



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SERVICES  
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## Submission Cover Sheet

Inquiry into Motor Accident Injuries Bill 2018—Exposure Draft and Guide to the  
Motor Accident Injuries Bill 2018 Exposure Draft

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### **Inquiry into Motor Accident Injuries Bill 2018**

Pedal Power ACT welcomes the opportunity to comment on this draft Bill. With over 7500 members, Pedal Power ACT represents the interests of people who already ride bicycles and those who would like to. As well as organising bike rides and events, we work consistently with the ACT Government on all bicycle riding related matters to support the Government's active travel program. Pedal Power ACT encourages the community to be active and provides opportunities to do so through a range of programs as well as providing members with liability and personal injury insurance.

In summary Pedal Power ACT

- welcomes the no-fault aspect of the Bill
- does not support the reduction in benefits that apply under the current third-party insurance scheme

If the Committee proposes to support the Bill Pedal Power ACT asks the Committee to recommend changes:

- to address provisions that unfairly favour insurers, such as cl 61
- to delete unjustified limitations to entitlements, such as in cl 49.

#### **No-fault**

The biggest gap in the current CTP scheme is the requirement for the injured person to show another driver was at fault (other than for a claim for an early payment for medical expenses of up to \$5,000).

The proposed scheme enables any person injured in a crash that involves a motor vehicle to claim benefits, a welcome change, and an obvious one. For vehicle owners it brings CTP insurance into line with most other insurance. For example, you don't have to show someone else was to blame to claim on your home building insurance.

The scheme will cover all Canberrans injured in a crash involving a bicycle and an insured motor vehicle regardless of fault. That is commendable.

As a motor vehicle must be involved, people will not be covered if, for example their bike collides with a kangaroo (unlike the driver cited in example 2 to cl 13). That is a disappointment for people who hoped for a scheme that covers all people who are injured on ACT roads.



*More Canberrans cycling, more often, for a better community*



### **Reduced benefits**

For people who are covered while cycling the benefits are not as comprehensive as those available under the current scheme:

- Once a claim is accepted, reasonable related medical expenses will be paid and some limited initial expenses should be paid quickly.
- Lost income though paid, is capped. The maximum that would be paid is 95% of \$2,250 for the first 13 weeks then 80% of that amount.
- Superannuation is excluded from the calculation.
- Income replacement and payment of medical expenses ceases after five years.

There is also an age limit on income payments. They stop when a person reaches pension age plus 26 weeks, regardless of whether or not they would otherwise be working. This amounts to compulsory retirement, contrary to broader government efforts to keep people in the workforce.

Some things that can be claimed under the current scheme would be claimable no longer, eg unpaid care by friends or family. This will force people to employ carers who may not have the understanding and empathy of family. It will also increase costs of the scheme.

Pedal Power ACT does not support these reductions/limitations.

The proposal does provide for limited additional benefits for people who can prove another person was at fault. However the impairment threshold before one can bring a claim could be quite difficult to meet. It appears to be based on a 'one size fits all' scale that does not allow for individual differences. For example a highly accomplished musician who cannot play as well, or at all, could easily not meet the threshold in the scheme and would not be compensated for the loss of quality of life.

There are some aspects of the Bill that appear to be mean or penny pinching. Claims must be made within 13 weeks of the crash or from when the injury becomes manifest. It is understandable that the Government wishes to encourage early notification and minimise fraud. But if you do claim late and the insurer accepts your reason, payments for medical and other defined benefits will only be backdated to 13 weeks prior to the receipt of the claim! This seems unreasonable.

### **Unfair provisions**

Clause 61 should require the insurer to accept a late application if the injured person satisfies the requirements of cl 61. As it stands, the scheme is weighted in the insurer's favour over the claimant, eg in a claim lodged outside the 13 week limit, the insurer may (ie at its discretion) accept the claim.

Some details of how the scheme would be run are unclear and perhaps insufficient. A person who is unsatisfied with an insurer's decision can seek internal review. But a completely 'fresh pair of eyes' does not appear to be guaranteed.

The regulator that will oversee insurers should have clearer and more certain powers to hold insurers to account for delay and obfuscation.



### **Unjustified limitations to entitlements**

Division 2.2.2 provides for limitations and exceptions to entitlements. Pedal Power believe it is reasonable to deny benefits to people found guilty of serious offences such as those set out in cl 51. Further, a clear causal connection can be drawn between over-the-limit drink driving and a crash. However, cl 49 can also reduce an injured person's entitlement to benefits by the mere fact that they have paid an infringement notice penalty or been found guilty of the specified offences. This appears unreasonable and unjustified.

Take the example of not wearing a bicycle helmet. The wearing, or non-wearing of a helmet will in many cases have no bearing on the nature or extent of a person's injuries (e.g a fractured limb). Having paid the penalty under the Road Transport Regulations, an injured person should not have the additional penalty of reduced benefits where their injuries are unrelated to the breach of those Regulations. Pedal Power ACT asks for cl49(6)(ii) to be deleted.

### **Conclusion**

Overall Pedal Power ACT supports the implementation of a no fault scheme, but considers that the scheme provided under the Bill contains costs at the expense of fairly compensating injured people. Pedal Power is not convinced the scheme contained in the Bill gets the balance right. It is hard to justify the removal of fault based on the proposed limits on benefits and the removal of existing rights for riders injured in crashes with motor vehicles.

Yours sincerely

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Chief Executive Officer

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