



Chris Steel MLA
Minister for Transport and City Services
Minister for Skills
Special Minister of State

Member for Murrumbidgee

Our ref: CMTEDD2023/1337

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

By email: scrutiny@parliament.act.gov.au

Dear Mr Cain

I refer to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 26 of 14 March 2023 in which the Committee made comments on the Motor Accident Injuries Amendment Bill 2023, introduced to the Legislative Assembly on 9 February 2023.

The comments relate to a concern the Committee had, and requested a response to, regarding the insertion of a provision allowing for the suspension of defined benefits if a person unreasonably fails to undergo the treatment and care stated in a recovery plan. The Committee's concern is that the potential suspension may disproportionately impact persons who may have a disability or other incapacity, limited access to transport or an inability to attend treatment. I note the Committee has the view there is a potential human rights limitation from this provision and recommended that the explanatory statement be amended to provide "for why any unequal impact of this provision should be considered reasonable using the framework in section 28 of the HRA".

The Committee notes that the explanatory statement referred the reader to the statement accompanying the Motor Accident Injuries Bill 2019 and suggests there is no analysis regarding suspension. With respect, there is an analysis of the limitation on the right to equality of the law in that statement. While the reader may not see a direct reference to suspension, a number of limitations, exception or exclusion for the receipt of defined benefits are discussed and analysed against the right to equality of the law, and why it is considered reasonable in a democratic society. I provide more detail below to assist the Committee but do not consider it necessary to amend the explanatory statement to the Motor Accident Injuries Amendment Bill 2023 to provide an additional analysis specific to the suspension limitation.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

+61 2 6205 1470

steel@act.gov.au

[@ChrisSteelMLA](https://twitter.com/ChrisSteelMLA)

[chrissteellabor](https://www.facebook.com/chrissteellabor)

[chrissteelmla](https://www.instagram.com/chrissteelmla)

The Motor Accident Injuries (MAI) Scheme's purpose is to provide treatment and care and a financial assistance safety net for an injured person so they can focus on their recovery. To achieve this requires a balance to be struck between the provision of up to five years of defined benefits with some certain, clearly identified processes, such as the power to suspend benefits if a person does not attend appointments or engage with their recovery. A supportive framework is in place, not just for the Committee's identified class of persons, but for all injured persons who apply to the MAI Scheme.

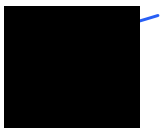
I am advised that the MAI Commission intends to update the *Motor Accident Injuries (Treatment and Care) Guidelines* following the Bill's passage to include guidance to MAI insurers on matters to take into consideration when developing an injured person's recovery plan. The guidelines will require an insurer to take into account an injured person's work, personal and carer commitments, and their residential area, when preparing a recovery plan (similar to clause 3.2.4 of the guidelines for arranging assessments). The guidance will be additional to the requirements of section 120 of the *Motor Accident Injuries Act 2019* (MAI Act) including the appropriateness of the provider, among other factors, and the consultation required on the content of the recovery plan provided for by section 123.

The recovery plan is required to be provided to the injured person and their treating practitioner so they can provide their input, including any transport assistance that may be required and paid for by the insurer. At any time, the injured person can raise with the insurer if a change is required to their approved treatment and care outlined in the recovery plan because they are encountering access issues. Obviously, if a suspension of benefits is to occur, proposed section 124A requires a number of steps to be followed and for the insurer to consider the reasonable excuse that is offered in response to a notice of suspension.

The safeguards that are in place mean there are measures to mitigate the potential for an unequal impact on individuals. There are numerous opportunities for the injured person to raise their personal circumstances with the MAI insurer and the MAI insurer is obligated to take these into account in developing the recovery plan.

I trust this additional information addresses the Committee's concern.

Yours sincerely

A black rectangular redaction box covers the signature of Chris Steel. A small blue mark is visible at the top right corner of the redaction.

Chris Steel MLA

1 May 2023