the MAI Scheme is a third-party insurance scheme.

The MAI Insurer then has 28 days to determine liability once they have provided a receipt notice for a complete application with all required information. The MAI insurer must accept liability to pay defined benefits if the injury concerned occurred as a result of a motor vehicle accident.

Questions

How was your experience completing the forms to apply to the MAI Scheme? Do you have feedback on the process or the timeframes?

Did you find the MAI insurer's information packet assisted you with navigating the MAI Scheme? Was the information clear, did you need further clarification or did it leave you confused? Please provide examples.

In your experience, is there sufficient clarity about eligibility to the MAI Scheme in the community?

Pre-liability decision early treatment payments

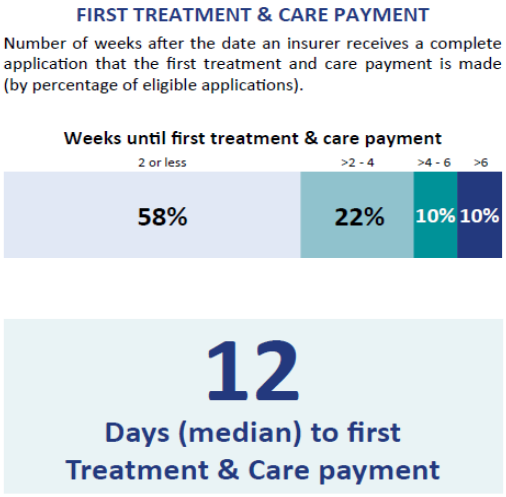
An injured person can receive payment for certain allowable treatments on a reimbursement basis while a MAI insurer is determining liability for a defined benefits application, so long as the application is made within the 13 weeks from the date of the accident. This is for treatment during the period between the receipt notice being given and the decision on liability.

An injured person can claim reimbursement of some of the treatment expenses they have incurred at the time of making the application, such as the cost of an appointment with their treating doctor. They are also able to claim reimbursement for certain types of allied health treatment such as physiotherapy and additional doctor visits, during the period between making an application and when an insurer makes their liability assessment. The types of allied health treatments payable during this period, together with the maximum number of sessions, are specified in the guidelines. Currently up to 8 allied health sessions, with no more than four from a given provider can be claimed. An MAI insurer is required to verify that services have been provided prior to making payments.

Once liability for an application is accepted, any other treatment and care dating back to the time of the accident that is assessed as reasonable and necessary by the MAI insurer can be

reimbursed. The MAI (Treatment and Care) Guidelines provide direction on the things that can be or is reasonable and necessary treatment and care. For applications made after the initial 13-week period, benefits are only payable once the insurer accepts liability for the application.

Within 4 weeks of submitting a complete application to an insurer, 80% of applications have received their first treatment and care payment (this can be to the person or a service provider). The median number of days to first payment is 12 days.



Motor Accident Injuries Scheme – Quarterly Report, January to March 2023, page 2.

Questions

Did the information packet given by the MAI insurer with the receipt notice assist you to navigate the MAI Scheme during the pre-liability decision stage? Was there sufficient clarity on the available services?

Do you have any feedback on the timeliness of the payments made by MAI insurers?

Treatment and care benefits

This is the most wide-ranging class of benefits available under the MAI Scheme and the types of benefits include:

- medical treatment, including mental health and pharmaceutical
- rehabilitation services
- aids and appliances, eg. walking stick
- respite care
- travel expenses
- dental treatment
- paid attendant care services, eg. home help, domestic services or nursing
- home and transport modifications

The treatment and care is tailored to the injuries that a person has from the motor accident, with the treatment having to be appropriate for the person, of benefit and cost effective. In essence, the MAI insurer needs to decide whether the treatment and care is reasonable and necessary. In addition, the provider needs to be appropriate. There is also special provision made for domestic services expenses, which allow for the employ of persons to care for dependents that would have been provided by the injured person, while they recover from their injuries.

To help all parties in assessing treatment and care needs, a tailored recovery plan must be developed by an MAI insurer for any applicant who is unable to return to their pre-injury duties and activities after 28 days (calculated from the date of receipt of application). The plan is to

include pre-approval for treatment and care assessed as reasonable and necessary, that can then be billed by the provider directly to the MAI insurer. The MAI insurer may also reimburse the injured person if direct billing is not possible. A MAI insurer will generally rely on medical assessments carried out by an injured person's own doctor or health practitioner to prepare the first recovery plan. In addition to treatment outlined in a recovery plan, an injured person can also request treatment outside that listed in the recovery plan.

The guidelines set out a requirement that an insurer should endeavour to streamline the medical assessment process and limit the number of required assessments. Where possible, a MAI insurer should contact an injured person's doctor if they have questions relating to the diagnosis or proposed treatment. An insurer can request an independent medical or health assessment of the person's injuries, if required. The Guidelines outline the circumstances an assessment request can be made by a MAI insurer. These include to inform a recovery plan or a treatment and care approval; to resolve a dispute about treatment and care needs; or to determine the extent injuries resulted from a motor accident. The MAI Act provides that the MAI insurer must review the recovery plan at least once every 13 weeks after the plan is given to the injured person or there is a material change in the person's condition, circumstances or treatment outcomes.

A MAI insurer has 10 business days to respond to a request for treatment not mentioned in the recovery plan. The MAI Commission is aware some complaints and disputes have related to delays by insurers in making decisions. The delay can be related to a MAI insurer waiting on a report back from a treating doctor or from an independent assessment. MAI insurers are expected to keep an injured person advised that they are waiting on further information. They are discouraged from denying a treatment request in order to comply with the 10 business day requirement.

Questions

Do you have comments on the range of treatment and care that is able to be obtained from the MAI Insurer?

Do you have feedback on the recovery plan process? Is it easy or difficult to request treatment and care outside of a recovery plan?

What impact do the timeframes (eg., 10 business days for treatment and care decisions; every 13 weeks for recovery plan review) have on your ability to access benefits?

How do you find the process of requesting treatment and care from the MAI insurer? Do you have views on opportunities to improve the process?

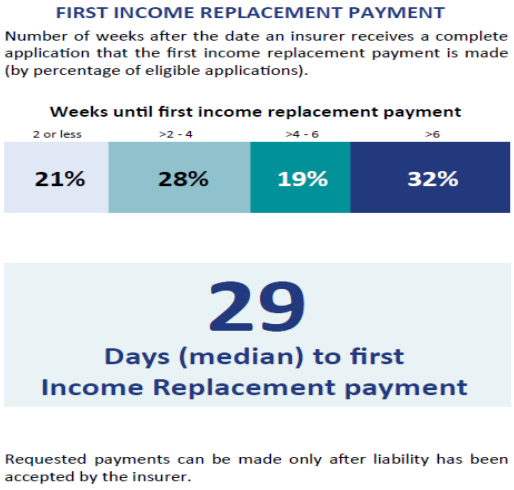
If the MAI Insurer does not make a decision on your request within 10 business days, do you think you received enough information about the delay? If an independent assessment is requested, do you feel you are given appropriate reasons?

Income replacement benefits

An injured person who is unable to work after an accident can receive income replacement payments. The purpose of this benefit is to provide timely income support while a person takes the time to recover from their injuries. There is a requirement to provide a fitness for work certificate from a doctor for this payment, and a work declaration by the injured person. The timely nature of this payment while a person is unable to work is different to the previous CTP Scheme where a person had to wait until settlement to receive back payment for their loss of income.

Payments can commence from when a MAI insurer accepts liability for the injured person's application, backdated to the time of the accident so long as the application was submitted

within the required timeframe (13 weeks, though backdating is allowed after this period if exceptional circumstances exist). The calculation for the payment is generally based on an injured person's income over the 52 weeks prior to the accident, with provision made for people who were capable of being in work (for example, a student who has just graduated). Interim payments can also be made if the injured person or the MAI insurer is still gathering information to calculate the actual amount of the income payment. 49% of applicants received their first income replacement payment within 4 weeks of submitting their complete application to the insurer, with the median days taken to first payment being 29 days.



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The MAI Act allows for the indexation of income amounts, as well as other amounts specified in the Act. You will see the term "AWE indexed" used to refer to these amounts. The term, AWE, stands for Average Weekly Earnings. Indexation allows for benefits to be adjusted in line with increases in wages in the community without needing to amend the MAI Act on a regular basis. The MAI Commission publishes the indexation factors and a guide with the current dollar amounts on the Commission's website (www.treasury.act.gov.au/maic).

The income payment is payable at 95 per cent of pre-injury weekly income for the first 13 weeks after an accident and then 80 per cent thereafter. Where income support is sought but the insurer needs more information to calculate the benefit, an interim payment of 22.5% of the AWE indexed amount can be paid in the meantime with the benefit topped up once calculated. Pre-injury weekly income is capped at $2,510 as at 1 April 2023 (it is AWE indexed twice a year). Income payments for low-income earners (weekly income below $920 as at 1 April 2023) are paid at a higher percentage, with the MAI Act allowing for a superannuation component to be included. This low-income adjustment approximates the minimum weekly wage for a full-time worker.

MAI insurers are required to calculate income replacement using formulas set out in the MAI Act. A separate calculation is made for each week a person misses paid work, with the first week commencing on the date of the accident. The formulas include the maximum cap on pre-injury weekly income. A person's post injury earning capacity for a week is subtracted from the capped amount of their pre-injury income before multiplying by an income replacement percentage factor. If the injured person is unable to work in that week, or part of the week, they will receive payment if there is an amount calculated. Similarly, if an injured person's post injury earning capacity for the week exceeds their pre-injury income then the injured person will not be eligible to receive any income replacement payments for that week. The purpose of the cap is to provide a maximum limit on the benefit that approximates one and half times average weekly earnings.

Questions

Is sufficient clarity provided by MAI insurers about eligibility for the income replacement benefit?

How useful did you find the information on income replacement? Is there more information required about the provisions governing the calculation of weekly income replacement?

How quickly did you receive income payments? What issues did you encounter?

The thresholds and caps were introduced to balance assistance to injured people against the premiums that all motorists pay, is the balance right?

Quality of life benefits

The Quality of Life benefit is a recognition payment for a person's permanent impairment for injuries caused by the accident. Quality of life defined benefit payments are available to all injured people with a Whole Person Impairment (WPI) assessment of at least five per cent. This assessment determines the degree of permanent impairment that resulted from the person's motor accident injuries. The MAI Commission appointed a service provider, called an 'IME Provider', with appropriate experience to select and provide independent medical examiners to undertake these assessments for the first WPI assessment.

The IME Provider selects the independent medical examiner relevant for the injuries needing to be assessed. This ensures that the doctor undertaking the assessment has not been appointed by either an insurer or a legal representative. An assessment must be conducted in accordance with the MAI (WPI) Guidelines. The MAI (WPI) Guidelines are largely based on the Safe Work Australia (SWA) Guidelines, with some modifications to reflect motor accident injuries rather than work injuries, as well as some MAI Scheme specific requirements, such as in the area of psychological injury. The SWA guidelines are based on *The Guides to the Evaluation of Permanent Impairment by the American Medical Association 5th edition* (AMA5), with some modifications.

The MAI (Quality of Life Benefits) Guidelines require that six months after an accident an insurer must give an applicant information about claiming quality of life payments, with some exceptions such as the person has been charged with a serious driving offence, or a foreign national that has departed Australia. A MAI insurer must provide an applicant the opportunity to request a WPI assessment from this point in time if their injuries are stabilised and permanent. The MAI insurer pays for this assessment, with separate assessments being available for physical injuries (including any secondary psychological injuries) and for primary psychological injuries.

Once the assessments are complete, a report is given to the MAI insurer. The MAI insurer is to make a Quality of Life offer based on the WPI assessment percentage reported from the completed assessments. These payments are based on a sliding scale for a given level of impairment. A maximum cap of $386,180 AWE indexed as at 1 October 2022 applies to the Quality of Life defined benefit. A higher cap of $662,020 AWE indexed applies to common law Quality of Life amounts for those injured people who meet the common law threshold, can prove someone else was at fault for the accident and choose to make a common law claim.

The Act contains processes to make the Quality of Life application as independent and as procedurally fair as possible. A MAI insurer cannot dispute the initial independent impairment assessment. An injured person that does not agree with the initial assessment can obtain their own assessment from an appropriately trained medical examiner in accordance with the WPI Guidelines and submit this to an insurer for review. As part of its review, the MAI insurer then has the option of providing this alternate assessment to the original independent medical examiner for

comment. The original IME can respond by either affirming or increasing the original assessment, with the insurer being bound by any increased assessment in making their WPI Final Offer. A Quality of Life benefit offer cannot be negotiated by either party, however if there is a concern about the Final Offer, the injured person can dispute this through the ACT Civil and Administrative Tribunal (ACAT).

Questions

How did you find out about the Quality of Life benefit? If you have had an assessment, how did you find the process?

The information pack regarding the Quality of Life benefit is provided 26 weeks after the motor accident. Do you think this is the right timeframe?

Noting the independence of the process being unique to the ACT MAI Scheme, do you have suggestions for streamlining the process?

Death benefits – funeral and dependent

A defined benefit provides cover for funeral expenses of up to $16,580 AWE indexed as at 1 October 2022 for a person who dies as a result of a motor accident. The MAI Commission has recently introduced a streamlined process for people to receive funeral benefits for a person who dies in an accident on an ACT road from any MAI insurer, when the person applying for the funeral benefits may not have all the details of the accident, including because it may be subject to police or coronial investigation.

Lump sum dependent benefits are also payable for the spouse of a person who dies as a result of a motor accident and up to four children of the deceased. A lump sum benefit will not be payable if the deceased person received a Quality of Life payment prior to their death or their injuries were self-inflicted. The ACT Civil and Administrative Tribunal (ACAT) is empowered to decide the disbursement of death benefits. While the lump sum is calculated on four children, the ACAT can decide to split the amount over more than four children if the deceased had more dependent children.

Applications for these benefits must be made within 13 weeks of a person's death unless the insurer accepts a full and satisfactory explanation from an applicant. In this case, an insurer may accept a late application up to 12 months after a person's death. There can be a delay with the payment of dependent benefits due to police and coronial processes needing to be completed before a formal death certificate is provided.

Questions

Acknowledging this is a sensitive issue for people who have lost a loved one, do you have feedback or suggestions for streamlining death benefits?

Are funeral benefits being paid within a reasonable amount of time?

Noting the impact of police and coronial processes, are dependent benefits being paid within a reasonable amount of time?

The provision of information

A potential barrier to an injured person accessing supports is their knowledge of the MAI Scheme's existence, eligibility requirements for benefits and how to access those benefits. There is a general duty on insurers to provide information to applicants on navigating the MAI Scheme. The MAI Commission's website has extensive information about MAI insurance coverage including about how to apply for defined benefits in addition to information for service providers, premiums information, and quarterly scheme performance statistics. The MAI Commission also provides information to the public about the MAI Scheme through marketing campaigns, and through responding to enquiries from the public. As the MAI Scheme is different to the previous CTP Scheme, where the benefits are defined rather than able to be negotiated, information and education is an important part of the MAI Commission's work.

The free Defined Benefits Information Service (DBIS), funded by the MAI Commission, also provides information that is tailored to a person's circumstances. The areas covered by the DBIS include making an application, accessing defined benefits and understanding review rights. Care Inc delivers the DBIS through their accredited community legal centre. Their services are available by phone, email, in person, and through translating and interpreting services. The DBIS supports injured people and their families through a combination of information services and some legal services, including legal advice and tasks, such as completing forms where a person has identified a particular difficulty, for example not able to read or write in English. The DBIS identifies the level of services required. They do not provide ongoing legal representation services. The DBIS has also developed referral pathways through ACT Policing (via Supportlink) and Canberra's network of community organisations. Demand for the DBIS services has continued to grow as the MAI Scheme matures. Since inception, the service has provided 434 services to individuals.

DBIS SERVICES PROVIDED

To date	This quarter	DBIS
434	59	Number of services provided*

*If required, individuals may access repeat services from the DBIS.

Motor Accident Injuries Scheme – Quarterly Report, January to March 2023, page 2.

Questions

How easy is it to find the MAI Commission's website? How did you find using the site?

Do you consider each of the MAI Commission, the Defined Benefits Information Service and MAI Insurers are achieving the objective of providing support to injured persons to navigate the scheme?

What changes do you think could be made to the initial information that a MAI insurer provides to an injured person?

How can general community awareness about the MAI Scheme be improved?

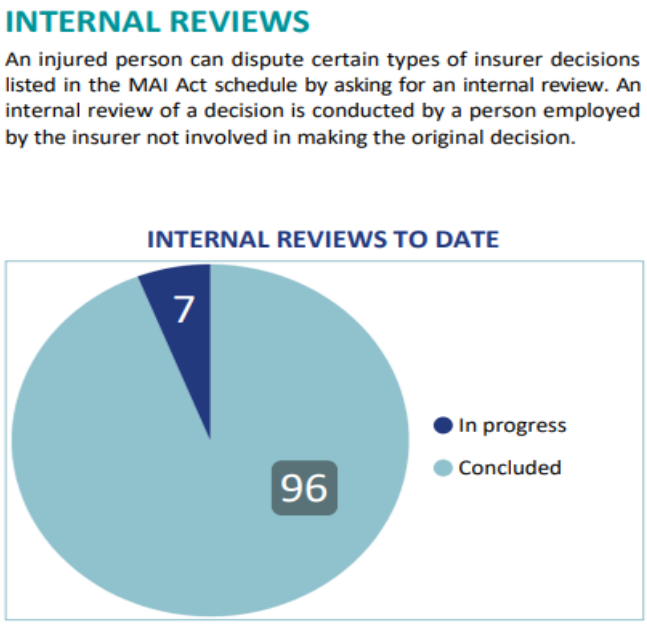
What services did you value from the Defined Benefits Information Service?

Dispute resolution

With the introduction of defined benefits, a dispute resolution process was required. Using a framework Canberrans would be familiar with, a two-step process of internal review and then

external review by the ACT Civil and Administrative Tribunal (ACAT) was established. The internal review step is undertaken by insurers. The MAI Commission encourages injured people to discuss any concerns or complaints with the insurer first, as sometimes these can be addressed without using the formal internal review process. Insurers are also encouraged to advise injured people to raise concerns first. To formally request an internal review, an injured person can provide this in writing, doing their best to identify the decision they would like to be reviewed and why.

The MAI (Internal Review) Guidelines stipulate who within a MAI insurer can carry out an internal review and how the review is to be carried out. These guidelines require a review to be carried out by a knowledgeable person not involved in the original decision. An internal review of a decision will generally be required to be completed within ten working days from a request being made, so long as required information for the review is available. If not, the request for review can be paused by agreement while any additional information is obtained. Most decisions made by an insurer are able to be reviewed.



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If, after the internal review the injured person remains unsatisfied, they can apply for an external review by ACAT, if that decision is listed as being able to be considered by the ACAT. There are some decisions made by insurers that can bypass internal review, for example a WPI Final Offer. ACAT was established to provide a timely and cost-effective dispute resolution process, where people did not require legal representatives to assist them with their matters. This was one of the reasons ACAT was selected as the external review body for the MAI Scheme. It is recognised that some people do require legal representation, and so for a MAI external review the ACAT is able to order a capped amount of $2,220 plus ACAT application fee towards a person's legal costs.

As at 31 March 2023, 96 internal reviews had been concluded with 7 in progress with insurers. The ACAT had conducted 31 external reviews, including two death benefit applications. The outcomes of reviews are detailed in the MAI Scheme's quarterly report.

Questions

How could complaint handling by MAI insurers be improved, or any other aspects of the dispute resolution process (internal or external review)? Are there process issues or any barriers to accessing dispute resolution?

Other aspects of the MAI Scheme

As noted earlier in the discussion paper, the review is focused on the first three years of the scheme's operation, particularly those aspects of the scheme currently operational. There are two aspects of the scheme that have later timeframes for them to be operational, being significant occupational impact assessments and the future medical treatment expense. As a result, these elements have not been included in this discussion paper. For people wanting further information on these elements, information on these aspects of the MAI Scheme will be available on the MAI Commission's website.

This review also does not focus on common law matters after the Quality of Life and WPI assessment process. A decision on making a common law claim can be made after an injured person meets the criteria (10 per cent or more WPI and not at fault for the motor accident). To date, very few common law claims have been made, with the MAI Commission reporting first claims being lodged in the last quarter of 2022. The MAI Scheme has only been operating for just over three years and the timing for any common law claim will be dependent on when an injured person's injuries have stabilised and they receive a WPI assessment and associated Quality of Life offer. If it has been 4 years and six months since the motor accident and there has been no Quality of Life/WPI assessment, then the MAI Act has built in processes for the assessment so that a common law claim can be lodged before the five years of defined benefits end and legal proceedings can no longer commence.

As such, we have not posed any questions on these aspects of the MAI Scheme.

How to provide feedback

The best way to provide your feedback is by email. Your feedback can be sent to insurancebranch@act.gov.au.

Consultation period closes on Friday 29 September 2023.

All information (including name and address details) contained in submissions will be made available to the public unless you indicate that you would like all or part of your submission to remain in confidence to the review. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like only part of their submission to remain in confidence, please clearly indicate this in the response. In the alternative, you can provide the information in a separate attachment marked as confidential. Legal requirements, such as under the Freedom of Information Act 2016, may require access also being given to any confidential submission.