



Government Response
to the Report of the
Justice and Community Safety Committee
on the
Inquiry into the Exposure Draft of the Motor
Accident Injuries Bill 2018

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Treasurer

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GOVERNMENT RESPONSE

Compulsory Third Party Insurance (CTP) in the ACT is currently regulated by *the Road Transport (Third-Party Insurance) Act 2008* (CTP Act) which has been in effect since 1 October 2008. It is an at-fault common law scheme where an injured person can sue another person for negligence and seek compensation through legal processes. The scheme does not cover accidents where fault cannot be proven. It also does not pay benefits to the person who was at fault, although most people can access up to \$5,000 for early medical expenses.

In August 2017, the ACT Government announced we would undertake a deliberative democracy process to consider with the community and other key stakeholders how to improve the scheme so it reflects the priorities of Canberrans. The Government set some criteria for this process, and committed to pursue the community's recommendations as long as these were met.

A group of 50 Canberrans, representative of the community, were randomly selected to participate in a two-part citizens' jury run by facilitators separate to Government. Their deliberations were supported by a Stakeholder Reference Group made up of legal, insurer, health care and consumer group representatives.

All Canberrans also had the opportunity to provide their views on CTP in September 2017, through surveys conducted on the ACT Government's Your Say website (www.yoursay.act.gov.au) and by telephone. The survey results and feedback from these consultations were provided to the jury in the first stage of their deliberations in October 2017.

In this first stage, the jury met over two weekends to consider the question: *What should the objectives of an improved CTP scheme be to best balance the interests of all road users?* The jury heard from a range of experts, injured people and those with experience of the current CTP scheme, to help guide their deliberations on a set of priorities for an improved CTP scheme. At the end of this process, the jury identified their priorities for an improved CTP scheme.

The jury's priorities and report were then provided to the Stakeholder Reference Group and an expert scheme designer so that they could develop a range of models for the jury's consideration. Between November 2017 and March 2018, the scheme designer worked closely with the Stakeholder Reference Group to develop four workable models which aligned with the jury's priorities. These models were costed by an actuary to determine their potential impact on the premiums Canberra motorists pay.

The jury re-convened in March 2018 to consider each of the models, including receiving information from the Stakeholder Reference Group about the merits of these. Finally, the jury chose the model that they believed to best meet the priorities they had identified in the first stage of the process. The model chosen by the jury delivers the following improvements:

- Everyone injured in a motor vehicle accident will receive up to five years treatment, care and income benefits, regardless of who was at fault (there will continue to be exclusions for serious criminal offences, in line with other Australian jurisdictions).

- Quality of life benefits, which provide compensation for non-financial loss, will be available for all people who meet injury thresholds.
- Anyone whose injury was caused by someone else's negligence and who is more seriously injured will still be able to access additional common law benefits.

To deliver on its commitment to pursue and develop legislation to reflect the jury's chosen model, the Government tabled an Exposure Draft of the *Motor Accident Injuries Bill 2018* on 20 September 2018 and referred it to a Committee process. The Committee was originally scheduled to table its report in the Legislative Assembly on 1 November 2018. The Assembly subsequently provided the Committee an extension until 14 December 2018 to provide its report.

The Government values the role played by the Committee in scrutinising the Exposure Draft of the *Motor Accident Injuries Bill 2018*. The Government provided a submission to the Committee process and provided responses as appropriate to the Committee's members and secretariat.

The Committee publicly released its *Report on the Inquiry into the Exposure Draft of the Motor Accident Injuries Bill 2018* on 14 December 2018, with a dissenting report by the Chair, Mrs Jones MLA. Seventeen recommendations were made, including two made by Mrs Jones MLA.

The Government thanks the Committee for its Report, and has agreed to all of the recommendations of the majority report. As a result, the Bill being introduced has been amended to reflect the following changes (recommendation 1):

- In relation to Whole Person Impairment assessments for injured persons (recommendation 10):
 - if an injured child is still receiving treatment and care defined benefits at four years and six months, they can make a common law claim without a Whole Person Impairment assessment; and
 - if an injured adult with a Whole Person Impairment less than 10 per cent is still receiving income defined benefits at four years and six months an independent occupational impact assessment can be undertaken to determine eligibility to access common law;

Consequential amendments have been made to the quality of life common law amount for an injured child and an injured adult who meets the occupational impact assessment.

- Clarifies that Whole Person Impairment assessments allow for physical and psychological injuries to be considered together when undertaking an assessment, if the psychological injuries arise as a result of the physical injuries (recommendation 11).

- Allows the court to make an additional Quality of Life award if the evidence shows that the Whole Person Impairment assessment did not take into account certain other injuries or a particular effect on the injured person's quality of life. This will be able to be recognised with up to an additional 20 per cent in dollar terms of the calculated quality of life payment the person has based on their Whole Person Impairment (recommendation 11).
- Removes the exclusion/limitation for the payment of defined benefits to cyclists who were not wearing a helmet at the time of the motor vehicle accident (recommendation 12).
- Increases the period from one months to 13 weeks for a worker injured in a motor vehicle accident to choose whether to switch a defined benefits claim under a workers' compensation scheme to defined benefits under the Motor Accident Injuries scheme (recommendation 8b).
- Specifies that external reviews of defined benefit disputes will be undertaken by the ACT Civil and Administrative Tribunal, with the ACT Civil and Administrative Tribunal to also decide upon legal costs for these reviews (recommendations 6, 7 and 8a).
- Includes additional detail about the matters to be considered by the review that is required every three years, without limiting the full scope of matters that may be considered (recommendations 2 and 14).
- Includes a broad regulation making to allow a mechanism to be prescribed for what is reasonable actual profits and determine what the consequences are if actual profits differ from reasonable actual profits. A regulation will be made in the future if analysis indicates insurer profits might be higher than is reasonable for the industry (recommendation 14).

The Committee made a number of recommendations relating to the Motor Accident Injuries Commission functions. Under the new scheme the Motor Accident Injuries Commission will have a stronger education role, as well as an expanded regulatory and monitoring role. The Bill allows for the Commission to put in place arrangements to allow other entities to assist with its expanded education and information role. The Government will consider authorising unions to assist with these services during implementation (recommendation 9).

There is an expectation that additional staffing will be required for the Commission to undertake these expanded functions. Actual staffing requirements will be finalised once the Bill is passed by the Legislative Assembly (recommendation 4).

Funding has already been provided in the 2018-19 Budget for an improved ICT system, that will provide enhanced reporting capabilities to assist the Commission undertake its expanded monitoring and compliance functions. This will assist in undertaking reviews of the scheme (recommendation 13).

The Committee recommended the Government provide detail at the time of introducing the Bill on how the Government plans to promote broader knowledge of the scheme and safer driver practices (recommendation 3). The Commission will promote broader knowledge of the scheme through the provision of education material, fund/work with information support services, and will liaise with ACT Health and Canberra Health Services to ensure broader knowledge of the scheme.

Road safety initiatives are currently funded through a levy paid with vehicle registration. The funding goes into the Road Safety Fund with its use being recommended to the Minister by the Fund's Advisory Board. The CTP Regulator is a member of the ACT Road Safety Taskforce that assists the Board with advice and recommendations about how this funding is used. Under the new scheme, the Motor Accident Injuries Commission will work constructively with the Taskforce and Road Safety Advisory Board to advance new initiatives.

The draft Motor Accident Injuries Regulation and the key draft guidelines to the Bill will be made publicly available before debate on the Bill occurs in the Legislative Assembly to provide more detail on the technical details of the scheme (recommendation 5).

The dissenting report from Mrs Jones MLA recommended the proposed Motor Accident Injuries scheme not be supported by the Assembly and that the Government should propose an improved scheme that benefits the community as a whole. The Government has noted the dissenting recommendations.

To further improve the workability of the Bill, in addition to the amendments made as a result of the Committee's report, the Government has also made the following changes to address technical matters raised by some stakeholders during consultation processes:

- *The payment of death benefits.*
 - The exposure draft of the Bill included provisions for death benefits to be paid to the deceased person's estate.
 - Concerns were raised that these payments may not ultimately be paid to the domestic partner and/or child dependents because the estate will need to meet any debts of the injured person before any payments are made to beneficiaries.
 - To address this concern, the final Bill has been amended to enable the ACT Civil and Administrative Tribunal to decide the distribution of the death benefit.
- *The treatment of foreign nationals.*
 - The exposure draft of the Bill required foreign nationals to claim first against any insurance policy (such as travel insurance) they hold in relation to their visit to Australia before they could access defined benefits.
 - It was raised that it would be difficult to determine if a claim on other insurance (e.g. travel insurance) has been made and what payments have been made, leading to costly complexity in administration and delays.

- To address this issue, the Bill removes the travel insurance requirement and update provisions to the defined benefit entitlements for foreign nationals. Foreign nationals will receive ongoing statutory treatment and care and income replacement payments during their stay in Australia. A foreign national can commute the defined benefits for treatment, care and income replacement once they return home overseas if the amount is AUD \$10,000 or greater. Statutory death and funeral benefits will be available if the foreign national dies in Australia.
- This is more equitable than other jurisdictions in Australia that do not provide extensive defined benefits for foreign nationals once they return home.
- *Interstate at-fault drivers.*
 - For the purpose of determining which insurer manages a defined benefit claim, the exposure draft included provision to direct an application to the ‘relevant’ insurer, usually being the insurer of the most at-fault driver. This can be an interstate insurer. However, where the interstate insurer operates under a common law at-fault scheme, they might not be able to pay defined benefits (e.g. the other jurisdiction’s legislation may not permit it).
 - To ensure that the ACT’s scheme provides its intended universal coverage, the Bill includes provision for the Nominal Defendant to pay the defined benefits to the interstate at-fault driver where their insurer cannot pay defined benefits due to that State’s compulsory third-party insurance policy.
- *Income replacement defined benefits for persons over the retirement age*
 - During exposure draft consultation, a number of submissions raised concerns about income replacement defined benefits ceasing at the pension age plus 26 weeks where the injured person is still working beyond their pension age.
 - The Bill has been amended to provide that if a person is over the pension age and still employed, income replacement will be provided for two years from the date of the accident. This is intended to provide a period for the injured person to transition to other available income streams of either superannuation or the pension. This two year period will also apply to a person who reaches the pension age while on income replacement (unless the defined benefit period has ended).

- *Payment of future medical treatment after the five year defined benefits period has ended*
 - A small number of not at fault injured people might still be receiving medical treatment at the end of the defined benefit period but not meet the requirements to access common law. These people will be eligible for a payment for further reasonable and necessary medical treatment expenses for up to five years, provided they have been accessing approved medical treatment benefits continuously for at least the time between the end of the extended lodgement period (two years) and 4.5 years. They will be able to claim the types of approved medical treatment they were recently receiving prior to the defined benefit period ending.
 - The process will be a negotiation between the injured person and the relevant insurer, with the ACT Civil and Administrative Tribunal available to settle the amount if agreement is not reached by the parties.
- *Exclusions and limitations to the receipt of defined benefits*
 - The exposure draft of the Bill included three categories of exclusions and limitations, in line with the jury's chosen model. The exclusions ranged from no defined benefits for serious offences such as high-level drink driving (category A), to a 25 per cent reduction to income replacement and Quality of Life payment for infringement notices and some offences such as not wearing a seatbelt and low level drink driving (category C).
 - The lowest category of limitations (category C) has been removed from the Bill to provide full defined benefit support to everyone injured in a motor vehicle accident, except for those convicted of offences which are of a more serious nature. For the same reasons, no exclusions or limitations will apply where a person is found guilty of an offence but a non-conviction order is given by the court. There have also been some changes to the offences listed in the remaining categories.