

Motor Accident Injuries Act 2019
Discussion Paper – Three Year Review

Questions and response form

This form is optional, to assist in providing feedback

Application process

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?

Your response (the box will expand as you type)

I have had extreme difficulty with the entire process and have had to be navigated through the entire thing by my solicitor from the very beginning.

I was not aware of the mai scheme until I contacted a solicitor regarding the mva and I was then informed by the solicitor of the mai process.

Pre-liability decision early treatment payments

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?

Your response

Not particularly, they provided a care worker that came to my home on two occasions and then I received no contact and no follow up from them and the payments relating to travel and appointments ect have proven to be difficult to receive so therefore I have been hesitant to forward receipts from past 18 months to 2 years for medications and travel for doctor appointments aswel.

Treatment and care benefits

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?

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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?

Your response

The delays and holds on treatments is a big factor as to why I am not fully recovered and will never be fully recovered. They stopped funding psychiatric therapy aswell as physiotherapy, they also argued to fund the mri and they have refused the cortisone injections so therefore I am living in excruciating pain daily and rely on medication to feel some what comfortable.

Income replacement benefits

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?

Your response

I have not received any payments from them even after 3 years

Quality of life benefits

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?

Your response

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I think the quality of life should be made available from the date of the accident and that the insurer should fund independent medical assessors as their medical assessor is not professional and insults the substantial injury suffered by myself and many others

Death benefits – funeral and dependent

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?

Your response

unknown

The provision of information

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?

Your response

I havnt found any of the services valuable since my accident. I don't feel that it is an appropriate scheme and I feel that it needs a major review and I think the old scheme should be brought back

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Dispute resolution

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?

Your response

unknown

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.

From: [Simon Copland](#)
To: [CMTEDD, Insurance Branch](#)
Subject: Feedback on Motor Accidents Injuries (MAI) Act - three year review
Date: Thursday, 14 September 2023 4:12:38 PM
Attachments: [image001.png](#)

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Hi Insurance Branch,

Pedal Power has reached out to some members who have had engagement with the MAI Act for the three year review. We have received this extensive feedback from one member who was hit by a car on his bike and has had to negotiate the act. I hope for Pedal Power to be able to present a formal submission, but may not be able to do so in time.

Overall, The Scheme Aims are appropriate

In terms of the aim of the scheme, in making sure that people had access to medical expenses, surgery, and income support this is a very good aim and from our experience this aspect has been met. The insurance companies that we have been involved with have responsive and we have had no issues (apart from minor administration aspects) to date.

However, the areas of dealing with specific types of injured parties, such as cyclists and pedestrians requires specific amendments and attention. And also, the needs of individuals injured who do not fall under a broad category of an employed person for establishing income support needs.

Consider the Injured Parties Circumstances, and do not have a ceiling on the income support, or a reduction by 20% after the first 3 months.

While certainly better than nothing, the amount of income support might not be reflective of an individual's circumstances. The income payment is also payable at 95 per cent of pre-injury weekly income, but why the discount? This is not about getting something free, but ensuring that there is no loss for the person due to someone else's fault. There is also no Superannuation paid, or any other employer benefits, so the person could be considerable worse off, especially if they have to recover over a long period, or don't recover at all. And in the case of someone who is a higher income earner than the MAIC top cap and may have suffered loss in running a business, or in some other professional capacity, the income protection cap, and subsequent discount to 80% of agreed payments after 13 weeks may fall well short of that person's previous earnings and committed outgoings. How is this recovered?

Because no legal action under common law can be taken under the current schemes structure until a 10% or more WPI assessment has been undertaken, there is then no opportunity for recourse in respect to any significant loss of income or earnings due to no fault of the injured person. And this needs to be addressed.

This also relates to the loss of quality of life issue. The sums in the table, and the percentages do not really make practical sense. What is a 10% loss of quality of life mean? And why is it only \$20K? And why is this assessed by the insurer? This seems designed to pay out the least amount possible. If I lose the ability to cycle even though I can return to work, what is the loss of quality of life here? I might be considered physically recovered to a point, but to me it would be devastating as cycling is something I have loved for the past 45 years, and had looked forward to a retirement of cycling holidays and adventures. All of the cycling equipment and any bicycles also become useless to me. How will someone determine this quality of life loss? I believe that a fairer system, not administered by the insurer to assess QOL needs to be found. Through no fault of an injured person, their world could be turned upside down for the rest of their life, and they might not be considered even in the 10% threshold to get a small fee which would fall well short of compensating for their loss.

Non-vehicle injured parties don't have an advocate or easy process to make claims for personal damage

In addition, in the case of the injured person being a cyclist or a pedestrian, being hit by a car or other road vehicle, there is no easy process for claiming damage to personal effects, bicycle, etc. as the insurance representatives on either side of the incident are not involved in this process. So, this means that the injured person or their representative has to make a claim directly to the party who are responsible (and this needs to be proven through the police or other witness process). This has proved problematic as the injured party in this case has limited recourse in making a claim against the responsible party. What needs to be added to the scheme is some way for non-vehicle injured parties to work through an advocate or structure process to make claims for personal and related damages directly.

Summary

Overall, the aim of the scheme is right. However, some changes need to be made to cater for a broader range of incidents, injured party types, and injured party circumstances. Otherwise the scheme only meets the needs of the median injured person, but not those on either side particularly well.

Dr. Simon Copland | Executive Director

Pedal Power ACT

[Redacted]

[Redacted]

www.pedalpower.org.au



I work Monday – Thursday, 9am – 5pm. If you have an urgent issue outside these hours please call me.

I acknowledge that I live and work on the land of the Ngunnawal people. This land has never been ceded and I pay respect to elders past and present.

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Application process

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?

Your response (the box will expand as you type)

There are problems around the process and the timeframes for the MAI scheme. In my specific example, I was involved in an accident where a car came through a stop sign and hit me on a bicycle. The driver could not see me or the stop sign because he had failed to clear frost from his wind screen. It is also possible that the driver was intoxicated, but the police tested me, rather than the driver. While the initial process was easy enough, in that I filled out the forms and went to the necessary treatment, I had a couple of subsequent conditions that related to my accident that were out of time, as far as I can see in relation to the MAI scheme. My [information personal to submit] was impacted into my [information], and as a result it developed [information personal to submit], and had to be removed at my own expense a year after my accident. A [information personal to submit], which had been in the [information] impacted in the accident, developed a [information], the [information personal to submit], and it had to be removed entirely a couple of years down the line, outside of the timeline of the MAI scheme.

The way in which the MAI operates produces outcomes of which the general public are not clearly aware. A minor disablement in the view of the scheme, of say 2 percent, could have a lasting financial effect on an individual and their family, if it is an intellectual disablement that prevents them from working in a profession or trade. Nowhere is this disclosed in the scheme, or any of the information provided. This needs clarification at the very least.

Pre-liability decision early treatment payments

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?

Your response

The information packet given by the MAI insurer gave minimal information as to my rights under the MAI Scheme during the pre-liability decision stage. Further, within the ACT, finding medical practitioners willing to assist with insurance issues is nearly impossible, regardless of clarity. Nobody wants to work with the insurers because it is time consuming and nobody wants threats of a lawsuit in their medical businesses.

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Such payments as the MAI insurers made were minor compared to the actual damages suffered, and did not include long term medical and dental bills.

Treatment and care benefits

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?

Your response

The recovery plan process is problematic as I have stated earlier, because it avoids paying for long term consequential injuries caused in an accident that may take one or two years to settle, particularly in the ACT, where the waiting list for medical and dental treatment can be six months or more.

From a cyclist or a pedestrian perspective, abolition of the MAI process and return to using litigation would be better because it would better cover injuries that take longer to resolve and also cover material loss at the same time.

The ACT really only has a single large MAI insurer, NRMA, that covers many other forms of medical insurance as well, and as a result, if they do not like the outcome of an assessment it is unlikely independent assessment is truly likely to be independent.

Income replacement benefits

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?

Motor Accident Injuries Act 2019

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

Your response

The balance was introduced at the behest of NRMA insurance. The balance is not right because the government could self-insure with greater accuracy and without underwriting NRMA. As previously pointed out, a 2 percent injury to the brain could potentially lead to a person not being able to continue to work in their previous employment and have devastating effects on their career. This is not covered by the MAI Scheme.

Quality of life benefits

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?

Your response

I was never informed about the quality of life benefit.

Death benefits – funeral and dependent

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?

Your response

I was told by the police who attended my accident in hospital that this was not serious police work. I'm not sure if it would have been any more serious if I had been dead. Apparently hitting a cyclist carries the same criminal penalty as hitting a road sign.

Motor Accident Injuries Act 2019

Discussion Paper – Three Year Review

The provision of information

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?

Your response

It is easy to find and navigate the MAI website. There’s not much on it for the average cyclist or pedestrian run over by a car that finds themselves in hospital.

I felt the process would have been improved by litigation. The MAI is a failure.

Dispute resolution

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?

Your response

MAI insurers don’t do complaint handling. The NRMA is expert at avoiding complaints. They make it nearly impossible to lodge a complaint.

How to provide feedback

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From: [James Treloar](#)
To: [CMTEDD Insurance Branch](#)
Cc: [James Treloar](#)
Subject: Three-Year Review of the Motor Accident Injuries Act 2019
Date: Tuesday, 26 September 2023 5:51:29 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Gail M.client response to MAIA review 2023.pdf](#)

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Please see **attached**, response prepared by my client in respect of the three-year review into the Motor Accident Injuries Act.

Ms Maddigan has asked that I forward this correspondence on her behalf.

Please acknowledge receipt.

James Treloar Partner

Maliganis Edwards Johnson



Maliganis Edwards
Johnson®



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Mr Stephen Miners
Deputy Under Treasurer
Economic, Revenue and Insurance

26 September 2023

Dear Sir

Re: Motor Accident Injuries Act – Three-year review

Below is my input into the ACT Government's Review of the Motor Injuries Act 2019.

Background:

In November 2020 I was involved in a four vehicle car accident on Kings Avenue Bridge. The accident occurred on my way home from work with the CDPP where I had recently started a contract in the media/communications team.

The accident was the result of a Transborder bus from NSW ploughing into three vehicles that were stationary due to traffic congestion. My vehicle was in the middle and I was struck from the rear and forced into the car in front.

My car was concertinaed and was eventually written off by my insurance company. I was attended by ambulance officers and received [information personal to submitter] injuries due to the impact.

I contacted my insurance company after locating the bus's NSW insurer Allianz. I provided information to Allianz regarding the accident and injuries. I received correspondence from Allianz for a few months before being advised that my case had been referred to the ACT Government to resolve.

My initial and subsequent reaction to dealing with a government department representing an insurance company for a NSW driver/business was disturbing to say the least. My only question is Why?

Why is the ACT government working with a multinational industry? What possible benefit is there for the ACT Government and the tax paying residents who unfortunately have to deal with this decision on the front line.

Treatment:

Due to Covid 19 my treatment had been sporadic. I was unable to see medical practitioners face to face, my treatments were continually interrupted due to lockdowns.

I requested a full assessment and attended both a [information personal to submitter] .

I am very suspicious of this process as I was deemed [inform] per cent life time incapacity. Just [information personal to submitter] to receive a fair settlement as compensation for almost 3 years of stress.

The front line:

I am probably one of the lucky ones in this scenario. Lucky because I had worked in the Federal government for more than 20 years as a media and communication adviser and was able to navigate through the red tape and confusing material on the process (to some extent).

My question about why the territory government was involved has still not been addressed to this day.

My experience working with the territory government has been very disappointing. Governments have never been good communicators with the general public so entering into the insurance injury area was never a good fit. The information I received were copies of guidelines full of public service speak and incredibly confusing. Even for me. I was also provided with information on Legislation and the changes that had occurred.

May I recommend at the very least a clear concise fact sheet be provided to this who are u lucky to face this minefield in the future.

Outcome:

Those involved in car accidents are penalised financially, physically and psychologically.

Faced with the added financial burden of having to source and pay for any legal assistance is another joy of this legislation.

I understand that there have been instances of large sums of money being awarded in the past. The financial outcomes should be determined on each individual situation not in a cap determined by policy makers.

Personally I was out of pocket for another car (\$7000), loss of income as I a contractor with no personal leave, time for treatments and have to live with my injuries for the rest of my life.

I recently received \$12k to compensate me for being in the wrong place at the wrong time.

Apparently that is what I am worth according to the ACT government. So glad I have paid my taxes in Canberra for 25 years and my hard earned money is being managed responsibly. Not.

Gail Maddigan

From: [Dan Crowe](#)
To: [CMTEDD, Insurance Branch](#)
Cc: [REDACTED] [Marcus Hassall](#)
Subject: RE: Motor Accident Injuries Act – Three-year review
Date: Tuesday, 26 September 2023 11:21:23 AM
Attachments: [image002.png](#)
[Response to Three-Year Review of MAI Act 26.09.23.pdf](#)

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Thank you for inviting the Bar Association's response to the Three-Year Review in to the MAI Act.

Mr Hassall, President of the Bar Association, asked me to consider the Discussion Paper and prepare a response on behalf of the Bar Association for his consideration.

Unfortunately, Mr Hassall is away on leave and has therefore not yet been able to consider the proposed response.

Accordingly, and to guard against the risk Mr Hassall will be unable to review the response prior to the due date later this week, the **attached** is provided under my own name only for the time being.

Dan

Dan Crowe
Barrister

[REDACTED]



[REDACTED]

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Three-Year Review of the *Motor Accident Injuries Act 2019 (MAI Act)*

Response by D. Crowe, Barrister

1. The following is submitted in response to the invitation from Mr Miners dated 3 August 2023.
2. The limited scope of the Three-Year Review of the MAI Act (**Review**) is noted. Given my primary role as a barrister is as an advocate, I have little to say in relation to most of the topics identified in the Discussion Paper for the Review (**Paper**), about which members of the Law Society and claimants themselves will no doubt be better placed to comment.
3. However, I am concerned about the effectively limited access to justice for claimants aggrieved by a decision taken by the relevant CTP insurer provided by the scheme.
4. It is now clear, by reference to a number of decisions by ACAT, that the process for ‘external review’ of an insurer’s decision under the MAI Act by ACAT is an administrative law review (cf. a merits review process)¹.
5. This is significant. It means a claimant seeking to challenge an insurer’s decision must establish that the decision was legally wrong (by reference to administrative law principles) rather than simply being the incorrect decision on its merits.
6. It is not realistic to expect that persons injured in motor accidents will be capable of understanding, researching, grappling with and articulating before the Tribunal the relevant legal concepts – almost invariably against experienced legal representatives retained by an insurer.
7. However, for the reasons set out below, it is simply not practical for claimants to retain their own legal representations in the scheme as currently in operation.
8. The maximum sum for legal costs an insurer can be ordered to pay a claimant who succeeds in an external review application in the Tribunal is, as noted in the Paper, only \$2,200 plus the ACAT application fee (**Cap**).
9. The legal costs reasonably incurred by a claimant in bringing a successful application for external review will almost always exceed the Cap several or many times over. The legal work involved in bringing an application for external review will likely include:
 - a. A solicitor:
 - i. meeting with the claimant to take instructions about the motor accident claim in general and the particular decision taken by the insurer about which the claimant is aggrieved;
 - ii. preparing and filing the application to ACAT;

¹ *Williams v GIO (Motor Accident Injuries)* [2022] ACAT 90 at [32]

- iii. considering and advising the claimant about the insurer's response to the application;
- iv. reading and advising the claimant about the tribunal documents filed by the insurer (which might include hundreds of pages of clinical notes, particularly where the claimant has been hospitalised for any length of time as a result of the subject motor accident);
- v. appearing at one or more directions hearings in ACAT; and
- vi. preparing a brief to counsel and instructing counsel during the Tribunal proceedings thereafter; and

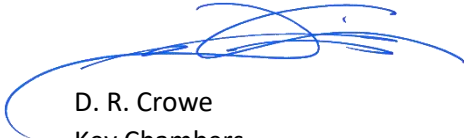
b. Counsel:

- i. reading the brief prepared by the solicitor;
- ii. meeting with the solicitor and claimant in conference, including to prepare the claimant for the process of giving evidence (where necessary);
- iii. preparing for hearing; and
- iv. appearing at hearing, including incidental work such as the preparation of written submissions.

10. The types of reviewable decisions likely to be the subject of external review will rarely involve significant financial sums or indeed any sum not already committed to treatment expenses or the like (cf. a lump sum from which legal representatives might be remunerated for their work in challenging a legally incorrect decision).
11. Accordingly, claimants will simply be unable to afford (or unable to financially justify) retaining legal representation in circumstances where, even when successful before the Tribunal, the legal costs incurred beyond the Cap will far outweigh the financial benefit of obtaining a favourable decision.
12. In practice, and other than in respect of lawyers acting on a *pro bono* basis, it is only in relation to claimants assessed by their lawyers as being likely to ultimately exceed 10% WPI so as to be entitled to recover a common law damages lump sum with party/party legal costs that those lawyers will be prepared to represent claimants before ACAT on the basis the legal costs will ultimately be paid from the proceeds of the common law damages claim.
13. In this way, the scheme in its current form operates unfairly.
14. Instead, the external review process by ACAT should:

- a. Be one which is accessible to claimants without the benefit of legal representation, namely it should not require a self-represented claimant to grapple with often complex administrative law principles; and
- b. In any event, allow for ACAT to order insurers to pay legal costs beyond the scope of the Cap – eg: by having a test to be applied by the Tribunal to identify cases in which it is deemed appropriate that a successful claimant has engaged legal representation and in those cases for the Tribunal to be able to order the insurer pay legal costs and disbursements on a more realistic basis.²

26 September 2023



D. R. Crowe
Key Chambers

² It is submitted the position under the *Workers Compensation Act 1951* (ACT) provides a fair and financially sustainable example: see r 3968 *Court Procedures Rules 2006* (ACT)

From: [Tim Kapustin](#)
To: [CMTEDD, Insurance Branch](#)
Subject: Re: Motor Accident Injuries Act – Three-year review
Date: Monday, 16 October 2023 8:48:53 AM
Attachments: [image002.png](#)
[image001.png](#)
[Response to Three-Year Review of MAI Act 26.09.23\[75\].pdf](#)

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Further to the email and response from Dan Crowe **attached**, I can confirm that ACT Bar Council President, Marcus Hassall together with the ACT Bar Council has also endorsed this submission.

Kind regards,

Tim Kapustin
Chief Executive Officer



actbar.com.au



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From: [Jenny Robertson](#)
To: [CMTEDD, Insurance Branch](#)
Subject: Motor Accident Injuries Act – Three-year review
Date: Tuesday, 26 September 2023 12:06:57 PM
Attachments: [image004.png](#)
[image005.png](#)
[image002.png](#)
[image006.png](#)
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Good afternoon

Thank you for contacting the APA and giving us an opportunity to give feedback on the attached review. I can confirm we have received and that we will not be making a submission as feedback from ACT engaged members is that they are happy with the scheme as it currently stands.

Please note that this email address is the best one to make contact for any future requests or discussions moving forward.

Jenny Robertson
Manager, NSW/ACT

[REDACTED]
Australian Physiotherapy Association

Association of the Year Award Winner 2022
HRD 5-Star Employer of Choice 2022 & 2023



AUSTRALIAN
PHYSIOTHERAPY
ASSOCIATION



I respectfully acknowledge the Traditional Owners and Custodians of the country on which I work.

Thomas McLuckie

[REDACTED]

E: [REDACTED]

Feedback to Three Year Review Discussion Paper MAI Scheme

TO WHOM IT MAY CONCERN

I have unfortunately had to deal with the machinations of the MAI Scheme after my son was murdered in a criminal motor vehicle incident on the 19th of May 2022. I currently have an outstanding decision pending with ACTAT due to a lack of appropriate advisement of the claims process by the Nominal Defendant and NRMA.

I can confirm my dealings with the various administrators of the scheme has been quite appalling. I wish the following feedback to be considered.

Point 1. The purpose of the Motor Accident Injuries Scheme.

This is defined in the legislation and on the publicly available MAI Commission site as per <https://www.treasury.act.gov.au/maic/about-the-maic>

The site states “Under the new scheme, Canberrans receive fairer, faster, and more comprehensive support if they are injured in a motor vehicle accident. And that the MAI and;

The scheme delivers “quick and transparent benefits to get recovery underway as soon as possible”.

This has not been my experience. We were given literally little to no assistance in pursuing the relevant information in making both the Funeral Benefit claim and the subsequent defined benefit claims. The benefits available are far from being transparent. In one email response from the Nominal Defendant, I was sent the legislation in its entirety for my review along with the Index of benefits. This shows an appalling lack of trauma awareness on behalf of this offices whose tone, and emails were dismissive and argumentative.

Point 2 The cap on the benefits is discriminatory of anyone who earns above the national average salary for income replacement benefits.

In my case I have lost over \$70'000 of income and been entitled to limited benefits to compensate. Until recently, there was no information to advise on the limits clearly on the MAIC site, and people undertaking MAI Insurance through the rego.act.gov.au site are not informed. If they were informed, it would have been possible to organise additional income / life insurance arrangements.

Point 3. Cancellation of a policy after the event of a crash

The policy of the 100% at fault vehicle was cancelled 6 days after the crash that killed my son and backdated to before the crash date (to the date of the vehicle theft). This meant we initially dealt with the Nominal Defendant only to have the matter transferred later in the year to the NRMA. Through no fault of our own these errors resulted in a poor outcome for our family. On being transferred to the NRMA, I received a call from the “new” insurer requesting to speak to Matthew – my son who had been killed in the crash. This caused significant distress.

Point 4. 13-week limit to raise a claim

This has raised considerable stress in our claim for funeral benefit. As per the form “To be assessed as eligible to receive income replacement payments from the date of the motor accident, an application for defined benefits should be made within 13 weeks after the date of accident. A late application may be made within 2 years after the date of the accident, accompanied by a full and satisfactory explanation for the delay which satisfies the insurer. Defined benefit income payments may only begin from four weeks before the date the late application is made.

This time limit, in particular for persons dealing with the loss of a loved one, where they are left chasing the rego details of the other car, the offender details and police incident number put an unbearable onus on the claimant. Assistance to those impacted in a motor vehicle death or suffering serious injury should be provided as a matter of course. A victim should not be left to navigate this nightmare on their own.

Point 5. Lack of knowledge of scheme across support services and medical practitioners

There was a total lack of knowledge of the workings of the scheme across the various support agencies – this included Victims Support, Coroner office and the ACT Policing victims support team.

There is also a lack of knowledge in the completion of forms across the General medical profession, with no completed example being available through the MAIC site.

Point 6. Multiple contacts failing to advise properly in the claims process.

I was in contact with the Minister office, a policy advisor from the MAIC, and the Nominal Defendant and at no stage was I appropriately advised about the procedures relating to defined benefits and in my own case explicitly as to the definition of the working week (which is ambiguous in the legislation). This is contrary to s52(2). b of the ACT which states “the information that must be given to the person about the procedures relating to applying for defined benefits, including— (i) accessing, completing, and submitting an application.

Sending the claimant, a 460-page copy of legislation plus other annexures is not appropriate advisement and does not meet the obligations under s52.

Point 7. No public reporting available on the premiums paid to the insurers and the profitability of the scheme

Whilst the scheme claims to be open and transparent, no public reporting appears to be available in terms of the total premiums paid to the insurers or how the insurers are reporting their profit margin on the premium they charge. How is this being audited?

For a scheme that appears to have taken in around \$700-800M in premiums it appears there is scope to increase payable benefits given the scheme to date has only paid out just over \$30M in benefits.

Point 8. Quality of Life assessment

I know multiple families stuck at the QoL Assessment stage as their condition has not been deemed “stabilised”. How on earth does an insurers assessor determine someone suffering from trauma and grief, which will last a lifetime, to be stable? They may never recover from the events that occurred.

Additionally, I have been advised I need to [information personal to submitter](#) to be able to apply for a QoL assessment. This seems to be somewhat obtuse.

Point 9. ACTAT to contest an internal review

The process to contest an internal review going to ACTAT again puts a financial and emotional strain on the claimant who are then confronted by legal teams from the relevant insurer. Free representation through Legal Aid should be provided to assist a claimant in making a claim as not doing so puts a claimant appealing a declined benefit at a significant disadvantage.

Point 10. Poor User Experience from the MAIC site

The navigation of the site is quite literally terrible and sends a claimant in loops and unless they come across the forms (and in my case the forms had already been provided by my son's insurer) it is not intuitive to track down the contact details of the insurer and how to contact them.

My overall experience of the scheme has been extremely poor, in particular dealings with the Nominal Defendant. I personally saw no reduction in premiums as we transition to the MAI from CTP and find it surprising the declaration that premiums have gone down. Most people I know would state the same. The lack of benefits paid from the scheme to date compared with the premiums collected is seriously concerning and given it appears the insurer will fight tooth and nail victims and claimants commencing the QoL claims, I do not foresee this position changing any time soon. It would appear the real benefactors of the scheme have been the insurers.

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Questions and response form

This form is optional, to assist in providing feedback

Application process

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?

Your response (the box will expand as you type)

My insurer was the Nominal Defendant, and they did not provide an information packet. There was limited direction or guidance, and their engagement was at time confrontational. They did send me the 400+ pages of the legislation. They appear to be lacking in any form of trauma awareness.

Pre-liability decision early treatment payments

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?

Your response

As above, I would only have been aware of early treatment payments through some form of osmosis and found the whole engagement appalling.

Treatment and care benefits

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?

Motor Accident Injuries Act 2019

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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?

Your response

It has proven quite frankly impossible receiving treatment for information personal to submitter through trauma and grief of the murder of my son in the ACT. I am currently not receiving any treatment apart from taking the occasional time off work when required.

Income replacement benefits

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?

Your response

Not at all, the forms are obtuse, the limits on defined benefits discriminate both from a recovery and loss of income perspective anyone that earns above the national average salary.

Quality of life benefits

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?

Your response

I have only just discussed QOL with my lawyer and I have been advised it would not be a good move to apply for QoL without having information personal to submitter.

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Death benefits – funeral and dependent

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?

Your response

This process was disgusting and I was left chasing the police incident number, the rego and other driver details (the other driver who murdered my son) and the thirteen week limit caused significant stress and anguish.

The provision of information

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?

Your response

The Website is pretty poor to navigate and lacks the actual details on how to apply, limited examples.

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Dispute resolution

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?

Your response

Dispute resolution is in the favour of the Insurers. My insurers turned up with a barrister and two solicitors whilst I was representing myself. Legal aid and assistance should be provided to claimants to raise a dispute to even our this imbalance.

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.

From: [Tom McLuckie](#)
To: [CMTEDD, Insurance Branch](#); [James Treloar](#); [Rowe, Margie](#); [Munro, Allison](#); [Sarah Payne](#)
Subject: Re: Feedback to MAI as per three year review
Date: Sunday, 12 November 2023 6:43:35 PM

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Dear Insurance Branch,

It is interesting you mention my recovery. As you are aware my insurer originally was the Nominal Defendant - another function within Treasury.

After I submitted my first GP referral and claim surely they then had an obligation to work with my GP to develop said plan and identify appropriate service providers.

It was so right on the Treasury webpage.

<https://www.treasury.act.gov.au/maic/service-providers/health-practitioners-under-the-mai-scheme>

An MAI insurer will develop a recovery plan in consultation with you and your patient and also any other health service provider involved in their treatment as appropriate. You will be given an opportunity to review a draft plan and to make recommendations to the insurer about reasonable and necessary treatment and care to be included in the plan. You will also be given a copy of the final recovery plan.

This has never occurred and neither has the NRMA arranged anything in that regard since the transfer of my case.

Actually, when my wife raised my inability to have any Information personal to submitter as there are limited Information personal to submitter in Canberra, they stated they are unable to recommend a service provider.

So in terms of my recovery and the MAI - it's been non-existent. This is a complete failure on the part of the insurers. Maybe of the Nominal Defendant has spent more time considering my recovery instead of sending me arsey emails with legislation being quoted to me and asking me to fill in spreadsheets, this may not have occurred.

Please add this email for the records to my submission and if you wish to reply, please reply to all so my lawyer is across any further correspondence.

Regards,
Tom

On Tue, 26 Sept 2023, 3:26 pm CMTEDD, Insurance Branch,
<InsuranceBranch@act.gov.au> wrote:

OFFICIAL

Dear Mr McLuckie,

Thank you contributing your feedback and the response template for the review into the *Motor Accident Injuries Act 2019*.

It is acknowledged the difficult journey you and your family have had since the terrible event. We wish you all the best with your ongoing recovery.

Kind regards,

Insurance Branch

Economic and Financial Group | Treasury

Chief Minister, Treasury and Economic Development Directorate

ACT Government | GPO Box 158 CANBERRA ACT 2601

From: Tom McLuckie [REDACTED]
Sent: Tuesday, 26 September 2023 3:16 PM
To: CMTEDD, Insurance Branch <InsuranceBranch@act.gov.au>
Subject: Feedback to MAI as per three year review

You don't often get email from [REDACTED]. [Learn why this is important](#)

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Please find attached feedback as per the three year review of the MAI scheme.

Regards,
Tom McLuckie

MALIGANIS EDWARDS JOHNSON®

Mr Stephen Miners
Deputy Under Treasurer
Economic, Revenue and Insurance

By email: insurancebranch@act.gov.au

28 September 2023

Dear Sir,

Re: Motor Accident Injuries Act – Three-year review

As one of the largest providers of specialist legal services to injured persons in the Canberra area, Maliganis Edwards Johnson (**MEJ**) welcomes the opportunity to provide a response to the review into the operation of the Motor Accident Injuries Scheme legislation, including the associated guidelines, and the extent to which they are working, in practice, with regard to the requirement of section 493(2) and the objects in section 6 of the *Motor Accident Injuries Act 2019* (the **Act**).

At MEJ we believe that people injured through the negligence of an at-fault driver should be restored to their pre-accident position to the extent possible. We are concerned that the current MAI Scheme is failing to achieve this aim and has, on a regular basis, resulted in innocent injured road accident victims being undercompensated.

Several of the problems that have manifest since the new scheme began are in direct odds with the objects of the Act as stated in section 6. Rather than promoting and encouraging the 'early, quick, cost-efficient and just resolution of disputes', more often than not, the opposite is the unfortunate reality.

Some of the main areas in which we see this occur on a regular basis are as follows:

1. Access to justice

- 1.1. Division 2.10.3 of the Act provides a mechanism by which ACAT is tasked with reviewing insurer's decisions in respect of a claimant's entitlement to defined benefits.
- 1.2. A difficulty that arises, and one that strikes at the heart of a claimant's ability to access justice, is in respect of the *Motor Accident Injuries (ACAT Costs Orders) Regulation 2020 (ACAT Regulation)*.

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- 1.3. At any time during a proceeding before the ACAT on an application for external review of an ACAT reviewable decision, a party to the proceeding may ask the ACAT to order the other party to the proceeding to pay the requesting party's costs arising from the application for external review: section 6(1) of the ACAT Regulation.
- 1.4. The maximum amount that the ACAT can order for costs is: \$2,000.00 AWE indexed, plus an amount for the ACAT filing fee. This maximum also includes GST payable in relation to the work done for or in the proceeding.
- 1.5. **Importantly** 'costs' is defined to include the fees, disbursements and expenses that the ACAT considers necessary for the preparation of, and appearances in relation to, an application for external review of an ACAT reviewable decision: section 6(6) of the ACAT Regulation.
- 1.6. The maximum amount that the ACAT can order for costs is insufficient to enable a claimant, with the benefit of legal advice, to properly prepare and present his or her dispute for resolution at ACAT.
- 1.7. That is because in order to do so, the claimant must obtain evidence in support of his or her position, including obtaining a report(s) from a treating doctor or specialist. Often, multiple reports are necessary.
- 1.8. In our experience, the cost of a medical report can often range from anywhere between \$850.00 to \$2,000.00 plus GST.
- 1.9. Therefore, it is not financially viable for a claimant to dispute an insurer's decision as to do so is wholly impractical from an economic standpoint.
- 1.10. MEJ respectfully submits that it is **imperative** the ACAT Regulation be amended such that:
 - (a) The maximum amount that the ACAT can order for costs is \$2,000.00 AWE indexed plus ACAT filing fee (at a minimum),
 - (b) And that costs are defined to **not include** the fees, disbursements and expenses that are necessary for the preparation, and appearances in relation to, an application for external review of an ACAT reviewable decision.
- 1.11. This issue is of vital importance to claimants. It strikes at the very heart of an injured person's ability to seek review of an insurer's decision to, for example, deny approval for, or reimbursement of, reasonable and necessary treatment that is recommended by their treating specialists.
- 1.12. At MEJ we regularly see claimants who are forced into an insidious position of being unable to challenge the insurer's decision due to these draconian costs limitations.
- 1.13. We respectfully request that the Commissioner undertake an urgent review in relation to the maximum costs payable in respect of an ACAT reviewable decision, to enable claimants to seek legal representation to challenge decisions in the ACAT in a timely manner.
- 1.14. This is, it is respectfully submitted, entirely consistent with the objects as set out in section 6 of the Act.

2. The Inability to Commute Defined Benefits to a Lump Sum

- 2.1. The Act further fails in its stated purpose to facilitate the '*early, quick, cost-efficient and just resolution of disputes*' by lacking provisions that allow for the commutation of defined benefits to a lump sum.
- 2.2. The Act requires claimants to be 'drip-fed' benefits over many years, with no avenues for departure from the scheme that provide adequate compensation. In fact, insurer decision-making in relation to defined benefits and dead-end review processes create delayed, inefficient, and unjust results.
- 2.3. The scheme is plagued by micro disputes about the entitlement to, and payment of, defined benefits that the typical claimant is poorly equipped to manage.
- 2.4. Other compensatory, statutory benefit schemes, such as the *Workers Compensation Act 1951* (ACT), contain commutation provisions that allow for the early and final resolution of claims that would otherwise continue for many years.
- 2.5. The Act specifically prevents insurers from commuting benefits to a lump sum (see sections 108 and 130).
- 2.6. As it presently stands, claimants are forced into an inconsistently applied, time-consuming and correspondence-heavy process to receive the defined benefits to which the Act says they are entitled.
- 2.7. Treatment and care benefits, as an example, are considered and approved on a case-by-case basis outside of a claimant's Recovery Plan. The relevant insurer considers the matters contained in section 120 of the Act and provides the claimant with a decision about whether the requested treatment is approved.
- 2.8. Even where a Recovery plan is in place, the problems persist. Whilst a claimant and their general practitioner are granted an opportunity to review a draft Recovery plan, any recommendations made by the claimant's doctor are not required to be included in the finalised plan.
- 2.9. Further, any material dispute about a plan's contents requires a formal review, with no clarity or guarantee that recommendations made by a claimant's doctor will be included at the conclusion of that process.
- 2.10. Claimants are consistently faced with limited accessible options for challenging the commercial decision-making of an insurer in declining coverage for treatment and care recommended by their treating doctors.
- 2.11. If a claimant is told by their general practitioner to have a MRI, for example, and undergoing this scan is not part of their approved Recovery plan, the claimant has two equally unappealing options:
 - (a) Request a new Recovery plan pursuant to section 127(2)(b); or
 - (b) Request that the insurer considers approving the treatment pursuant to section 126(1)(a).
- 2.12. In both cases, the insurer is not required to approve the MRI, even if it is determined to be reasonable, necessary, and likely to assist with the claimant's recovery. This,

amongst other failings that have been highlighted in this submission, makes the ability to commute benefits an appealing option.

- 2.13. Where a claimant's request for treatment is refused, they are faced with a confusing micro-appeals process with internal and external review mechanisms to make any challenge to an insurer's decision.
- 2.14. This is manifestly unjust in the case of claimants from a culturally or linguistically diverse background, as well as for claimants with limited legal literacy. Where legal services providers like MEJ face further challenges in providing accessible and commercially viable legal representation for claimants under the Act, as highlighted above, this creates an untenable power imbalance and inherent inefficiency in the process.

3. Quality of Life Benefits and Assessments

- 3.1. Quality of life benefits (**QOL**) were designed to replace general damages to allow compensation for injured persons who suffered a permanent impairment due to a motor vehicle accident. However, past QOL applications have shown that there is a power imbalance as the insurer has significant discretion over the QOL process.
- 3.2. If a QOL application is accepted, the insurer arranges an Independent Medical Examination (**IME**). The claimant has little-to-no control over this process and no right to elect or choose a different IME provider.
- 3.3. If the outcome of the first IME is unsatisfactory and/or erroneous, to dispute the decision the claimant must undergo a second medical assessment for which they are responsible for payment. In the experience of this firm, claimants often abandon disputing the first IME due to the high costs of subsequent medical examinations.
- 3.4. If a claimant does elect to undergo a second IME, which can result in a higher whole person impairment (**WPI**) value, in our experience (and that of our clients), it is rare indeed for the first IME to amend his or her initial WPI assessment. In those circumstances, the insurer has the authority to reject the second IME and almost invariably affirms the initial decision by issuing a final decision on WPI that is disadvantageous to the claimant.
- 3.5. Though the ACAT has the power to review the insurer's decision and can remit the matter to the insurer for reconsideration under s.197 of the MAIA, for the reasons outlined earlier in this letter, the ACAT review process is time-consuming and lawyers are often unwilling to assist due to the draconian and inadequate costs provisions that are currently in place.
- 3.6. Case study (former client of MEJ)

Y, [redacted] was involved in a motor vehicle accident on [redacted] 2020. He sustained serious injuries to his left knee and left wrist, requiring surgery. He underwent an IME and was assessed with a WPI of [redacted]. Unsatisfied with the assessment, and the accompanying QOL offer from the insurer, Y approached MEJ for advice on his options to dispute the outcome.

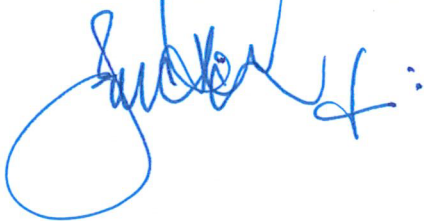
He was advised of the risks involved (mentioned above) and the costs associated with obtaining a second IME. Despite the ongoing impact of his accident-related injuries and disabilities on his daily life, Y made the difficult decision to accept the initial QOL outcome as he lacked the financial resources to challenge the insurer's decision.

To dispute an insurer's decision regarding compensation for injuries arising from a no-fault accident, injured persons are exposed to the risks of incurring significant costs. For instance, an IME will often cost a minimum \$2,500, a cost that must be borne by a claimant at a time when his or her finances are already stretched due to the financial burden of a motor accident claim. As mentioned above, ACAT review costs are capped at approximately \$2,000 including disbursement and GST, a figure that is simply insufficient to cover the costs associated with external review.

- 3.7. The financial burden of disputing an insurer's decision is a significant barrier that many claimants cannot overcome, thereby further limiting his or her ability access justice. In the experience of MEJ, the current QOL assessment process is designed in such a way that it is beneficial to insurers as claimants are often forced to accept an insurer's decision as other options are costly, ineffective or inaccessible.

MEJ is grateful for the opportunity to participate in the review of the Act. We hope that the issues raised in this letter, borne from experience, will assist the Insurance Branch of the Chief Minister, Treasury and Economic Development Directorate in advising the Special Minister of State, and hope that the concerns raised will be taken into consideration for the purposes of the review report and ultimately addressed through legislative reform designed to provide a fairer system for innocent road accident victims.

Yours faithfully,
MALIGANIS EDWARDS JOHNSON





AASW

Australian Association
of Social Workers

Three-Year Review of the Motor Accident Injuries Act 2019

Motor Accident Injuries Commission (ACT)

September 2023

About the Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the national professional body representing more than 15,000 social workers throughout Australia. The AASW works to promote the profession of social work including setting the benchmark for professional education and practice in social work, while also advocating on matters of human rights to advance social justice.

For further information or questions relating to this submission, please contact:

Author of the Submission

Jamie Ling

Policy, Advocacy and Engagement Officer

Information personal to submitter

Manager, Social Policy and Advocacy

Sue O'Sullivan

Information personal to submitter

Executive Summary

The AASW appreciates the opportunity to provide input into the three-year review of the *Motor Accident Injuries Act 2019*. The Terms of Reference which are numbered 1, 3 and 4 will be addressed in this submission. Addressing the issues described in this submission will aim to help support better outcomes and increased recovery rates for people who have been injured in a motor vehicle accident in ACT. The AASW welcomes future collaboration with MAIC to discuss this further.

Recommendations

The AASW recommends:

- Specific data on service provision by AMHSWs should be collected and used to inform improvements in service delivery.
- The value and impact of service provision by AMHSWs in the motor vehicle accident schemes needs to be further recognised by increased promotion with the appropriate stakeholders.
- AMHSWs and social workers should be considered for inclusion in any future innovative pilots or models of care, including early intervention programs, due to their skillset, values, knowledge and approach.

Background information

Accredited Mental Health Social Workers (AMHSWs) are highly trained and educated mental health professionals that provide valuable services to people who are injured in motor vehicle accidents.

The Australian Government has recognised the AASW as the statutory assessing authority for the accreditation of AMHSWs for Medicare Australia since 2004 and continues to recognise AMHSWs as equal to other allied health professionals, such as psychologists, in providing specific government funded mental health programs, such as the Better Access initiative.¹

To be accredited, AMHSWs must satisfy the following criteria:

- Hold a current membership with the AASW.
- Graduate from an AASW accredited 4-year Bachelor degree or 2-year Master's degree in social work, which includes 1000 hours of supervised placement experience.
- Adhere to the AASW Code of Ethics ²
- Meet the strict AMHSW credentialing criteria, including at least 2 years full time equivalent (FTE) post-qualifying supervised social work practice experience in a mental health setting within the last 5 years, totaling 3,360 hours (this is on top of their baseline social work qualification, as mentioned above).
- Meet the standards in the AASW Practice Standards for all social workers³
- Provide proof of how their practice meets the AASW Practice Standards for Mental Health Social Workers and demonstrate their experience in providing focused psychological strategies.
- Provide a referee statement and evidence of recent employment in therapeutic clinical practice.
- Complete 30 hours of continued professional development each year of practice, including 20 hours linked to the mental health field of practice, and 10 hours linked to Focussed Psychological Strategies.
- Be subject to regular AASW and Medicare CPD audits.
- Commit to staying up to date with relevant professional approaches and knowledge.

¹ [Better Access initiative | Australian Government Department of Health and Aged Care](#)

² [AASW Code of Ethics 2020 \(amazonaws.com\)](#)

³ [AASW-Practice-Standards-FEB2023-1.pdf \(amazonaws.com\)](#)

Responses to the Terms of Reference

1. MAI Scheme general statistics.

This is to include:

- a. number of defined benefit applications and the potential impact COVID has had on the Scheme, and**
- b. participant statistics such as role in accident, age ranges, types of injuries, injury severity.**

The AASW advocates for the collection of data specific to the service provision by AMHSWs in the MAI scheme and working collaboratively with the AASW in sharing this deidentified data. This is primarily for the purpose of assessing the impact and value of AMHSW service provision for supporting the recovery of people injured in motor vehicle accidents so that positive outcomes can be replicated and promoted.

3. Encourage early and appropriate treatment and care, to achieve optimum recovery and return to pre-accident levels of activity and work.

This is to include:

- **the amount and incidence of allowable expense payments**
- **treatment and care approvals, including factors in section 120 of the Act relating to deciding what is reasonable and necessary**
- **conduct in relation to treatment and care needs assessments**
- **recovery plan development and engagement**
- **the timeliness of delivery of treatment and care**
- **the amount, and timeliness of treatment and care benefit payments**
- **the progression of motor accident injury claims**

AMHSWs are highly valued members of Australia's mental health workforce delivering clinical social work services in mental health settings and utilising a range of evidence-based strategies. AMHSWs work with people across the lifespan (including children, adults, and older persons) and provide a unique contribution to the mental health space in their holistic approach to working with a person. The advanced training that is expected of AMHSWs prepares and provides them with the skills for working with people with very complex presentations and comorbidities. AMHSWs are trained and educated professionals, meeting some of the highest standards of professional regulation in Australia. Accordingly, the profession of social work has a clear role and provides a unique contribution in the continuum of mental health services.

Given the ability of AMHSWs to conduct comprehensive and holistic biopsychosocial assessments, they are also well placed to intervene early and identify potential and actual systemic and structural barriers to an injured person's recovery.

AMHSWS are also valuable mental health service providers in the motor vehicle accident space as mental health social work aligns with the principles of the Clinical Framework for the Delivery of

Health Services, as supported by the ACT Government.⁴ For example, AMHSWs use various assessment tools to measure the effectiveness of treatment, and they work using a biopsychosocial approach and empower the person to realise their strengths and full potential.

4. Support access to defined benefits.

This is to include the:

- **availability of information and support to access defined benefits under the MAI Scheme, including whether there are barriers for some individuals in engaging with the scheme**
- **provision of services by the Defined Benefits Information Service**

Our members inform us that one of the barriers to providing services within systems such as the motor accident scheme is that there is a lack of awareness and understanding among referrers such as general practitioners as well as within insurance companies. This limits the type and amount of service provision that an injured person can access to support their recovery. The AASW welcomes ongoing collaboration with the MAIC to address this issue, for example, by contributing material to MAIC for inclusion on their website about the treatment that AMHSWs can provide to injured individuals.

⁴ [Collaboration and support for the Clinical Framework - TAC - Transport Accident Commission](#)

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AASW

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Questions and response form

This form is optional, to assist in providing feedback

Application process

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?

Your response (the box will expand as you type)

All the paperwork and documentation is too much for an injured individual to handle.

It was ineffective because the quantity of information was excessive. It left me perplexed, as I was in Information personal to submitter, and I often struggled to make a living to support myself or my daughters.

I was not properly able to assimilate and retain all the information. It works for various individuals depending on their circumstances. For a single parent with no family or friends nearby to assist, it is very challenging to complete all the paperwork while attempting to recover, care for my children, be cognitively present for them, and perform the essential daily tasks, as well as manage pain and trauma from the car accident. Without family support, it is challenging to comprehend all of the information.

Pre-liability decision early treatment payments

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?

Your response

No, I did not have any clarity on the available services.

Treatment and care benefits

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

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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?

Your response

Requesting treatment and care outside of a recovery plan is challenging, since the Insurer (GIO) is primarily motivated to close the injured person's case.

The rehabilitation person who accompanied me during treatment sessions or GP visits was unhelpful and did not assist in guiding me or informing me of the symptoms I was complaining about due to the car accident. Instead, they attempted to divert the issue by dismissing it as unrelated to the accident. Given the severity of my impact in the car accident (the car rolled over multiple times), I sustained injuries, and three years after the car accident, it still impacts my daily life. I have not been able to resume work in this time and I have no prospect of doing so soon.

GIO provides a general explanation for why my claim has been rejected or deemed inapplicable. My case manager needed to refer back to the impact of the car accident in which I sustained a severe **Information personal to submitter** She did not communicate well and work with me instead engaging with me just as a formality to brush off my case and close it; that was the impression I received.

Due to the car accident the **Information personal to submitter**

In regards to this when I stated my physical impairment due to car accident, the response I received from Senior Claims Advisor of GIO,

In her email she stated, "Good afternoon Sylvia

Please see attached your updated Recovery Plan draft.

With regards to your **informatio** injury and my email advising to return to your GP to discuss outside of the claims process, this is because we have not yet accept liability for this new injury.

Please don't hesitate to call me should you have any questions. (Date, Sep 27, 2023)".

Income replacement benefits

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?

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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?

Your response

I was unaware, they may have given me all the documentation, but I needed help comprehending the information package. It would have been different if I had a family member who lived with me full-time to care for me and review all the paperwork and documentation.

Before my injury, I worked part-time in 2020 and full-time in 2021, but the car accident has left me unemployed today. I resigned in December 2020 from my role, I returned to work on a casual and part-time basis. I attempted to return to work to increase my hours in 2022, but I had to resign this year due to the pain [information personal to submitter]. This has further impacted my children's attendance at school.

When I requested income replacement from GIO, I was informed that GIO did not offer such a service. This is clearly not the case under the legislation.

Quality of life benefits

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?

Your response

Before getting the patient ready for the QOL assessment, the Rehabilitator, in my case, was focused on collecting the necessary paperwork to demonstrate that I had returned to my pre-injury capacity to prepare for the QOL assessment. However, the assessment does not take into account what happens to the injured person after the QOL assessment. Due to the car accident, I have developed [information] as a result of [information personal to submitter], and I am physically unable to support myself and my children financially and this has been detrimental to my [information personal to submitter] career progression as a single mother.

Regarding this, I've enclosed my correspondence with GIO attached with this form and I copied and pasted the email here:

Aug 22, 2021,

Hi J,

Thank you for your email.

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As I have repeatedly told M and Dr S, that the Fitness Work certificate to my understanding was paid work accounted for.

I have attached the Fitness Work Certificate from the Dr review, those hours were forcefully written down, is not for my paid 2 days of work hours. It was accounted for under my study and Practicum hours.

I refuted this and our 20 minutes appointment that day, 10th August 2021, with the Doctor went on for almost an hour.

Dr S has also asked to define what is capacity of work? I am not sure if M has forwarded her notes to GIO and updated Dr [Information personal] on this. M was there that day representing GIO concerning the Fitness Work certificate to get my work hours from zero to a double digit. She was not there to assist me to rehabilitate but just to get the numbers down in the Fitness Work certificate.

I just want to reiterate again, the last recent Fitness Work Certificate review ,10 August 2021, was forced on me to give a number of hours that I undertake relating to my Diploma studies.

In the past pre- car accident, I cut my paid work to 2 days and it did not account for any hours from my study hours or Practicum that I undertook then. It was purely for paid work.

The question I would like to ask is do I have to also account for this time as I read and respond to your email into my Fitness of Work Certificate. According to [Information personal], that's my capacity to work, even if I am reading a book to unwind and manage my [Information personal to submitter] well being.

Because that is what I was asked and forced to do and [Information personal] was very aggressive to put a number down into the Fitness Work Certificate. I feel oppressed with all this. The last time when I told the Dr, physically I was not in the condition to do paid work, it was evident and that's how it was zero hours in the Fitness Work Certificate.

Before my car accident, I did the same study and Practicum and I kept Paid work and study/Practicum totally separate.

Making judgement calls does not change anything to my fitness physically, mentally or emotionally. Please clarify and rectify the hours that were taken from my Study/Practicum work hours on 10 September 2021. That is not the truth, what was forcefully written to suffice the paperwork formality.

Kind regards

Sylvia

I was not able to access Quality of Life support because of the assessment report, despite having my life destroyed from the accident, I have had not able to access quality of life support.

The system does not work.

The Assessment Report is rubbish, the outcome makes no sense:

Here is a clinical history and examination findings compatible with the [Information personal to submitter]

[Redacted text block]

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So the Doctor took the lowest value of the impairment scale of [redacted] then added [redacted] to it to arrive at a total impairment of [redacted]. If she had taken the midpoint – [redacted], your overall score would be [redacted], and this appears entirely subjective to me. You are not functional; therefore the Doctor has got this wrong.

Death benefits – funeral and dependent

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?

Your response

The provision of information

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?

Your response

No, I do not believe it to be genuine from the MAI Insurers' perspective that they assist injured individuals in navigating the scheme.

A genuine rehabilitation professional who will educate and familiarise the injured individual about their condition.

The Rehabilitation consultation should study the accident details, know how the accident impacted the individual, and explore the complications and symptoms that will surface after 2-5 years from the accident date.

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In my case, I developed [information personal to submitter]. I went to the Medical Walk-in Centre ED at Canberra Hosp, and my GP referred me to a [information personal to submitter]. The medication reduced the pain and inflammation. Three years ago, my car was T-boned by a speeding car, rolled over twice, the car turned 360 degrees, landed on its wheels, airbags didn't deploy, the car was totalled, my head kept hitting the dashboard, [information personal to submitter] as a result of the accident. GIO has now denied treatment for my [information personal to submitter], stating that it is unrelated to my MVA. [information personal to submitter]

Establish a genuine medical and specialist organisation to assist and direct the injured individual, including independent specialists who themselves have been in a car accident or been through similar injury will be better able to assist an injured person. Knowledge without experience of internal or external suffering is insufficient to comprehend the struggles of the injured.

For instance, a woman who has never given birth and is a spinster cannot comprehend the nine-month journey of pregnancy, the excruciating birthing process, and the following recovery period. In my case, no immediate family members are residing with me to provide me with daily support, and I am a single parent supporting my children. Each injured person is unique and different, considering their social life as it hinders recovery when the body is in pain. For example, I still have to drive my children to school, which exacerbates the pain with constant movement when the [information personal to submitter] is in severe pain, and I am in the car driving to get my [information personal to submitter] to school on time. Establishing a genuine independent medical and specialist body who provide support and guidance to the injured person would be a huge benefit. At present it is virtually impossible to see physicians not recommended by the insurer (with the conflict of interest that implies). Also taking into account each injured person's circumstances and situations, like in my case, I have no immediate family members living with me to support me in my daily life, being a single parent to support my children.

Each injured person are unique and different, so their social life should also be taken into account as it limits recovery when the body is in pain, I still have to drive my children to school, which escalates the pain with constant movements when the neck is in severe pain and I am in the car driving as I have to get my daughters to where they have to be at certain time.

The one-time cleaning and gardening services that were provided were helpful.

Dispute resolution

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?

Your response

The MAI could provide better advice on how to resolve disputes with insurers. The insurer leads the injured person through a claims process in which they have a clear conflict of interest. They have no interest in supporting the claimant, instead doing their best to terminate the claim as early as

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possible rather than get a good outcome for the injured person. The MAI should have an assurance role on the claims process and check with claimants on the progress of claims, and ensure they are being addressed properly by the insurer. Where they are not, proactively telling the claimant what avenues are available to address the issues would be helpful.

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.



Insurance Council
of Australia

29 September 2023

Insurance Branch
Motor Accident Injuries Commission
ACT Government

Submitted by email: insurancebranch@act.gov.au

Dear Sir/Madam,

Motor Accident Injuries Act 2019 – Three-Year Review

The Insurance Council of Australia ('ICA'), on behalf of its licensed ACT Motor Accident Injuries Scheme insurer members ('Insurers') welcomes the opportunity to provide feedback in relation to the Motor Accident Injuries Act 2019 – Three-Year review ('Review').

The ICA is the representative body for the general insurance industry in Australia. The ACT MAI Scheme is currently underwritten by two insurers: IAG and Suncorp. The ICA and MAI Insurers are committed to working with the Motor Accident Injuries Commission ('MAI Commission'), the ACT Government and other stakeholders to support a stable and sustainable MAI scheme that delivers timely benefits to injured road users and affordable premiums to motorists.

Scope of consultation

The Review examines the operation of the MAI Scheme legislation and the extent to which it is working in practice in the interests of delivering optimal outcomes to injured road users and the motoring public of the ACT. Given the MAI Scheme has only been in operation for just over three years, the Review does not examine aspects of the Scheme that are still to be implemented including Significant Occupational Impact assessments and future medical treatment expenses.

Insurers note that because the MAI Scheme is continuing to mature, there continues to be some volatility and the regular patterns that are generally seen in more mature schemes have not yet emerged. It is likely that the impacts of COVID- 19 over the last three years have also caused the usual claims experience patterns to become distorted.

While acknowledging that the MAI Scheme is in its infancy, Insurers support the reforms and believe they have resulted in an efficient, strong and successful MAI Scheme for ACT motorists. In particular, the level of medical support and prompt payment of wages to those injured on ACT roads are examples of the benefits of the MAI Scheme. The introduction of defined benefits for at fault motorists under the MAI Scheme has also widened the cohort of motorists that have access to benefits.

Insurers were pleased to have the opportunity to meet with the MAI Commission in person recently and value this ongoing communication and engagement. As foreshadowed, Insurers do see some

opportunities to further improve the MAI Scheme, particularly for injured people's access to benefits, and would like to raise the following matters for the MAI Commission's consideration.

Recovery plans

Section 122 of the *Motor Accident Injuries Act 2019* ('the Act') provides that a 'recovery plan' for an injured person is a plan that (a) is prepared by the relevant insurer for the motor accident; and (b) provides for the management and coordination of the injured person's treatment and care. Insurers recognise the importance of recovery plans in an injured person's path to recovery. Recovery plans provide transparency around the treatment being provided and the reasons for that treatment. However, not all injured people and doctors share the same level of engagement with the recovery planning process.

Section 123 sets out the process for the preparation of a recovery plan, including the requirement that a relevant insurer must give the injured person and their doctor a draft of the plan and allow them a reasonable opportunity to consider the draft (section 123(3)(a)-(b)). The Motor Accident Injuries (Treatment and Care) Guidelines ('the Guidelines') also set timeframes for the activities associated with the preparation of the plan. There are currently five different timeframes which apply to the creation and provision of recovery plans.

In the experience of Insurers, the requirements in section 123(3), when coupled with the requirement to provide the final version of the plan to the injured person and their doctor within 28 days of the application receipt notice under section 123(5), create a complex recovery planning process which does not necessarily engage the injured person in recovery outcomes. Insurers strongly recommend that section 123(3) be amended to enable an injured person to decide whether a draft plan is to be provided, along with a complementary amendment to section 123(5) to enable the Guidelines to extend the timeframe to provide a final plan in cases where an injured person has elected to receive a draft plan. The extension of the timeframe for the provision of a final plan would ensure adequate time is available to undertake the additional engagement.

Insurers consider there may be other opportunities to realise the objective of recovery planning more fully by reducing complexity and improving efficiency in the process and would be pleased to work with the Commission to achieve this end.

Transfer applications

The Act sets out a process for the transfer of defined benefit applications between Insurers, including interstate Insurers where the application has been made with the wrong insurer. Our experience suggests the process set out in the legislation is complex and falls short of achieving its original aim of providing for timely and efficient transfer of applications. The limitations of the process are magnified in matters involving a relevant insurer that is an interstate insurer and there is a dispute about liability for reasons outlined below.

Interstate relevant insurers are required to pay defined benefits under section 40 of the Act. Section 70 concerns disputes about liability and applies where (a) the relevant insurer for a motor accident (the **first insurer**) intends to reject liability for the application because another insurer (the **second insurer**) appears to be the relevant insurer for the motor accident; and (b) the second insurer disputes the liability for the application.

Section 70(4) of the Act provides that such disputes must be dealt with in accordance with the industry deed.

The industry deed and insurance sharing deed contain rules around the sharing of claim costs where two or more Insurers are liable or potentially liable in relation to a motor accident claim. Difficulty arises where there is a dispute about liability and one of the insurers is an interstate insurer and is not a party to the industry and sharing deeds.

Insurers also see an opportunity to clarify the rules around transfers where it is clear the first insurer is not the insurer for any of the vehicles involved in a motor accident and the relevant insurer is known. Making provision for expedited transfer of these applications would reduce the administrative burden, cost and potential confusion for the injured person.

Insurers would welcome further consideration of these issues by the MAI Commission.

Dispute Resolution

Insurers believe that the introduction of internal dispute resolution mechanisms has assisted injured people resolve disputes in a quick and cost-efficient manner.

At this stage there have only been 15 published decisions under the Act in the ACT Civil and Administrative Tribunal (ACAT). Insurers believe that the major impediment to the quick resolution of disputes is the fact that ACAT have determined that they will only hear administrative law reviews rather than substantive merit reviews. Even if the injured person is successful at ACAT after experiencing a delay in accessing the tribunal, the matter will be returned to the Insurer for further consideration. Our experience is that this has resulted in a disincentive for injured people to seek either internal or external dispute resolution of disputes.

In other jurisdictions, injured people have access to specialist personal injury scheme tribunals such as the Personal Injuries Commission in NSW or the Victorian Civil and Administrative Tribunal which provide external dispute resolution services. We believe that the legislative requirements be amended to ensure that ACAT has a role as an effective merit reviewer to ensure the effective operation of dispute resolution in the MAI Scheme. Insurers also believe the MAI Scheme would benefit from the appointment of one or more medical assessors/tribunal members who have the appropriate medical qualifications to determine medical disputes as is the case in NSW.

Information about the MAI Scheme

It is our experience across jurisdictions that there are injured people who are motivated to find out more about their scheme and/or want to check what they have been told by their insurer is correct. Some look to regulator and insurer websites for information to assist in their treatment and recovery.

To promote greater understanding of entitlements, processes and improve access to information setting out an injured person's rights and responsibilities when recovering benefits, Insurers recommend that subordinate instruments such as the Defined Benefit Application and Treatment and Care Guidelines, be simplified and consolidated. We also suggest that links to the relevant guidelines should be clearly signposted on the MAI Commission website.

In addition to responding to the needs and preferences of injured people, simplified and consolidated subordinate instruments would benefit other stakeholders, such as Insurers and members of the legal profession, resulting in improved outcomes for injured people.

Quality of Life Benefit/ Whole Person Impairment (WPI)

Insurers have concerns regarding an unnecessarily complex Quality of Life benefits ('QoL') process. We have identified several issues such as the requirement for multiple WPI examinations when the applicant has suffered multiple injuries in the accident. This is particularly stressful for applicants with psychological injuries. Insurers are also required to obtain agreement with the injured person as to the injuries to be assessed. This can often lead to a protracted back and forth with the injured person.

By requiring the use of an Independent Medical Examiner ('IME') to conduct WPI assessments, Insurers are required to leave the quality assurance of WPI reports to the IME Provider. This has led to a number of WPI assessments being undertaken by incorrectly qualified IMEs and IMEs producing inconsistent WPI reports with no allowance for insurers to request the correction of reports. In matters where a second WPI assessment has been conducted by the applicant, insurers are able to send the second WPI report to the original IME for comment. This also led to a back and forth between the insurers, IME and the injured person, delaying the QoL process.

We also believe that there is inconsistency in the provisions in relation to whether QoL benefits are payable for WPI assessments less than 5%. Section 132 of the Act provides that only a person with a 5% WPI or more is entitled to a Quality of Life (QoL) payment. In addition, the table attached to Section 167 states that nothing is payable for QoL benefits under 5%. As the rest of the table does not have a consistent per percentage point payment, a figure less than 5% cannot be calculated. These provisions are inconsistent with:

- Section 153 – If both physical and psychological injuries and each is more than 0% (but under 5%), the insurer may take into account the WPI for each kind of injury to determine the amount of QoL benefits the insurer may offer.
- Section 154 WPI less than 5% - insurer may make an offer.
- Section 161 Final offer WPI less than 5%.

We suggest that this inconsistency be clarified to provide certainty both for insurers and injured persons.

IMEs

Insurers note concerns regarding the use of a single authorised IME provider in the Scheme. Insurers recommend the authorisation of at least one additional IME Provider to capture the benefits that come with competition such as the improved standards of service. Insurers are conscious that there may be insufficient numbers of doctors to service two providers and query whether doctors would/could double up.

Insurers also note that the different processes for obtaining WPI assessments for claimants and insurers can be problematic. While claimants can choose their preferred provider, insurers are required to use a randomly allocated provider. For consistency, Insurers suggest that both claimants and insurers are required to use the same process and are both allocated providers randomly subject to authorised IME providers having at least two assessors that can complete the same assessments.

Emerging Issues

There are several matters that Insurers are monitoring and appear to be emerging as concerns for applicants:

- The WPI process, particularly the imposition of an excess for a second assessment, is noted to be a pain point for some applicants.
- Insurers submit that medical assessment processes, including reviews and the role of medical examiners/assessors in the current Scheme design would benefit from review more broadly.

We hope this letter is of assistance. If you have any questions or comments in relation to our submission, please contact Alice Nichol on [REDACTED] or at [REDACTED]

Sincerely



Kylie Macfarlane

Acting CEO

MOTOR ACCIDENTS INJURIES ACT REVIEW SUNCORP SUBMISSION

Suncorp (trading as GIO, AAMI and APIA) welcomes the opportunity provided by the ACT Government to deliver its response to the *Motor Accident Injuries Act (ACT) 2019* three-year review.

Scheme Performance

The Motor Accident Injuries (MAI) model is a hybrid scheme which enables injured road users to receive access to defined benefits (regardless of fault¹) whilst retaining a system of common law damages for victims of negligence. The current scheme model commenced operation in February 2020 and includes access to defined benefits for a period of up to five years. The scheme is in its infancy with only 3.5 years of a possible 5 years of Defined benefits being observed, and common law claims only recently commenced being reported.

In addition to the limited time of operation, the scheme has been impacted by the effects of the global pandemic. Suncorp has observed a significant reduction in reported claims due to the impact of COVID lockdowns that reduced the number of customers accessing the roads. A resultant reduction in claims numbers was experienced across all CTP/ MAI schemes nationally during the pandemic.

A combination of scheme maturity and external factors caused by the pandemic, means it is not yet possible to comprehensively assess the performance of the MAI Scheme. However, we do consider that the new MAI scheme model has demonstrated positive signs that the scheme is operating in accordance with the objects of the Act – i.e., to ensure that benefits are available to support all people injured in motor accidents on a no-fault basis and to support people injured in motor accidents to access defined benefits.

In the MAI Scheme Quarterly Report for the period from 1 April to 30 June 2023, 58% of applicants received their first treatment and care payment within two weeks of lodgement of a notice of claim and 51% received their first income replacement benefit within four weeks. This is in stark comparison to the prior traditional common law model which did not allow access to past economic loss benefits until the common law claim was resolved by the parties (usually at least eighteen months post-accident) or the matter proceeded to Trial (generally at least three years post-accident.)

The price of MAI premiums paid by of customers has decreased significantly since scheme reform in 2020. Minister Steel assessed the decrease in premiums on 5 August 2023 at \$53.15 or 11.6 per cent reduction for the average passenger vehicle premium: -

“This represents a change in the average passenger vehicle premium from \$458.30 at the start of the MAI scheme, which will fall to \$405.15 effective 22 August 2023. The average takes into account the four insurers’ premium offering for a passenger vehicle.”

Scheme reform has enabled more motorists in the ACT to have access to defined benefits whilst reducing the cost of premiums payable by motorists.

In Suncorp’s view, minor refinements to the scheme would assist with overall scheme efficiency.

¹ Exclusions and Limitations on access to MAI benefits do exist under the Act.

Claims Considerations

It would be advantageous for Claimants if further attempts could be made to reduce the level of documentation required to be completed for medical and rehabilitation treatment requests. Whilst Claimants are receiving early access to benefits, there is a high degree of correspondence required to be completed by all parties, which could be streamlined for enhanced customer benefits.

We have experienced significant issues with the management of the Internal Dispute Resolution process at ACAT which is onerous and has numerous technicalities. Assessors do not have the ability to decide the merit of the disputes, resulting in long durations and no resolution of disputes, requiring matters to be remitted back to the parties for reconsideration.

Premium Considerations

The MAI scheme is small in comparison to other jurisdictions, and young in the life of a long tail scheme. These factors combined mean there is only immature data to assess claims experience to date, making it difficult to fully appraise premium efficiency. In conjunction with a highly competitive and price sensitive market, there is some risk that the sustainability of the scheme could be undermined by pricing that is too low for the ultimate claims liability which may take 5 – 7 years after policies have been sold to become evident in the data.

We understand and acknowledge the desire to maintain a balance between funding the risk costs and maintaining premium affordability for motorcyclists following scheme reform. The current mechanism for collecting, and redistributing the motorcycle premium support achieves this outcome. However, if the support arrangements are to remain as a permanent feature of the scheme, we suggest that alternate mechanisms be explored to ensure this remains efficient.

One such alternate mechanism would be to adopt a process such as the Premium Surplus Refund (PSR) process. This would enable the portion of premium to support motorcycles be retained at the central point of premium collection, and then remitted to insurers along with the premium payment for each motorcycle. The benefits of this model would be less administration and transfer of funds between insurers and government departments. This may also enable any surplus in the support fund to be used to offset future motorcycle premium increases, or used for initiatives such as motorcycle safety programs that reduce the risk cost for motorcycles.

Licensing and Supervision of Insurers

Suncorp considers that there are no significant issues with the licensing and supervision of insurers in the MAI Scheme. The Regulator is actively engaged in its role of providing regulatory oversight of insurers whilst maintaining a constructive approach to managing issues of compliance connected with licence supervision.

From: [Eddie Stewart](#)
To: [CMTEDD Insurance Branch](#)
Cc: [Amber Wang](#)
Subject: De-identified submission for three year review of Motor Accident Injuries Act
Date: Tuesday, 3 October 2023 4:26:55 PM
Attachments: [image006234.png](#)
[image146846.png](#)
[Response-template.docx](#)

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Dear Sir / Madam

Please find **attached** de-identified submission in relation to the three-year review of the *Motor Accident Injuries Act 2019*, from an individual who sought advice by our firm. We have been asked to provide this response to you as they are not comfortable with their name or address being public information.

We apologise that this submission is being sent to you after the deadline for submissions, and we hope that it will still be considered in the review.

Kind regards

Eddie Stewart | Graduate

Snedden Hall & Gallop Lawyers

(P) [REDACTED] | (E) [REDACTED]

[REDACTED]

[REDACTED]

ABN 67 123 354 129 | www.shqlawyers.com.au



It is our policy to acknowledge emails within 24-hours. Please note that all emails are scanned for viruses and spam. If you are concerned that software may have blocked your email, please contact me by phone.

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Questions and response form

This form is optional, to assist in providing feedback

Application process

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?

Your response (the box will expand as you type)

The initial forms for the MAI scheme were fine to complete, I had no issues with these. I was contacted quickly by the scheme and advised what to do in a reasonably simple way.

The insurer's forms and information sheets I found quite confusing. The insurer passed on a large quantity of information, which I found quite overwhelming. It takes an extremely long time to learn it all, so it is hard to be confident and know what you are entitled to. For most people going through this experience, it would be their first time. If you are not experienced or a lawyer, understanding the information provided is quite difficult. I have found it is also essential to know as much as possible as the insurance company seems to look for weaknesses in your evidence and understanding.

I did not find eligibility to be a clear and straightforward process.

Pre-liability decision early treatment payments

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?

Your response

The information packet was long and confusing, and to understand it all you really need a professional who knows the system to explain it. At the start of my case I thought the insurance company would be that person to help explain and guide me through the system. I am now of the opinion that they want you to understand as little as possible so you claim less with them.

Regarding clarity on available services, I expected that any service needed to assist in my recovery would be covered. Unfortunately I have spent a lot of time arguing with NRMA about reimbursements for services that are essential to my recovery. This time could have been spent focusing on rebuilding my life after a serious accident.

My accident was on the 25/1/23, and the first funds that entered my account from the insurer was on the 10/3/23. This is far too long for financial support to arrive. I wasn't able to work much at all

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during this time, so my employer allowed me to use sick leave to ensure I could pay my mortgage and other bills. I am still battling with the insurance company so that my employer can get reimbursed for this generosity.

Treatment and care benefits

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?

Your response

Most treatments and care that I felt were needed for my recovery were not easily accessible. I have had to argue with the insurer to get most things covered and there are still large outstanding amounts I am fighting to get reimbursed.

It is also difficult to get treatment outside of the recovery plan. For example, my Doctor and my physiotherapist both agreed that doing yoga and specific weight exercises at the gym would be helpful rehabilitation for my injuries, yet it took 7 months for any of my gym membership fees to be reimbursed.

The insurer on many occasions has not answered questions I asked. I find their time frames to be very slow. If you are waiting 2 weeks for answers (often it is longer or not at all) each time and there are multiple issues you are trying to resolve it gets quite hard and confusing to keep track of each issue and what stage it is at.

Getting the insurer to cover treatment requests is like drawing blood from a stone.

[Redacted text]

. I passed all of this evidence onto NRMA, and they took a lot more than 10 days to come back with their decision. In the meantime, I had to get the surgery to prevent further serious damage so I took a loan from [Redacted] to get it done, expecting NRMA to do the right thing and reimburse me. Instead they sent me to a Medico-Legal specialist who wrote a report that favoured NRMA. After researching this specialist [Redacted], it became clear that he has the worst reviews I have ever seen, with multiple people claiming that he writes reports that ignore evidence and benefit only the

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insurance companies. They have used the report of this specialist to deny the claim and drag the process out. I now have to challenge it in ACAT. This process has been extremely stressful.

If I could have had a lawyer help me with getting this surgery covered, I am sure I wouldn't be fighting it anymore and I would have been reimbursed by now. I had to spend hours of time stressfully fighting this, and I have evidence proving information personal to submitter by the accident. I should be focusing on recovery, not arguing about getting reimbursed.

Multiple times NRMA has stated that they didn't get back to me or are late with getting back to me because the person was on leave. This is fine, everyone deserves their leave but this is a massive company. Surely they have the resources to find someone who isn't on leave to handle my issue in a timely manner.

My experience with NRMAs independent assessment was that they pick and choose the bits of information that benefit the insurer and ignore clear facts.

Income replacement benefits

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?

Your response

NRMA provided information on the income replacement benefit that was hard to understand and overwhelming.

After my accident I couldn't work, if my employer didn't let me use sick leave to fill up my time sheet I would have waited over a month before NRMA paid any sort of benefit. I am currently in an internal review about getting the income replacement correct. The math I have done on what is owed to me is very different to the numbers that NRMA presented. I have asked questions on how they calculated this but have not received a straight or understandable answer yet. I used to work an average of 85 hrs per fortnight, after the accident this was reduced considerably. The fair thing to do is have my pay slip reimbursed for the lost time that I couldn't work, yet I still see no results 8 months later.

Income payments took well over a month to arrive. Issues included them not reimbursing sick leave used to cover my time off and overtime not being repaid.

The balance does not seem right. Are all the premiums that motorists pay used to help them recover, or do insurance companies make profits off them? If they make profits and put people through as much misery as I have been through, something is not right, fair or balanced as they are profiting off helpless peoples suffering and not assisting them to the best of their abilities.

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Quality of life benefits

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?

Your response

I asked NRMA if there would be any reimbursement for pain and suffering, they said there can be depending on the circumstances and that this is best to speak to a lawyer about. I am still unsure when that part of the process will begin and what I will be entitled to.

As mentioned, I had to go and see information personal to submitter to assess my injuries. It was unlike any other medical experience I have had in the world. It was extremely impersonable and went for a very short period of time considering the severity of my injuries and the accident. The worst part was his report stating that my information injury had gotten to the best it could get, and that no more treatment would help it. I am still experiencing information personal to from the accident, and therefore still receiving treatment and completing exercises to get it better. I find it is still helping. However, it concerns me that if I felt I needed further treatment on my injuries, then NRMA won't cover it as they won't think it will help. information personal to also ignored clear facts, and has stopped NRMA from covering my information p surgery. The facts inform ignored were written by medical professionals with far more satisfied patients and far more knowledge and experience on my situation and injury.

It has been 35 weeks and I still don't believe NRMA has sent the information pack. I have very little information on how this process will work and what I am entitled to.

The process would be a lot less painful and faster for myself if I was provided with the right support to help fight my case. A lawyer who can get a lot more involved would be very helpful.

Death benefits – funeral and dependent

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?

Your response

Not applicable to my case.

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The provision of information

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?

Your response

I have used the MAI website minimally, I am unsure where to find helpful resources on it.

No, my experience with NRMA has left me more confused and dissatisfied than ever. I expected support and fairness but instead have received a very slow service that has added financial and emotional stress to an already traumatic situation. It has felt like NRMA wants to cause confusion and suffering to push me away so I don't try and claim as much.

A timeline of the process would be helpful. A list of support services would be very helpful. Faster initial payments would save stress throughout the claim. Support from a paid lawyer would greatly reduce stress and increase time to focus on recovery. It has felt like NRMA wanted to do the bare minimum to help me, and I have not felt supported at all. They have an opportunity to help put peoples lives back together after accidents, yet their attitudes and practices seem to only make life harder.

The community needs to hear stories about how the current scheme isn't working. This way they can be informed and vote to make changes to improve the scheme. If the scheme can be improved it will greatly reduce individuals' suffering from the hassles of the scheme.

I am yet to have a positive experience with the scheme. It would be great to feel supported and have a professional to help guide me through the complicated process.

Dispute resolution

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?

Your response

Having support from lawyers would be very helpful in resolving disputes. I feel that if I could have presented information or facts in a certain way then I wouldn't have to be fighting it so much, and I could spend more time focusing on recovery.

The way insurers provide answers and information is a major issue.

Time frames are a big barrier.

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The insurers dispute resolution processes are very poor. They are slow and they use their big budgets and huge amounts of staff to bring your case down. It feels like a David vs Goliath situation, how is 1 person who is in a traumatic situation, supposed to compete with a company that makes hundreds of millions in profits?

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.

From: [Rowe, Margie](#)
To: [CMTEDD, Insurance Branch](#)
Subject: Victim Support ACT Submission to MAI Scheme Review
Date: Tuesday, 3 October 2023 4:33:54 PM
Attachments: [03102023 VSACT submission to MAI Scheme Discussion.pdf](#)

OFFICIAL

Dear Colleagues

Please find attached submission to the Review on behalf of Victim Support ACT. Our comments are largely reflective of the feedback and experiences of VSACT clients who have interacted with the MAI Scheme.

VSACT wishes to acknowledge and thank staff in the MAI Regulatory Policy and Supervision section for working with VSACT to provide assistance to our clients, to being open and responsive to feedback and willing to make changes where possible to improve the operations of the Scheme and its accessibility to our clients.

Warm Regards
Margie

Margie Rowe
Senior Director
Victim Support ACT
ACT Human Rights Commission
[REDACTED] | 56 Allara Street, Canberra City | GPO Box 158 Canberra ACT 2601
ACT Human Rights Commission | ACT Government | [Home - Victim Support ACT](#)



I acknowledge the traditional custodians of the ACT and their continuing connection to land and community. I pay my respect to them, their culture and their elders, past, present, and future. *Artwork by Lynnice Keen, Ngunnawal artist.*

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Questions and response form

This form is optional, to assist in providing feedback

Application process

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?

Your response (the box will expand as you type)

Victim Support ACT (VSACT) has increasingly been called upon to provide support to families who have experienced loss arising from criminal offence(s) involving motor vehicles. In May 2023 the Victims of Crime Regulations 2000 were amended to enable VSACT to assist families with crisis counselling, case coordination and ongoing therapeutic support under the Victim Services Scheme. VSACT has provided assistance to family members to understand and navigate their entitlements under the MAI Scheme as well as supporting them to advocate for law reform.

VSACT has received feedback from our clients that the current application process is complex and onerous. Our clients have had difficulties in their interactions with the Motor Accident Insurance Scheme (the Scheme) and with insurers. This has been compounded by the timeframes within which some applications under the Scheme are to be made. While we note that there is the ability to obtain time extensions, this has not been readily apparent to some of our clients who have been worried and stressed about meeting an earlier time limit.

We note that the timeframe for interaction with the Scheme and insurers will often coincide with the period during which our clients are grieving the loss of a family member and experiencing significant trauma.

Primarily, VSACT has received feedback that the application forms can be overwhelming for potential applicants, and this can, in turn, deter people who are eligible from applying for defined benefits. VSACT's clients cite the number of forms required when applying for a particular benefit, and the burden this places on applicants to understand what is required of them at a time when they are often least able to do this.

For example, the income replacement benefit requires a fitness for work certificate in addition to the main application forms. A recovery plan is developed by the insurer, in consultation with the doctor and applicant, if applicants do not resume their normal activities within 28 days of the collision. This recovery plan is in relation to the applicant's treatment and care needs however may subsequently be required in relation to the assessment for a Quality of life benefit as well. That is, a client should be seeing a psychiatrist or clinical psychologist in order to be assessed for primary psychological injury. Therefore, the linkages between the forms and their impact across applications for different defined benefits is not clear.

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Further, timeframes around when applications can be submitted require applicants to monitor administrative paperwork, such as the Quality of Life benefit, which can only be submitted after six months from the date of the collision. Lastly, VSACT also note the requirement for different forms to be submitted to different insurers, i.e. Personal Injuries Application to be submitted to the insurer of the vehicle most at fault and for the Funeral Benefits Application, the applicant can submit to any insurer of choice as an option.

VSACT accepts that a certain level of administrative burden is justified to ensure standardised treatment and minimise fraud by limiting access to those eligible. However, VSACT notes that the forms play a critical role in shaping accessibility to the Scheme and its entitlements. Accordingly, VSACT holds concerns that the forms and the administrative burdens associated with the applications can present as an unreasonable burden that prevents eligible individuals receiving benefits to which they are legally entitled. For example, it would be difficult for applicants to know without accessing the relevant section of information and additional links to documents, that to claim for a Quality of Life benefit, they require a letter from a psychiatrist or clinical psychologist to assess for permanent primary psychological injury. As a result, VSACT holds concerns that the MAI may not reach the whole target population as intended, while the affected individuals bear costs that would otherwise be payable through the Scheme.

The MAI Commission gave evidence to the Inquiry into Dangerous Driving that the move to the new defined benefits MAI scheme was “partly because of community feedback that a claimant had to continually tell their story and prove someone was at fault” and that “they are trying to streamline the forms as much as possible to avoid people having to provide the same information multiple times.” However, VSACT notes that under the heading ‘4. About the Accident’ in both the Dependant Benefits Defined Benefits Application and Funeral Benefits Defined Benefits Application, the forms provide that only if a Personal Injuries application has been submitted for the deceased, then the Applicant is not required to complete the section outlining the accident. Submitting a Personal Injuries application for a deceased person appears incongruous. Accordingly, in circumstances where the personal representative of the deceased person, or a dependant, or parent or guardian of a dependant of the deceased person is additionally the person who has paid or is liable to pay the funeral expenses and they have not completed a Personal Injuries Application, they are required to restate what is likely traumatic information.

Even if the applicant can navigate the form, obtaining the required evidence can still be unduly onerous. For example, the Dependant Benefits Defined Benefits Application and Funeral Benefits Defined Benefits Application forms require a high volume of supporting documentation including the Police Incident Numbers, vehicle details and other driver details. Accordingly, while the forms are a seemingly innocuous part of the Scheme, this information is not always readily available and the requirement to obtain it from the ACT Coroners Court and the AFP poses challenges for most people dealing with the aftermath of a serious collision and experiencing trauma as a result. VSACT notes that some of the known reactions and impacts of experiencing trauma include feeling fatigued, tired, anxious, having reduced concentration and memory and feeling confused and disorientated. Further, applicants may also be experiencing emotional reactions of shock and continuing to feel like the danger is present.

The MAI Commission gave evidence at the Dangerous Driving Inquiry that given that the MAI is a compulsory scheme which is administered by private sector insurers, the MAI encourages private insurers to provide clarity in terms of exactly what the benefits are that people are entitled to under the scheme. VSACT has received feedback that concerningly applicants receive very little guidance

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from private insurers. Further, on the MAI Commission’s webpage under “What types of support are available”, there are two forms that are identified as relevant for support available if someone has died in a motor accident, namely, the forms that relate to the funeral and/or dependant benefits. This, in turn, incorrectly implies that those bereaved are not eligible for, inter alia, other supports and defined benefits such as income replacement benefits.

Further to the above, the Personal Injuries (Defined Benefits Application) Form is to be used to apply for medical and income benefits and notes “Use this form to apply for medical and income benefits if you’ve been injured in a motor accident on or after 1 February 2020.” There is no definition of “injured”. As a result of the wording in the form, we have heard from a bereaved client that their medical practitioner refused to fill in the MAI benefit form because they were not “injured in a motor accident”. The form does not seem to have contemplated applications from bereaved family members. Accordingly, the form is phrased to inadvertently limit the accessibility of certain benefits to bereaved applicants. It is notable that this bereaved client gave up at this point and did not wish to continue with any claims under the MAI Scheme.

Ultimately, it is VSACT’s experience that, by virtue of the private insurers and the MAI Commission’s webpage, the community’s understanding of eligibility for any of the defined benefits is unclear. Further, with respect to the forms, the administrative burdens we have seen play out are costly to overcome and require not just time, but also financial resources (some people have engaged lawyers), cognitive skills, administrative skills and technological literacy. The administrative burdens also represent a more significant barrier for those with fewer resources, as well as those with limited English or lower levels of literacy. Critically, an unsuccessful outcome may not be tied to an applicant’s eligibility for the Scheme, rather their inability to successfully complete a complex and administratively burdensome form. VSACT note the Defined Benefits Information Service has been advertised to provide free information and advice to people accessing the defined benefits however information on the scope of their role and involvement is limited. Additional information in this regard would be helpful for applicants to know prior to commencing their application process. VSACT are also cognisant that the title of this service does not make their role apparent, noting the layers of complexity that would be experienced by those from culturally and linguistically diverse backgrounds or those with lower levels of literacy.

Pre-liability decision early treatment payments

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?

Your response

While the private insurer is able to reimburse for some treatment expenses, the pre-application treatment expenses that are required to complete the MAI Medical Report are only paid once an application is lodged for a Personal Injuries Application. Accordingly, VSACT holds concerns that where someone cannot even afford pre-application expenses, there seems to be no other option for them under the Scheme.

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Treatment and care benefits

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?

Your response

In deciding whether treatment and care is reasonable and necessary, an insurer must consider the factors set out in section 120 of the *Motor Accident Injuries Act 2019* (“the Act”). The Motor Accident Injuries (Treatment and Care) Guidelines 2021 state that a provider of a service will not be appropriate unless they are at arms-length to the injured person. Accordingly, the Scheme will only reimburse domestic carer support services where the provider is, inter alia, appropriately qualified and at arms-length to the injured person. Therefore, family members, relatives, the injured person or a business owned or controlled by a family member or relative of the injured person will not be an appropriate provider. VSACT considers that this is not trauma informed, particularly noting that in certain cultural contexts, families may be less willing to engage a professional caring service but rather perceive it as their duty or responsibility to care for their family member. Accordingly, VSACT holds concerns that where family members with appropriate skills are in a position to and choose to take a significant carer’s role or substitute for attendance care, the Scheme is unduly limiting by remunerating only formal carers.

Where family members provide care, this often comes at a cost to the family members such as requirement to take leave or adjusting their work hours. Additionally, a client’s family expressed that the client does not want someone who is a stranger to them providing this care. The current requirements of the Scheme in this regard do not allow for the applicant to experience safety, choice, empowerment – all characteristics of trauma informed practice that can support and recognise the needs of applicants.

Income replacement benefits

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?

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Your response

In VSACT's experience, the legislative framework of the Act is complex, particularly in relation to Income Replacement Benefits.

VSACT acknowledges, in circumstances where there is a commercial incentive on private insurers to provide as little compensation as possible, that the MAI Commission has largely relied on the existence of detailed legislation to mitigate against the risk of private insurers under-compensating applicants. The information on the webpage refers applicants to the Income Replacement Guidelines to provide information concerning when an applicant can be paid income replacement. In VSACT's view, the guidelines are exceedingly complex and do not provide sufficient clarity as to the income replacement benefit. VSACT has also found that the Act is highly technical and complex. For example, there is an ambiguity in relation to what constitutes a 'weekly amount' for the purpose of assessing and paying income replacement benefits, as outlined below.

Section 96 provides for the amount of income replacement benefits for the first payment period. Section 96(1) provides that an injured person entitled to income replacement benefits is entitled to the amount each *week* worked out as follows for the first payment period: $(P - A) \times N$. A means the amount of the injured person's post-injury earning capacity which is defined 'the weekly amount the person has the capacity to earn in paid work for which the person is reasonably suited because of the person's education, training and experience, based on the person's fitness for work in that paid work as decided by the relevant insurer under s 100 (1) (Injured person's post-injury earning capacity)'. While section 93 of the Act states the 'first payment period' commences on the date of the motor vehicle collision and the 'second payment period' commences on the day after the end of the 'first payment period', the term 'weekly' is not defined in the Act.

Section 93 states the 'first payment period' commences on the date of the motor vehicle collision, but there is nothing in the Act that states that a 'weekly amount' for the purposes of, inter alia, the post injury earning capacity must be calculated to commence at the start of the 'first payment period'. Rather, the 'first payment period' and 'second payment period' simply define the periods of time for which income replacement benefits are payable and allow for different rates of pre-injury income to be payable for each period. Given the above, together with the ordinary meaning of a working week, it is reasonable to assume that a 'weekly amount' refers to the amount paid for Monday to Friday and that use of a Monday to Friday weekly amount would have to be calculated using pro-rated part weeks. A pro-rated calculation is simple and is contemplated by the Act.

Section 20(4)(a) of the Act states the licenced insurer has a duty to "disclose as soon as practicable all information that an applicant or claimant may reasonably need to understand the process for applying...". VSACT considers this obligation ought to extend to providing Applicants with full and accurate information about the process for applying for income replacement benefits. However, we have been advised that an applicant did not receive such information. For example, this client was not advised that the 'weekly amount' for the purpose of income replacement benefit was not calculated as an ordinary working week, that is Monday to Friday, until after an Internal Review. The intent of the legislation and promoted through the MAI Commission website states "Under the new scheme, Canberrans receive fairer, faster and more comprehensive support if they are injured in a motor vehicle accident". The lack of information provided to a client about the way that income replacement benefits is calculated does not align with this assertion and had a negative financial impact on the client.

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Further, there is a lack of clarity and transparency concerning the fact that informal work arrangements can be accepted through provision of a statutory declaration from the employer. VSACT are aware of this through our engagement with Defined Benefits Information Service and clients. Accordingly, unless an applicant is engaged with the Defined Benefits Information Service, the individual may not be aware that they could apply for this payment.

Quality of life benefits

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?

Your response

With respect to requiring applicants to wait 26 weeks after the motor vehicle accident to apply for Quality of Life benefit, the VSACT holds concerns that this delay can disproportionately impact applicants whose injury has sufficiently stabilised for the purpose of undertaking an assessment of whole person impairment. Further, VSACT holds concerns that the whole person impairment assessment is inordinately complex.

Through working with DBIS and clients, VSACT have gained insight into the significance of the recovery plan for application of the Quality of life benefit. VSACT understands that medical professionals, including a psychiatrist or clinical psychologist, must make a determination about the permanent nature of the physical or primary psychological injuries prior to the applicant being able to apply for this defined benefit. Further, it is unclear as to the extent to which the Defined Benefits Information Service can assist in this process.

Death benefits – funeral and dependent

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?

Your response

VSACT has provided support to families directly impacted by motor vehicle offences causing death. These families have found the MAI Scheme administrative burdens and requirements for the person who has paid or is liable to pay the funeral expenses to be onerous. The applicant is, as discussed above in relation to the applications, required to obtain the following documentation: a police officer name or accident report number, a brief description of the accident, details of the vehicles involved in the accident, including the vehicle description, driver's name, driver's contact and number of passengers. This is at a time when they have lost someone and are usually arranging the

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funeral within the first week or two, including being able to pay a deposit if required by the funeral director.

VSACT has heard from a client that they became aware of the Funeral Benefit Form at the time of receiving a funeral invoice with a payment term of 21 days. While the client contacted the insurers and the ACT Coroners Court via the phone and email, they had significant difficulties obtaining the required information to complete the form. Only after seeking updates did the client receive significantly delayed and insufficient information from the ACT Coroners Court. Further, the client was required to navigate additional administrative burdens due to ambiguity as to whether the ACT Coroners Court was permitted to release further information as indicated in the application. Given the time limit, the client ultimately sought the assistance of an investigating officer once they were back on shift, who then informed the client of the registration of the vehicle. The client was then advised that the vehicle was unregistered as the comprehensive motor vehicle insurer sought to cancel the registration and Access Canberra backdated the write off, of the insurance to the date it was stolen, prior to the offence. As a consequence of backdating the write off, the client was required to contact Access Canberra, unsuccessfully, and contact the Commission for further advice. During this process, the insurer firmly advised the client that there was a time limitation as to when the defined benefit claims were required to be submitted, namely, 13 weeks from time of accident which included funeral, medical and income replacement benefits even though the delays were principally as a result of the difficulties in obtaining the required information and lack of assistance of the insurers. While we, and the client, now understand that an extension of time is allowed, this was not apparent or known at the time and not communicated by the insurer. This increased the level of stress on a person at the most stressful period of their life. Accordingly, this case exemplifies how the Act places an onerous and unwarranted overhead on bereaved families to obtain information. VSACT considers that the complicated process privileges access to those who are best able to navigate complex bureaucracy and withstand the administrative burden of application. Applicants with significant injuries and/or trauma, who are most in need of benefits, are most likely to be affected.

The provision of information

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?

Your response

As a general comment, VSACT holds concerns that the MAI Commission's references to different legislative guidelines to provide further information on defined benefits, often without even directly linking the reference on the webpage to the Legislation Register, is too complicated and onerous to inflict on lay people who are likely in some state of trauma or have experienced injuries. It limits applicants' understanding about the MAI Scheme and presents as a barrier for many applicants who

Motor Accident Injuries Act 2019

Discussion Paper – Three Year Review

have limited legal literacy. The nomenclature for the Defined Benefits Information Service does not easily communicate what the service does, noting that 'defined benefits' is terminology that is either unfamiliar to people or familiar to them only in the context of superannuation. We suggest changing the name of this service to be reflective of the assistance it provides. In addition to this, the Quality of Life Benefit, Funeral Benefits and Dependent Benefits application titles could also be considered for change noting the severity and seriousness of the circumstances of the applicants, rather than a 'benefit' they are accessing.

It would also be helpful to have information available on the website in different languages and easy English to foster inclusivity and promote easier understanding.

Additionally, there should be a streamlined process where MAI insurers have avenues to communicate with one another and the burden for submission of applications is removed from the applicants. This would include a provision for the applicant to submit to any insurer regardless of the type of application they are completing and for an internal process to resolve administrative issues in providing this to the appropriate insurer. It would be beneficial for applicants to deal with one main contact or case worker within an insurance company who can internally address other requirements.

VSACT note that a person who experiences a traumatic event, can experience significantly high levels of physical, emotional and psychological distress. An applicant may be trying to process a multitude of thoughts about the event, feel they are in a state of shock, not want to engage with others or become withdrawn or avoid their normal daily routine while trying to navigate the MAI Scheme.

Dispute resolution

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?

Your response

VSACT has concerns about the extent to which the MAI scheme relies on private insurers to inform applicants of their rights and entitlements and it has been our experience that unrepresented applicants are at a disadvantage when dealing with the insurers. There are few avenues to appeal or dispute decisions of private insurers, and no guarantee that they will be able to seek cost orders. Without the assistance of specialist legal advice, applicants are expected to navigate complex disputes directly with well-resourced insurers, noting that the Defined Benefits Scheme does not provide representation. VSACT considers that this has exacerbated the inappropriate power imbalance in favour of private insurers over applicants who are often under significant financial and emotional distress.

How to provide feedback

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

Motor Accident Injuries Act 2019
Discussion Paper – Three Year Review

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.

From: [Committee](#)
To: [CMTEDD, Insurance Branch](#)
Cc: [Policy](#)
Subject: RE: Extension Request - ACT Law Society
Date: Wednesday, 4 October 2023 4:39:25 PM
Attachments: [image001.png](#)
[ACTLS MAIA 3 Year Review Submission.pdf](#)
[ACT Law Society Submission - Motor Accident Injuries Act & Workers Compensation Act.pdf](#)

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Good afternoon,

Thank you for providing us with the additional time to complete this submission. The ACT Law Society is very grateful for the opportunity to provide input.

Please see attached our submission, and a previous submission referred to in the present response.

Thank you.

Kind regards,
Hayley

Hayley White

Committee Administration Coordinator

T [REDACTED] | E [REDACTED]

actlawsociety

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The Law Society acknowledges the Ngunnawal and Ngambri peoples, who are the traditional custodians of the land on which our building is located. The Law Society is committed to providing access to resources and services to meet the needs of a diverse community.

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Mr Stephen Miners
Duty Under Treasurer
Economic, Revenue and Insurance

By email: insurancebranch@act.gov.au

4 October 2023

Dear Mr Miners,

Motor Accident Injuries Act – Three-year review

The ACT Law Society appreciates the opportunity to respond to the review into the operation of the Motor Accident Injuries Scheme legislation, including the associated Guidelines, and report on the extent to which they are working in practice, with regard to the requirements of section 493(2) and the objects in section 6 of the *Motor Accident Injuries Act 2019* (ACT) (the **Act**).

The Society exists to:

- Represent, advance, and defend the interests of an independent legal profession in the ACT;
- Protect the public interest in the ACT system of justice through the efficient regulation of the profession in accordance with the Legal Profession Act and the Society's Rules for Solicitors.

The Society's members are drawn from a diverse background, including legal professionals who advise insurers, claimants and the Government, and whose members have extensive experience in handling compulsory third party (CTP) claims procedures across various jurisdictions.

This response has been prepared with the expert input of a working group of members of the Society's Civil Litigation Committee (the Committee). The Committee is of the view that, while there are several commendable aspirational aspects to the current Scheme, there are also ways the operation of the Act can be improved in practise. They are as follows:

Whole person impairment (WPI) assessment

1.1 In the experience of Committee members, the current process for determining WPI, set out in Part 2.6 of the Act, is cumbersome and unnecessarily complicated. This is manifest in several ways:

- (a) Determination of whether the applicant's injuries are stable;
- (b) Appropriate assessment framework to assess minor's injuries;
- (c) Lack of suitable experts to assess claimants; and
- (d) Resolution of disputes concerning differing assessments of WPI.

Each of the above items is assessed further below.

Stability

- 1.2 Before arranging a WPI assessment, the insurer must decide whether an injury is 'stable', as per s 138 of the Act. 'Stable' is not defined in the Act, yet claims managers employed by insurers, who would generally not hold any medical qualifications, are tasked with determining whether physical or psychological injuries (which inherently fluctuate) are stable.
- 1.3 By comparison, once an insurer decides an injury is stable, and arranges a WPI assessment, the *Motor Accident Injuries (WPI Assessment) Guidelines 2019* (the Guidelines) requires the medical assessor to consider whether the injury is at 'maximum medical improvement' (MMI), a term which is defined.
- 1.4 It is recommended that further clarity is provided to insurers as to when an injury should be considered 'stable' or MMI, to promote and encourage the early, quick, cost-effective, and just resolution of disputes, as per section 6(d) of the Act.

Children

- 1.5 Paragraph 1.3 of the Guidelines confirms that they were adapted from workers compensation systems, which would appear to indicate that these Guidelines were designed to assess injuries to individuals of working age, and not children. This issue appears to be highlighted when considering the elements of the psychiatric impairment rating scale (PIRS) assessment for psychological injuries, and the activity of daily living uplift assessments. For example:
- 1.6 Paragraph 4.35 of the Guidelines states that additional 1 to 3% WPI can be given for a physical injury after considering the following factors:
- Three per cent WPI if injured person's capacity to undertake personal care activities such as dressing, washing, toileting and shaving has been affected.*
- Two per cent WPI if the injured person can manage personal care, but is restricted with usual household tasks such as cooking, vacuuming, making beds or tasks of equal magnitude such as shopping, climbing stairs or walking reasonable distances.*
- One per cent WPI for those able to cope with the above, but unable to get back to previous sporting or recreational activities such as gardening, running and active hobbies etc*
- 1.7 Paragraphs 11.11 to 11.12 of the Guidelines set out the PIRS assessment process, which considers the following categories:

1. *Self care and personal hygiene (Table 11.1)*
2. *Social and recreational activities (Table 11.2)*

3. *Travel (Table 11.3)*

4. *Social functioning (relationships) (Table 11.4)*

5. *Concentration, persistence and pace (table 11.5)*

6. *Employability (Table 11.6)*

A review of the relevant tables indicates the difficulties a medical assessor would encounter trying to undertake a PIRS assessment on a child, particularly a minor who is too young to work, does not undertake independent travel and does not have responsibility for household management.

- 1.8 The Society considers urgent consideration should be given to this issue, as the ‘deeming’ provisions in section 133 of the Act will not remediate this deficit for all minors, because not all children with permanent injuries will be receiving treatment at 4 years and 6 months after the accident.

Suitable experts

- 1.9 The Motor Accident Injuries Commission (MAI Commission) provides the MAI Commission must authorise entities to be Independent Medical Examiner (IME) providers for the Act (authorised IME providers): section 15 of the Act.
- 1.10 At present, the only IME provider authorised as an IME provider is mlcoa. In the experience of committee members, there have been instances where a claim has been significantly delayed due to the lack of appropriately qualified IMEs within the stable of providers working under the mlcoa banner.
- 1.11 In particular, difficulties have arisen in arranging assessments in less common fields of speciality, such as ear, nose and throat. This has led to significant delays in the claims process as the WPI assessment is stalled until an appropriate expert is found. This runs contrary to the objects in section 6 of the Act, specifically to *promote and encourage the early, quick, cost-effective and just resolution of disputes*: section 6(d) of the Act.

Resolution of WPI disputes

- 1.12 The Society suggests that consideration be given to amendment to the WPI dispute process within the Act and related Guidelines.
- 1.13 The WPI threshold of 10% is the gateway through which common entitlements are enlivened, pursuant to s 239 of the Act.
- 1.14 Committee members have experienced uncertainty surrounding the resolution of disputes concerning WPI assessments. It is not uncommon, for example, for an IME to provide a report assessing WPI of less than 10% at the instigation of an insurer, with the claimant

obtaining a second report from a private medical examiner (PME) in which WPI is assessed at 10% or greater. In those circumstances, where the IME assessor does not agree to amend their initial assessment, the dispute can be subject to external review by the ACAT.

- 1.15 At present, with reference to the amendments introduced through the *Motor Accident Injuries Amendments Act 2023*, this threshold issue is to be determined through a sequence of WPI reports.
- 1.16 When an applicant makes a Quality of Life (QOL) Benefits application, an insurer must refer them to an authorised IME provider for their first WPI assessment.
- 1.17 The applicant may only arrange for their second WPI assessment from a PME after the IME assessment.
- 1.18 This amendment makes it clear that the applicant's second WPI assessment must take place after the first assessment arranged by the insurer (section 137(4) of the Act).
- 1.19 If an applicant is given notice that their WPI has been assessed as at least 10% and that they are entitled to make a 'motor accident claim', they must respond by the latest date under subsections 157(8)(a) to (c) of the Act .
- 1.20 For an applicant to make a 'motor accident claim', they must have:
 - first made a QOL Benefits application; and
 - been assessed as having a WPI of at least 10% by an IME; or
 - the insurer must have decided they have a WPI of at least 10%; and
 - made a final offer WPI.
- 1.21 The amendment above prescribes that the process for WPI assessments as set out in the Act must be strictly followed.
- 1.22 As such, the first WPI report must be obtained from an IME. Any second WPI assessment report from a PME then can only be used to decide a final offer WPI after considering the IME report (section 239(1)(a) of the Act).
- 1.23 Any dispute is then the subject of a "final report", to be issued by the first IME assessment provider.
- 1.24 Any dispute regarding the "final report" is an externally reviewable decision, pursuant to Schedule 1, Part 1.2 of the Act .
- 1.25 With reference to the decision of *Neish v Insurance Australia Limited* ACN 000 016 722 t/as NRMA (*Motor Accident Injuries*) [2002] ACAT 24 at paragraphs 17-20, it is clear that the ACAT's role in determining an externally reviewable decision, with reference to ss 192-197 Act , is an administrative review rather than a merits review.

- 1.26 Accordingly, the ACAT's role in determining this threshold dispute is to determine whether the above processes have been followed correctly. That is, whether there was any error of fact or law in issuing the "final report".
- 1.27 However, the Society submits that a WPI dispute is not one suited to an administrative review by an ACAT Member. Rather, it is a medical dispute that ought to be determined by a qualified medical practitioner.
- 1.28 In New South Wales, WPI disputes of this nature are determined through the Personal Injury Commission.
- 1.29 Disputes regarding WPI are referred to an independent Personal Injury Commission (PIC) medical Assessor, one is who is on the State Insurance Regulatory Authority (SIRA) approved list of health practitioners authorised to give evidence, in order to determine the medical dispute and issue a certificate with an independent assessment of WPI. This will involve a further medical assessment of the applicant.
- 1.30 That certificate can also be subject to further review, either by way of a merits review or by of a further assessment as determined by the medical panel.
- 1.31 The Society suggests that this model ought to be adopted in the ACT.
- 1.32 This will allow the medical threshold dispute of WPI to be determined by a qualified and approved health practitioner; rather than by way of an administrative review by an ACAT Member.

Treatment disputes

- 1.33 It is submitted that a similar or the same approach, as suggested for WPI disputes, ought to be adopted for externally reviewable treatment disputes under the Act.
- 1.34 Again, it is noted that these are medical disputes that ought to be determined by a qualified and approved health practitioner as opposed to administrative review decisions by an ACAT Member.
- 1.35 It is respectfully submitted that the ACT CTP Scheme requires a similar medical dispute resolution pathway as that which exists in New South Wales. Medical practitioners are best placed to determine disputes as between parties of a medical nature.

Interaction with the *Workers Compensation Act 1951*

- 1.36 The Society has previously provided submissions regarding the interaction of the Act and *Workers Compensation Act 1951*.
- 1.37 We note that the recommendations contained therein were not adopted in the latest tranche of reforms introduced by the *Motor Accident Injuries Amendments Act 2023*.

- 1.38 The Society again **encloses** copies of those submissions as part of this response and urges consideration of further amendments as previously suggested by the profession.
- 1.39 It is unclear how the date of injury or date of lodgement (i.e. of defined benefits claim; (QOL) application; Notice of Claim) was intended to be addressed within transition provisions.
- 1.40 The Society is aware there remains uncertainty for injured motorists regarding their choice between defined benefits under the Act or workers compensation entitlements under the *Workers Compensation Act 1951* (WCA) or other workers compensation insurance schemes. We understand that the Defined Benefits Information Scheme is not funded to advise injured motorists about workers compensation, and lawyers cannot be paid to advise injured motorists about defined benefit entitlements.

Drafting considerations

Reference to section 157(2) of the Act

- 1.41 Section 157(2) of the Act states:

WPI 10% or more—injured person entitled to make motor accident claim

(1) This section applies if—

- (a) separate WPI reports from an independent medical examiner assess an injured person’s physical injuries and psychological injuries; and*
- (b) the higher WPI assessment assesses the person’s WPI as at least 10%; and*
- (c) the injured person is entitled to make a motor accident claim in relation to the motor accident.*

(2) This section also applies if—

- (a) only 1 WPI report from an independent medical examiner assesses an injured person’s WPI; and*
- (b) the person’s WPI is assessed as at least 10%; and*
- (c) the injured person is entitled to make a motor accident claim in relation to the motor accident.*

...

- 1.42 The Committee queries whether section 157(2) is erroneously emphasised in the following separate pieces of legislation:

- (e) Note 1(b) of *Limitation Act 1985*
“if the person receives a notice under that Act, s 157 (2) or s 169 (2)—the due date for the notice”.

- (f) Section 51(4) of the Civil Law Wrongs Act 2002
 “(c) if the claimant receives a notice under the Motor Accident Injuries Act 2019, section 157 (2) (WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice;”

Inconsistencies in the wording used as to when a Notice of Claim (NOC) is due to be served:

- 1.43 Section 166 of the Act appears to adopt different wording to the *Civil Law (Wrongs) Act* and the notes in the Limitation Act:

166 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 to make a motor accident claim:

(a) if the injured person receives a notice under section 141 (5) (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 [157 \(3\)](#) (WPI 10% or more—injured person entitled to make motor accident claim) or section 164 (2) (Final offer WPI 10% or more—injured person entitled to make motor accident claim)—the due date for the notice.

- 1.44 Section 51(4) of the Civil Law (Wrongs) Act:

(4) For a proceeding based on a motor accident claim, the notice must be given within 3 months after the latest of the following days:

(a) if the claimant is taken, under the [Motor Accident Injuries Act 2019](#), section 133 (WPI taken to be 10% in certain circumstances), to have a WPI of 10% as a result of the motor accident—the day the claimant receives information under the [Motor Accident Injuries Act 2019](#) stating that the claimant is taken to have a WPI of 10%;

(b) if the claimant receives a notice under the [Motor Accident Injuries Act 2019](#), section 141 (5) (WPI assessment 4 years 6 months after motor accident)—the date that is 26 weeks after the date of the notice;

(c) if the claimant receives a notice under the [Motor Accident Injuries Act 2019](#), [section 157 \(2\)](#) (WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice;

(d) if the claimant receives a notice under the [Motor Accident Injuries Act 2019](#), [section 164 \(2\)](#) (Final offer WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice;

(e) if the claimant applies to the ACAT for review of a final offer WPI decision under the [Motor Accident Injuries Act 2019](#), section 162 (1) (Final offer WPI

5% to 9%), section 163 (1) (Final offer WPI 10% or more—injured person not entitled to make motor accident claim) or section 164 (1) and the ACAT makes an order under that Act, section 197 (External review—decision) to the effect that the claimant has a WPI of at least 10% and is entitled to make a motor accident claim—

(i) if no appeal from the order is made—the date the appeal period for the order ends; or

(ii) if an appeal from the order is made—the date the appeal is finally decided;

(f) if the claimant receives a notice under the [Motor Accident Injuries Act 2019](#), section 213 (4) (SOI report—injury has significant occupational impact) stating that the claimant is taken to have a WPI of 10% for this Act—the date of the notice;

(g) if the claimant applies to the ACAT for review of an SOI report under the [Motor Accident Injuries Act 2019](#), section 214 (SOI report—no significant occupational impact) and the ACAT makes an order under that Act, section 218 (1) (b) (ACAT review—decision)—

(i) if no appeal from the order is made—the date the appeal period for the order ends; or

(ii) if an appeal from the order is made—the date the appeal is finally decided.

Note This chapter does not apply to a claim for which a notice has been given by or for the claimant under the [Limitation Act 1985](#), s 30A (2) (see s 50).

1.45 The notes set out in section 16AA(1)(b) of the Limitation Act 1985 also state:

Note 1 Under the [Motor Accident Injuries Act 2019](#), s 166, 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 (5)—the date that is 26 weeks after the date of the notice;

(b) if the person receives a notice under that Act, s 157 (2) or s 169 (2)—the due date for the notice.

Note 2 Under the [Motor Accident Injuries Act 2019](#), s 220, a person who receives a notice under that Act, s 213 (4) has 3 months from the date of the notice to make a motor accident claim.

1.46 It is also noted by the Society that:

- the timing of 157(8)(a) of the Act , being the latest of the 'due date' options, indicates that the applicant can respond after the expiring of the statutory limitation period for a common law damages claim.
- the meaning of '*the claim is finally decided*' at subsection 157(8)(c) is ambiguous and not defined in the Act.

1.47 Due to the intricacies of the drafting of the Act up until the Motor Accident Claim (common law) claim has commenced, the Society considers there may be more drafting and logistical issues which are yet to be ventilated, given:

- WPI assessments have only become more common in the past 12 months;
- At this stage the injured motorist may not be legally represented, which places a burden upon the insurer's claims manager (who can obtain legal advice).

1.48 It is suggested by the Society that the next review of the Act is held within 12 months, and also focuses on the transition from defined benefits, and leading into and through, common law claims.

Committee members would be happy to meet with you should you wish to discuss the above comments provided by the committee on behalf of the Society in further detail.

Yours sincerely,



Simone Carton
Chief Executive Officer

27 March 2023

Nicola Clark
MAI Regulatory Policy and Supervision
GPO Box 158
Canberra ACT 2601

Dear Nicola,

Interaction between *Motor Accident Injuries Act 2019* and *Workers Compensation Act 1951*

Thank you for the opportunity to consult further on the *Motor Accident Injuries Act 2019* (MAIA), specifically in relation to its interaction with the *Workers Compensation Act 1951* (W/C Act). The ACT Law Society (the Society) has consulted our Civil Litigation Committee and motor accident injuries sub-committee on the information sheet that summarises the proposed changes to sections 50 and 239 of the MAIA and we provide the following comments.

The Society is not of the view that the proposed amendments remove any ambiguity between the operation of sections 50, 133 and 239 of the MAIA and the W/C Act.

The Society considers that the proposed amendments, potentially create more uncertainty for injured claimants regarding their election of defined benefits and/or workers compensation entitlements.

For self-represented litigants, the Society considers that the terms and operation of the proposed amendments to sections 50 and 239 of the MAIA are unclear and framed in ambiguous terms. For represented litigants, the Society is concerned the proposed amendments would make it difficult for lawyers to advise injured claimants on the legal consequences that settlement of a workers compensation claim would have on future entitlements under the MAIA.

In our members' experience, workers compensation commutations/without prejudice settlements can include certain terms completely disparate to MAIA defined benefits compensation. For example, workers compensation commutations/without prejudice settlements can include the risk of common law exposure, a resignation from employment or other terms central to the workers compensation scheme.

Given that the proposed amendments appear to conclusively finalise an injured claimants' MAIA defined benefits entitlements upon agreeing to a workers compensation settlement, the Society considers that further guidance and clarity is necessary as part of any legislative reforms.

This is particularly necessary in circumstances where there is uncertainty regarding:

- The election of a worker compensation settlement where MAIA common law/motor accident claim entitlements are uncertain, including where no Quality of Life Benefits Application has yet been made;
- The election of a worker compensation settlement where MAIA common law/motor accident claim entitlements are uncertain, including where no Quality of Life Benefits Assessment can be arranged as the claimants' injuries have not yet stabilised; and
- Recovery implications from any MAIA common law claim/motor accident claim, pursuant to sections 183-184 of the W/C Act.

For the reasons stated above, the Society does not support the proposed amendments to sections 50 and 239 of the MAIA, as currently proposed.

However, the Society acknowledges that the proposed changes are intended to improve the interaction between the MAIA and the W/C Act. The Society supports the objective of improving the interaction between the schemes.

Indeed, the Society notes the various legislative amendments introduced in New South Wales to improve the interaction between the *Motor Accident Injuries Act 2017* and *Workers Compensation Act 1987*, which have generally been positive and improved the interaction between those schemes. As such, the Society would welcome the opportunity to consult on any further proposed amendments to these or other sections of the MAIA.

In this regard, the Society previously provided comments on the operation of section 50 of the MAIA, in a letter dated 28 November 2022. We have again enclosed that correspondence for ease of reference. The Society would like to take this opportunity to reiterate the comments therein.

In particular, the Society considers that the election provision within section 50 of the MAIA should be amended as previously suggested, to prevent injured claimants losing the opportunity to elect the scheme through which they want to receive no-fault entitlements. This is particularly relevant in circumstances where injured claimants are not legally represented within 13 weeks of the date of injury, which in our members' experience is often the case.

We trust that these comments are of assistance and welcome the opportunity to consult further. The Society would particularly welcome the opportunity for further consultation in the upcoming 3-year review of the scheme, as prescribed in the MAIA.

Yours Sincerely,



Simone Carton
Chief Executive Officer

From: [Elenore Levi](#)
To: [CMTEDD, Insurance Branch](#)
Subject: Australian Lawyers Alliance Submission to the Three-Year Review of the Motor Accident Injuries Act 2019 (ACT)
Date: Thursday, 5 October 2023 4:27:46 PM
Attachments: [image001.png](#)
[image002.png](#)
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[051023 - Australian Lawyers Alliance Submission to the Three-Year Review of the Motor Accident Injuries Act 2019 \(ACT\).pdf](#)

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Good Afternoon,

I hope this email finds you well.

Please find **attached** a submission from the Australian Lawyers Alliance (ALA) to the Three-Year Review of the *Motor Accident Injuries Act 2019* (ACT). The ALA appreciates the additional time we were afforded to complete our submission.

Thank you in advance for Treasury's time in reviewing our submission.

Is the ALA authorised to publish our submission on our website?

Kind regards,
Elenore

—

Elenore Levi (Eli)
Policy and
Advocacy Officer



Australian Lawyers Alliance

A Level 7, 321 Kent Street Sydney NSW 2000

P GPO Box 7052 Sydney NSW 2001



W lawyersalliance.com.au

The Australian Lawyers Alliance office is located on land traditionally owned by the Gadigal people of the Eora Nation. The ALA is a national organisation and we acknowledge the traditional owners and custodians of the lands on which we work as the First Peoples of this country.

Three-Year Review of the *Motor Accident Injuries Act 2019 (ACT)*

Submission to the Insurance Branch, Economic and
Financial Group, Treasury (ACT Government)

5 October 2023

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into Treasury's Three-Year Review of the *Motor Accident Injuries Act 2019* (ACT) ('MAI Act'). The ALA notes this is the first three-year review of the ACT's Motor Accident Injuries Scheme ('MAI Scheme') since the MAI Scheme commenced on 1 February 2020.
2. The ALA submits that there are important reforms needed to the MAI Act and all related legislative instruments, as we are concerned that the MAI Scheme is largely not upholding the objectives underlying the MAI Scheme. This is having a negative impact on injured motorists and their support networks in the ACT.
3. In our submission, the ALA will address:
 - the significant power imbalances contained in the MAI Act;
 - drafting issues in the MAI Act, which affect the MAI Act's application and how the MAI Act's provisions interact with other pieces of legislation;
 - concerns held by ALA members about the Whole Person Impairment (WPI) assessment framework;
 - the uncertainty for injured motorists regarding how the MAI Scheme interacts with workers compensation entitlements; and
 - the resolution of common law claims.

Balance of power

4. The ALA hold concerns about the complexity of the defined benefits phase of the MAI Act (and its recent amendments commencing on 14 July 2023, version R5) and the evolving intricate network of Regulations, Guidelines and other disallowable instruments being formed around it. This creates a power imbalance for injured motorists, as they are expected to comprehend a significant amount of legislation and related materials, or attempt to arrange legal assistance (as addressed further below).

5. The ALA considers access to justice a fundamental right, and injured motorists in the ACT (including those who were injured through no fault of their own) have had this right circumscribed by the restriction placed upon personal injury lawyers practising in this area, as personal injury lawyers cannot be paid to advise these individuals. Most plaintiff personal injury law firms have historically undertaken a significant amount of pro bono work for injured individuals, and commonly act under no-win no-fee cost agreements. However, it is unlikely to be commercially viable for plaintiff personal injury firms (most of whom are ACT-based firms) to provide pro bono advice for the duration of a defined benefits claim – which, so far, appear to run for around three years.
6. The ALA’s concern about access to justice is magnified by insurers retaining an unfettered right to access any legal representation from their chosen panel of law firms – usually from national, top-tier law firms specialising in personal injury.
7. In ALA members’ experience, injured motorists are often vulnerable, confused or feel stressed by corresponding with an insurer. Many injured motorists indicate that it is harder to mentally ‘move on’ from the accident when they must continue to liaise directly with the insurer. This appears contrary to the objectives of the MAI Act, outlined in section 6, including:
 - (b) *encourage early and appropriate treatment and care of people injured in motor accidents to achieve optimum recovery and return to pre-accident levels of activity and work;*
8. Our members have received feedback that whilst the insurers’ claim managers are still learning the MAI Scheme, errors are inadvertently being made (despite the insurers’ right to access and retain lawyers), which further adds to the stressful nature of those interactions for injured motorists in the ACT. This also appears contrary to the objectives of the MAI Act, outlined in section 6, including:
 - (d) *promote and encourage the early, quick, cost-effective and just resolution of disputes;*
9. A not insignificant educational burden has been placed upon insurance claim managers in relation to defined benefits. However, ALA members have noticed that correspondence from the insurers generally does not identify the MAI Act provisions or Guidelines under which a decision has been made or is required. This appears contrary to the objectives of the MAI Act, outlined in section 6, including subsection (d), reproduced above.

10. The ALA acknowledges the important role that the Defined Benefit Information Service (DBIS) has played in advising injured motorists. However, there are significant limitations to DBIS' ability to advise:

- DBIS cannot advise about workers compensation schemes, which under the MAI Act is a significant consideration as to which scheme is most beneficial for the injured motorist;
- It is uncertain whether DBIS can meet with injured motorists, and thereby determine – as their plaintiff personal injury lawyer would – an injured motorist's capacity to provide legal instructions (which is very important after a head injury or psychological injury), or whether that injured motorist requires additional assistance with understanding written material; and
- DBIS cannot advise about motor accident claims (common law) claims, which also interact with the *Civil Law (Wrongs) Act 2002* (ACT) and the *Limitation Act 1985* (ACT).

11. **The ALA would support the injured motorist (particularly those injured through no fault of their own) being able to engage a plaintiff personal injury lawyer of their choice, who would be able to provide holistic advice in relation to:**

- Workers compensation schemes, which scheme is most beneficial for the injured motorist, and how the schemes interact. This is incredibly important, as the injured motorist may need return to work rehabilitation assistance or may be unable to return to work due to their injuries.
- Whether the injured motorist has capacity to provide legal instructions (which, as expressed above, is very important after a head injury or psychological injury) or whether the injured motorist requires any additional assistance with understanding written material. The medical literacy of a plaintiff personal injury lawyer can also be instrumental in ensuring that all injuries are properly diagnosed and assessed.
- Motor accident (common law) claims and the obligations under the *Civil Law (Wrongs) Act 2002* (ACT) and the *Limitation Act 1985* (ACT).

12. The ALA submits that the MAI Act contains significant power imbalances, including at the following significant stages:

- Delayed lodgement of claims:
 - Injured motorists may be unaware of the process or time limits in sections 58 and 59 (13 weeks) to lodge a MAI Act claim.
 - ‘Exceptional circumstances’ are required under clause 5.1.1 of the *Motor Accident Injuries (Treatment and Care) Guidelines 2021 (ACT)*, which relates to MAI Act section 128, for back payment of treatment or care expenses for:
 - a person who died from injuries resulting from the motor accident;
 - a person who was hospitalised for at least four weeks;
 - a close relative, spouse or child of the injured person who died from injuries resulting from the motor accident; or
 - direct result of errors or mistakes made by a MAI insurer while handling an application.
- When the insurer thinks treatment is ‘reasonable and necessary’, injured motorists are expected to be self-represented or to contact the DBIS for assistance during this stage:

Motor Accident Injuries (Treatment and Care) Guidelines 2021 –

“4.3.3 - An insurer may also approve treatment and care not mentioned in a recovery plan, if the insurer is satisfied on reasonable grounds that the treatment and care:

- *is reasonable and necessary in the circumstances; and*
 - *will assist with the injured person’s recovery or management of the person’s injury.”*
- When the injury is ‘stable’ or ‘maximum medical improvement’ (MMI), injured motorists are expected to be self-represented, or contact the DBIS for assistance during this stage.

- Section 138 of the MAI Act states that a WPI assessment can occur when the insurer considers the injury 'stable'. There is no clear metric or definition as to when an injury, particularly a psychological injury which are inherently fluctuating, is considered stable.
- However, the *Motor Accident Injuries (WPI Assessment) Guidelines 2019* (ACT) ('MAI (WPI Assessment) Guidelines') states that a WPI assessment can only occur if the assessor (doctor) considers that the injury is at MMI: *"This is considered to occur when the injured person's condition is well stabilised and is unlikely to change substantially in the next year with or without medical treatment"*.

13. Decisions provided by insurers do not appear to clearly state under what provisions of the MAI Act their decisions are made, nor the legislation relating to the due date for providing a Private Medical Examiner report or a Notice of Claim. This appears contrary to the objectives of the MAI Act, outlined in section 6.

14. Whilst power imbalances are not uncommon within statutory insurance schemes, the significant difference with the MAI Scheme is that the ACT Government has significantly hindered the ability of injured motorists to access independent legal advice during the defined benefits phase, they are restricted in their ability to access legal advice because:

- lawyers cannot be paid for providing legal advice under the defined benefits scheme, except in the below circumstance. This means injured motorists must:
 - be self-represented; or
 - utilise the ACT Government-funded DBIS; and/or
 - rely upon pro-bono advice (if possible).
- lawyers can only be paid for assisting with an external review in ACAT under the defined benefits scheme. ACAT preparation generally involves:
 - drafting all necessary paperwork;
 - drafting submissions;
 - appearances; and
 - potentially briefing doctors and counsel.

15. One such example is the matter of *Williams v GIO (Motor Accident Injuries)* [2022] ACAT 90. This matter involved a single motor vehicle collision. It involved multiple applications and a final hearing. Ultimately, the injured party decided to walk away from the claim.
16. However, a \$2,000.00 AWE Indexed legal cost cap (and filing fee) has been placed on lawyers instructed to act for an injured motorist in the ACT Civil and Administrative Appeal Tribunal (ACAT)². This amount must also incorporate any costs associated with the ACAT claim, which could include medical reports and barrister's fees.
17. It is unclear whether the legal community were consulted before the ACAT cost cap was imposed, and the ALA is concerned it significantly under reflects the work associated with appearing at ACAT. Whilst we understand many of our members would be able to assist with ACAT external reviews, the work is not commercially viable under the cost restriction.
18. It is, therefore, not commercially viable for many ACT-based, personal injury law firms to assist injured motorists with external appeals. Meanwhile, the DBIS are not funded to represent injured motorists in ACAT. This all appears contrary to the objectives of the MAI Act, outlined in section 6.
19. However, the insurers are not constrained from seeking legal advice at any stage in the defined benefits process, including briefing lawyers or counsel for external appeals to ACAT.
20. The insurers have unfettered access to legal representation without any cost restrictions when appearing in ACAT to defend their decision. The *total* legal expenditure of insurers to date can be seen in the MAIC quarterly reports; however, little is known about the actual matter-based expenditure, particularly in ACAT.

Technical concerns

21. ALA members are aware of some drafting issues in the MAI Act, which affect the MAI Act's application and how the MAI Act's provisions interact with other pieces of legislation.

² *Motor Accident Injuries (ACAT Costs Orders) Regulation 2020* (ACT) Regulation 6.

Section 157(2)

22. Section 157(2) of the MAI Act appears to be incorrectly referred to in note 1(b) of section 16AA in the *Limitation Act 1985* (ACT) and in section 51(4) of the *Civil Law (Wrongs) Act 2002* (ACT). It is unclear why section 157(2) is referenced. For example, the provision in the latter is as follows:

(c) if the claimant receives a notice under the Motor Accident Injuries Act 2019, section 157 (2) (WPI 10% or more—injured person entitled to make motor accident claim)—the due date stated in the notice.

23. There are also a very large number of defined terms in the MAI Act. However, there are many significant terms or clauses that lack definition and are prone to be subject to litigation. **The ALA submits that all terms in the MAI Act must be adequately defined in the interests of ensuring anyone seeking to comprehend the MAI Act can do so, including injured motorists.**

Inconsistencies in the wording regarding Notices of Claim

24. The ALA submits that there are inconsistencies in the wording used in the following three provisions as to when a notice of claim is due to be served:

- Section 166 of the MAI Act;
- Section 51 of the *Civil Law (Wrongs) Act 2002* (ACT); and
- Notes set out in section 16AA of the *Limitation Act 1985* (ACT).

25. **The ALA’s recommendation is that this is streamlined and clarified, to avoid any misinterpretation of the legislation and missed timeframes.**

26. When the MAI Act was amended in July 2023 (version R5), it is unclear that consideration was given to implementing clear transitional provisions within the legislation, regarding the impact on injured motorists depending upon the date of injury, and date of lodgement of the defined benefits claim, Quality of Life application and Notice of Claim.

27. **The ALA recommends that consideration is given to improving the interaction between the MAI Act and other legislation, including refining all ambiguously-worded provisions.**

The Whole Person Impairment (WPI) assessment framework

28. The ALA remains of the view, as per our 2018 submission,³ that:

- Whole Person Impairment (WPI) is an ineffective way to calculate the pain and suffering, and impact on the lifestyle, of an injured motorist.
- Artificially separating the following categories of injuries is not in the best interests of injured motorists in the ACT:
 - i. Physical and psychological injuries, given the biopsychosocial model; and
 - ii. Primary and secondary psychological injuries.

29. ALA members have observed that the fluctuating nature of psychological injuries has resulted in injured motorists with psychological injuries having their primary WPI assessments significantly delayed.

30. ALA members have noted clinical psychologists reporting being unable to advise whether a psychological injury is a primary or secondary psychological injury. It has not been explained how a psychiatrist (or another specialist) can artificially distinguish between the impact of a primary and secondary psychological injury.

31. Injured motorists who develop severe secondary psychological injury (such as depression) as a result of their physical injuries are only able to achieve a one to three per cent uplift on their physical injuries. This does not make their suffering any less than someone who sustained a primary psychological injury in the accident, yet they cannot be properly assessed or compensated for that injury.

32. The ALA strongly contends that these artificial separations between injuries seems contrary to the objectives of the MAI Act outlined in section 6, including:

(b) encourage early and appropriate treatment and care of people injured in motor accidents to achieve optimum recovery and return to pre-accident levels of activity and work; and

(c) support people injured in motor accidents to access defined benefits;

³ Australian Lawyers Alliance, Submission to the Standing Committee on Justice and Community Safety of the ACT Legislative Assembly, *Inquiry into Motor Accident Injuries Bill 2018* (17 October 2018) <www.lawyersalliance.com.au/documents/item/1381>.

33. There are several categories of physical injuries which are not covered in the MAI (WPI Assessment) Guidelines:

- Whilst damage to dentures is considered a 'personal injury' under the MAI (WPI Assessment) Guidelines, no provision is made for loss or damage to teeth.
- The ALA notes that pregnancy loss is not covered under the MAI (WPI Assessment) Guidelines.

34. The ALA is concerned that in creating the *MAI (WPI Assessment) Guidelines*, this was modelled not from other road injury schemes but instead from workers compensation systems. This means that there is a built-in presumption that the injuries being assessed are for injured motorists of working age.

35. The MAI (WPI Assessment) Guidelines, therefore, do not appear to accommodate injuries to children. In particular, the Psychiatric impairment Rating scale (PIRS) and Activities of Daily Living (ADL) assessments seem to be unfairly biased towards adult lifestyles.

36. Whilst section 133 of the MAI Act contains a deeming provision for children injured in an accident, it is only applicable if the child is receiving treatment at four years and six months after the accident. With children as some of the most vulnerable road users, the ALA is concerned that this appears contrary to the objectives of the MAI Act, outlined in section 6, including:

(a) ensure benefits are available to support all people injured in motor accidents on a no-fault basis, subject to some exclusions and limitations;

37. The ALA recommends urgent consideration of the MAI (WPI Assessment) Guidelines, to ensure children are not disadvantaged.

Disputes around WPI and treatment decisions

38. The ALA notes that disputes around WPI must be escalated to external review by ACAT.

39. However, **the ALA submits that a dedicated medical tribunal is required and should be established to be able to understand and weigh up expert opinion on these issues.**

Interaction with workers compensation schemes

40. There remains uncertainty for injured motorists regarding their choice between defined benefits under the MAI Act or workers compensation entitlements under the *Workers Compensation Act 1951* (ACT) ('WCA Act').
41. Injured motorists can engage a lawyer to advise them about and assist them with workers compensation entitlements, but not the MAI Act. Sections 50, 133 and 239 of the MAI Act remain ambiguous as to their interaction with the WCA Act. The ALA notes that the DBIS cannot provide legal advice on workers compensation, common law claims, employment law claims, or income protection claims.
42. Further, the ALA notes that not all workers compensation claims are covered under the WCA Act. There remains the possibility that a claim will be notified by a person driving in the course of their Government employment (SRCA) or while interstate.
43. **The ALA recommends that injured motorists should be able to obtain holistic legal advice about the pros and cons of proceeding with either a workers compensation claim or a claim under the MAI scheme. Such advice cannot be provided by the DBIS or the insurer, and such advice can be critical in determining the outcome for the injured motorist in terms of quality of treatment and rehabilitation to return to their employment.**

Resolution of common law claims

44. ALA members submit that the inability to proceed with commutation of defined benefits (unless the injured motorist lives overseas) under a motor accident (common law) claim unnecessarily complicates the system and keeps the injured motorist 'stuck in the system' for longer.
45. **The ALA recommends that the injured motorist ought to be able to elect whether the resolution of a motor accident (common law) claim includes a commutation of defined benefits. This would allow the insurer and the injured motorist to part ways, with all entitlements resolved without need for further recourse of internal or external review, and would increase the cost effectiveness of the scheme. This would align with the objectives of the MAI Act, outlined in section 6.**

Conclusion

46. The ALA contends that a full and comprehensive review of the MAI Scheme, the MAI Act and all related legislative instruments is essential given the issues, inconsistencies and inequities we have identified in our submission above.
47. That review should have regard to whether the MAI Scheme should be continued or what substantial amendments are needed to ensure the MAI Scheme fulfils its objectives. The ALA submits this is essential so that injured motorists in the ACT can receive appropriate treatment, support and access to justice.
48. The ALA welcomes the opportunity to have input into the Three-Year Review of the *Motor Accident Injuries Act 2019* (ACT). The ALA is available to provide further assistance to Treasury on the issues raised in this submission.



Hassan Ehsan

**President, ACT Branch Committee,
Australian Lawyers Alliance**



Amber Wang

**ACT Director,
Australian Lawyers Alliance**

Oral feedback documented by Insurance Branch and confirmed with CARE Inc (9 October 2023)

Overall observations

Care Inc's experiences are supportive of the MAI Scheme. They see its operation as meeting the objectives of the MAI Act. They have observed injured people receiving faster and broader access to support than was available under the previous CTP Scheme.

Uptake of the Defined Benefits Information Service (DBIS) provided by Care Inc

Care Inc observed the MAI Scheme began slowly in 2020, with a low uptake of the services offered by the DBIS. They attribute this to the impact of COVID-19, changing commuting patterns and the legal profession's reluctance to refer people to the DBIS. They identified lawyers as a common first point of contact for people attempting to access the Scheme. They note in the following years demand for the DBIS services has since increased greatly, but there are still no warm referrals made by the legal profession. They are supportive of the MAI Commission continuing to outreach to the legal profession through the ACT Law Society.

The role of the MAI Commission

Care Inc are supportive of the MAI Commission's approach to resolving the issues it raises about insurer conduct. They noted the approach of using engagement and education before enforcement is effective. They are supportive the MAI Commission providing more services in the education and engagement space.

Areas of improvement for the MAI Scheme

Care Inc identified the following five areas for improvement:

1. **The accessibility of the ACAT process.** The ACAT process is less self-represented litigant friendly than was originally intended. This may be discouraging injured people from applying for external review. This is because MAI ACAT matters have a more complex process than other ACAT matters. Further, insurers can pay for their own legal representation whereas costs order restrictions mean injured people are less able to do so. Care Inc's suggested options to resolve the accessibility issue are:
 - the MAI Commission providing a less formal external dispute resolution step before a matter progresses to ACAT;
 - a reduction in the complexity of the ACAT process; or
 - greater support for injured people to access their own legal representation.
2. **Communication to motorists about the limitations of income replacement benefits.** A small group of high income earners have voiced concerns about missing out on full income replacement. Care Inc suggested this could be mitigated through the upfront disclosure of about income replacement benefit coverage when people purchased their MAI insurance.
3. **Communication to injured people about timeframes.** Care Inc have observed that insurers are not mandated to provide timeframes on for key process (e.g., providing feedback on recovery plans) and these timeframes are being omitted from insurers' communications.
4. **Support for navigating complex interactions between the MAI scheme and other areas of law (e.g., employment law, workers compensation or the NDIS scheme).** Injured people with matters that span multiple areas of law can get confused about which parts relate to the MAI Scheme. The DBIS has limited capacity to address non-MAI issues. Care Inc suggests consideration for making additional support available to vulnerable people in these circumstances.

5. **WPI assessments process.** Injured people have expressed dissatisfaction the cost of seeking a 2nd private WPI report when they are unlikely to reach the 10% threshold to access common law damages. Further, they are concerned about the perceived lack of independence of the IME provider. This is reinforced by the process of insurers seeking clarifications on the initial draft of a 1st WPI report. Care Inc suggests improved communication with injured people about the WPI process.

Care Inc noted that their feedback is limited by the nature of their service. They primarily assist injured people experiencing problems with the operation of the Scheme. Thus, they have less visibility of people for whom the Scheme is working well.

From: [REDACTED]
To: [MAI Commission](#)
Subject: My experience of the MAIC
Date: Friday, 18 August 2023 1:54:47 PM

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I recently completed your survey but I would like to add my thoughts about my experience of the MAIC because the survey provided no chance to add comments.

I was smashed off my bicycle by a large vehicle going through a give way sign two years ago. My whole left side bore the brunt, including breaking my [REDACTED]—which was especially difficult as I am [REDACTED], but I suffered damage to soft tissue all down my [REDACTED]. Being elderly and living alone meant two very difficult months in a full plaster cast and unable to drive yet I received no help in my home, or with shopping or in the garden, etc.

When the accident first happened I didn't have a clue where to turn for help or compensation and it took me over a week to track down the MAI. After the cast was removed I received a substantial amount of physical therapy through MAI, and very little else.

I when it became clear I was going to be left with on-going pain I applied for compensation. To my amazement the man assessing me said they can't measure for pain! Only disability. The physio and I had worked hard to get my strength back, in spite of the pain, so the assessing doctor denied me any compensation based on his judgement that my strength was not severely affected. However, he didn't seem to take account that I no longer have strength in the arm for more than a few seconds (the length of his measurement), and I can no longer lift my left arm with weight, etc. but most importantly, I live with almost continuous wrist and hand pain and intermittent knee and shoulder pain, yet, I got no compensation at all.

At my own expense, I have had many [REDACTED] sessions in an attempt to remediate the results of favouring my [REDACTED] for so long. There have been other uncompensated expenses due to the accident, like a holiday cancelled and the number of clothes I ruined pulling them over my cast, etc.—surely I should have received a small sum of compensation to at least cover all my expenses, to say nothing of the substantial changes to my lifestyle.

So my experience of the MAI system is that it is grossly unfair. The accident was not my fault but it has cost me a lot in monetary terms, but worse it seems I will have this [REDACTED]. I have paid third party insurance for about 50 years, yet the first time I needed it I got no compensation at all.

Sincerely,
[REDACTED]

From: [REDACTED]
To: [CMTEDD, Insurance Branch](#)
Subject: Re: Invitation to tell us about your experience with the ACT Motor Accident Injuries Scheme
Date: Monday, 21 August 2023 10:18:01 PM

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Hi,

I am happy to do the survey, however am really concerned about this process and how its been managed. I'm pretty capable and able to manage my injury as the project management type administration aligns to my role, but the system is completely inadequate and I can imagine people who don't have access to resources or support or have the skills to manage this sort of chaos would be totally left behind and out of pocket. Its seemingly built to be such an administrative burden that people get confused or just give up.

I'd be happy to be contacted to provide further feedback on top of the survey responses.

[REDACTED]

From: [REDACTED]
To: [CMTEDD, Insurance Branch](#)
Subject: Re: Reminder: Invitation to tell us about your experience with the ACT Motor Accident Injuries Scheme
Date: Friday, 8 September 2023 8:19:23 PM

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I still haven't received anything from my accident. I have not even heard about any payment for my car and have found this quite upsetting actually. I think a few of my medical bills got paid but I have not received any of the money I had to fork out to have my car towed or any money for the loss of my car.

From: [REDACTED]
To: [CMTEDD, Insurance Branch](#)
Subject: MAI review
Date: Wednesday, 23 August 2023 5:16:20 PM

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Good morning,

I received an invitation to respond to a survey about the MAI scheme, and have provided a response. I have further comments on my experience that the survey did not provide space to respond to, so I am submitting a further written response here.

I am still experiencing effects of my MVA- this limits my ability to interact with technology for extended periods of time. Therefore, I am not using the response template and I have not read the terms of reference.

Further input:

- the survey itself focussed on the insurers and ability to access information on the Mai scheme. Context for my experience - after a MVA, I have been healing from prolonged Information personal to submitter I found the way information is provided did not clearly state that a limitation period for claims applies (thankfully my insurer accepted the claim outside of this period). The information was not accessible and the forms were difficult to complete for someone with Information personal to submitter and at no time was it evident to me that an information service exists. I had to wait until Information personal to submitter healed sufficiently to be able to complete the forms. I would recommend the forms and information be reviewed for whether a person with temporary or permanent limits to their cognitive capacity can complete them easefully.

- Access to treatment- there is not a lot of treatment available in western medicine for my condition. I use a combination of alternative therapies and complementary/holistic/traditional medicine. In Australia, many therapies I have found beneficial are not well understood. This leaves me out of pocket often, and having to provide complex information to support the insurer's understanding at a time when I am least able to do this successfully. While this is generally consistent with Australia's attitudes towards non-western medicine, many other countries include/recognise a much wider range of treatments for healing. For example, in New Zealand, I understand traditional Māori healing practices are covered under their accident insurance scheme, which also effectively empowers cultural access and self determination. I access Information personal to submitter Information personal to submitter and others. These modalities are recognised outside Australia (for example in France, Germany, the UK...) - but I find my providers have to justify the validity of their services which have in some cases thousands of years of understanding and practice behind them. The western-centric view is very disappointing, and in my case, if I were accessing only treatment provided through the MAI scheme, would leave me with very few options and the majority of my gains in terms of recovery would not have been realised.

- I am really grateful that this scheme exists, and for the benefits I have received so far. I would welcome the government reviewing the modalities accessible under the scheme, and how information and access to the scheme itself could be better designed for the likely range of needs of people who have been in a motor vehicle accident.

Thank you for considering my response,

Name redacted

From: [REDACTED]
To: [CMTEDD, Insurance Branch](#)
Subject: Experience with the ACT Motor Accident Injuries Scheme
Date: Wednesday, 23 August 2023 8:12:08 PM

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Dear Manager,

There is a drawback on this scheme. As per this scheme insurance company not providing super contribution given by employer if someone work. When i contact the insurance company they advise they can't provide super contribution. Please advise on this issue.

Thanks
With kind regards

[REDACTED]