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Member for Kurrajong

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to *Scrutiny Report 29 on the Motor Accident Injuries Bill 2019* (MAI Bill) released on 1 April 2019.

I appreciate that the Standing Committee on Justice and Community Safety in its capacity as Scrutiny Committee expeditiously considered the MAI Bill. In response to the issues raised by the Committee where a response was requested, I provide the following comments.

Availability of merits review

The Government notes the Committee's concerns about regulations prescribing matters for internal and external review rather than them being specified in the Bill. This is one of the reasons for the public release of draft regulations prior to the Legislative Assembly debating the Bill. The draft regulations and key guidelines, including the process for internal review, have been made publically available on the YourSay on CTP website (www.yoursay.act.gov.au/ctp).

The internal and external review matters are to be prescribed by regulation to allow for flexibility and responsiveness to refine matters and address issues that may have not been anticipated before the MAI scheme commences. I also note the regulations are subject to review by the Legislative Assembly as part of its oversight of legislation.

In relation to the Committee's comments on the making of MAI Guidelines, the Government notes that the scheme's principles and key processes are contained in the MAI Bill. The lower level procedural and technical matters that flow from the principles and the Bill's requirements are contained in Guidelines rather than MAI Commission documents. This provides appropriate transparency and oversight while allowing some flexibility to make required changes for the effective and efficient operation of the Scheme in accordance with the objectives of the Bill. It also allows the Guidelines to be written in a non-legalistic style so that they are more readable and able to be understood by injured people, insurers and others who may interact with the Scheme.

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The Committee's comment regarding a potential role for personal representatives in the review process and the human rights implications this may present is noted. The Government is mindful of the need for procedural fairness, noting that the scheme does not limit an injured person's ability to access legal advice. The MAI Bill allows for the ACT Civil and Administrative Tribunal (ACAT) to order a party to pay the costs of the other party arising from an application for external review of an ACAT reviewable decision (see clause 195), reflecting that there is a role for personal representatives in the scheme.

Creation or Definition of offences by regulation

The Committee expressed concerns that regulations are able to define a type of condition with an attached offence. Under clause 374 (MAI Commission Conditions – power to include conditions), a licensed insurer will only be subject to any conditions the MAI Commission includes on a MAI licence when the licence is issued or amended. No regulation to create an offence is proposed to be made at this stage. The power is included to allow for flexibility in the future if additional conditions may need to be prescribed on an MAI licence. This would be in circumstances where a general license condition is to apply to all licensees and a degree of specificity is required. The power is included to allow for the efficient and effective operation of the scheme in line with the objectives specified in the MAI Bill once it has commenced.

The general power to make regulations under clause 489 that permits the creation of offences is included to allow for the ability to administer and regulate a privately underwritten motor accident injuries scheme. The clause is necessary to ensure the Executive has the power to create offences that will apply to insurers to ensure the effective and efficient operation of the scheme in line with the objectives of the MAI Bill.

Displacement of section 47(6) of the Legislation Act 2001

The Committee asks for a justification for the displacement of section 47(6) of the *Legislation Act 2001* for the general guideline-making power at clause 484. Generally, this relates to where documents are copyright, as is noted in the justification provided for this in the explanatory statement to clause 145, providing for the Whole Person Impairment (WPI) Assessment Guidelines. The Safe Work Australia (SWA) Guidelines for the evaluation of permanent impairment will be adopted for these purposes. These Guidelines modify some parts of *The Guides to the Evaluation of Permanent Impairment by the American Medical Association 5th edition* (AMA5). In Australia, the most commonly used tool for the assessment of impairment is the American Medical Association Guides to the Evaluation of Permanent Impairment.

The AMA5 is subject to copyright restrictions and thus the disapplication of section 47(6) is necessary so that the publication of the document on the ACT Legislation Register is not required. The Government notes this justification could have been explicitly included in the explanatory statement. If other instruments are to be adopted that cannot be published on the Legislation Register, justification for this in relation to a particular document will be provided in the accompanying explanatory statement to the instrument.

Industry Insurance Deed

The Committee asked why the disallowable instrument for the industry insurance deed is not provided for in the MAI Bill. The Bill provides that a regulation may prescribe what may or must be included in the industry insurance deed under Part 7.2 of the MAI Bill.

I consider it reasonable to continue the transparent practice of prescribing the insurance industry deed as a disallowable instrument in the regulation. The content of the industry insurance deed is in relation to the licensing arrangements, and thus is different to the approach taken in relation to the benefits provided to injured people. The Government is of the view it is appropriate for the content and the form of the deed to be included in the regulation so similar licensing matters are located together. This is consistent with the current *Road Transport (Third-Party Insurance) Regulation 2008*. For transparency and to inform the debate of the Bill, the relevant provision is section 28 in the draft regulation.

I hope these responses address the matters raised in Scrutiny Report 29.

Thank you for considering the Bill to allow the Government to debate the *Motor Accident Injuries Bill 2019* in the Assembly during the coming sittings week.

Yours sincerely

Andrew Barr MLA
Treasurer