

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**MOTOR ACCIDENT INJURIES COMMISSION RESPONSE TO THE
MOTOR ACCIDENT INJURIES ACT 2019: THREE-YEAR REVIEW**

**Presented by
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Special Minister of State
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Introduction

The *Motor Accident Injuries Act 2019* (MAI Act) requires the Minister to undertake a review of the operation of the Act every three years. The Government considers the three-yearly review to be an important feature of the legislation. It ensures that the MAI Scheme is periodically reviewed in a systematic way, through the development of terms of reference, a discussion paper and ultimately the report.

This first review into the operation of the Act focused on the extent to which the MAI legislation is working in practice, within the context of the policy objectives and policy framework for the MAI Scheme. These policy objectives and framework are based around the outcomes of the Citizens' Jury on Compulsory Third Party Insurance.

The Special Minister of State tasked the Insurance Branch of the Chief Minister, Treasury and Economic Development Directorate with undertaking this review. The MAI Commission assisted the Insurance Branch with the review by providing MAI Scheme data and information about its activities. The MAI Commission is a Territory authority established under the MAI Act that monitors and supervises the MAI Scheme. The Commission also arranged the MAI Scheme Actuary to provide a financial report on the MAI Scheme (Attachment A to the Review Report).

The Government is pleased to note that the reviewers found that, overall, the MAI Scheme is working as intended in providing early access and support to all people regardless of fault. The MAI Scheme is supporting injured people with defined benefit payments usually occurring within four weeks of application. In relation to the affordability of the Scheme, passenger vehicle premiums have fallen by nearly \$53 or 12 per cent from the Scheme's commencement in February 2020 to 30 June 2023.

While the MAI Scheme is operating as intended, the Review Report does identify opportunities for improvement in the operation of the MAI Scheme. In total, 15 action items were identified by the reviewers.

As part of tabling the Review Report in the Legislative Assembly, the Special Minister of State requested the MAI Commission prepare a response to the report, focusing on its proposed implementation of the action items. The next section provides the MAI Commission's response.

The Government thanks the MAI Commission for its response and notes the proposed implementation for the action items.



Motor Accident Injuries Commission Response to the Motor Accident Injuries Act 2019: Three-year Review Report

The Motor Accident Injuries (MAI) Commission welcomes the Special Minister of State's three-year review into the operation of the *Motor Accident Injuries Act 2019*. The Commission acknowledges that the Review Report, and the action items, are informed by the submissions and feedback provided to the reviewers from the public and stakeholders. The Commission was consulted in the process of finalising the Review Report and on the proposed actions items contained in the report.

This is the first review conducted since the MAI Scheme replaced the previous common law Compulsory Third Party Insurance Scheme. Although the MAI Scheme has now been in operation for over four years, it is still in its infancy given defined benefits are available for up to five years and there are some elements of the Scheme that have not been reached yet.

As the Review Report outlines, since the start of the MAI Scheme, MAI insurers and the Nominal Defendant have received 1,249 complete applications relating to ACT accidents, with a 97 per cent acceptance rate to 30 June 2023. The Commission reported in its December 2023 Quarterly Statistic Report that a further 189 complete applications relating to ACT accidents have been received by the Scheme, with the 97 per cent acceptance rate maintained.

The MAI Commission is committed to improving how the MAI Scheme operates within the bounds of the Scheme's legislation, policy objectives and policy framework. The submissions and feedback to the review provide valuable insight on how the MAI Scheme is currently operating and the action items contained in the Review Report provide a clear actionable way forward to making improvements.

One of the issues the MAI Commission was alive to on its establishment was providing people with the right information at the right time on the MAI Scheme. As the ACT's motor accident injury insurance was shifting into a defined benefits scheme, it was important that the developed MAI Scheme website and forms were accessible and navigable. Given the submissions to the review identified that further work is required in this area, the Commission supports the action items made in the Review Report to refresh its information material on the website; develop an information booklet(s) on various aspects of the MAI Scheme; and update the Scheme's forms.

The MAI Commission agrees to implement each of the action items in the Review Report. More detail is provided below against each, including our response to each finding and approach for implementation. The Commission will carefully consider the reported feedback as it works through implementation of the action items.

The action items will be progressively implemented to allow the Commission to continue with its day-to-day activities in monitoring and supervising the MAI Scheme and undertaking compliance activities. Our activities also include managing email and telephone enquiries; following up with insurers; and providing technical advice and assistance to the Defined Benefits Information Service that provides free information and advice about the MAI Scheme.

The MAI Commission would like to acknowledge the work of the Insurance Branch within Chief Minister, Treasury and Economic Development in undertaking the review, and that the Insurance Branch will work with and support the Commission to progress the 15 action items.

Action item 1

The MAI Commission should refresh its information material on the website to improve accessibility and develop an information booklet to provide additional guidance for making an application.

Agreed

The Commission acknowledges that the Review Report outlines feedback that for some applicants it was not obvious or clear how to apply to the MAI Scheme or the information that was required. The reviewers found that improved information about how the application process works was needed.

The Commission is committed to refreshing its information material on the website to improve accessibility. The development of an information booklet will further assist members of the public understand how to apply to the MAI Scheme by providing easier to read and understand material. To this end, the Commission will support a refresh of its website material and develop the information booklet. The Commission will give priority to the website refresh and will develop the information booklet over the coming year. The Commission will need to undertake a review to identify the best booklet design, and this may include stakeholder consultation.

Action item 2

The MAI Commission should update the forms to minimise the required information and make the steps clearer.

Agreed

The Commission acknowledges that the Review Report outlines some feedback that the information required on the forms was not clear. Following feedback in 2023 the Commission redesigned its Funeral Benefits application form to address two concerns raised regarding the provision of information that people found difficult to provide. There have also been some changes to the other forms since the Scheme commenced.

The Commission agrees an audit of its forms would be appropriate to identify further opportunities to minimise the required information and make the steps clearer. Forms are a

necessary component of any insurance scheme and if there is a way to reduce the administrative load on injured people and their families, the Commission is committed to implement the required changes. The Commission will need to consult with stakeholders, including the MAI Insurers, on changes to the forms so that information is being collected to facilitate the fast and efficient processing of an application. This work is expected to be completed in the 3rd quarter of 2024.

Action item 3

The MAI Commission should explore the feasibility of establishing an optional process for a notification to the relevant insurer through a digital portal.

Agreed

The Commission is aware that some people have struggled with making an application and when contacted has facilitated the submitting of an application. The Commission is committed to ensuring people who are injured as a result of a motor accident are able to submit their application to the at-fault MAI insurer or the Nominal Defendant.

The Commission is keen to explore the feasibility of establishing an optional process for a notification to the relevant insurer through a digital portal, to facilitate applications getting to the relevant insurer for a motor accident. It is important to undertake a feasibility study as the system will be hosted by the ACT Government and will need to be able to extract data to identify the MAI insurer from the registration database and then send the information securely to the relevant insurer. A privacy impact assessment will be required, and MAI insurers will need to be able to have the systems in place to then process the notification.

This feasibility study is anticipated to be concluded by the end of 1st quarter, 2025. The Commission will consider next steps following the conclusion of the feasibility study.

Action item 4

The MAI Commission should consider whether there are changes required to minimise barriers and disputes in accessing treatment and care, while being consistent with the MAI Act. This should include insurer communications.

Agreed

The Commission acknowledges and expresses concern regarding the frustrating experiences of some injured people noted in the Review Report. We are particularly concerned that the Review Report noted a number of concerns including disputes around treatment requests; denial of diagnostic requests; and barriers being put in place around certain treatments. The Commission advises that it has an enquiry and complaint function, and notes that the MAI Act provides for internal review precisely for these situations where a person is dissatisfied with a decision. The Commission recently amended the treatment and care guidelines made under the Act to provide for a streamlining of the recovery planning process. These amendments may assist with minimising barriers and disputes.

Over the coming year the Commission will undertake further analysis around treatment decisions and engage with the MAI insurers to identify the root causes for the dissatisfaction expressed in the review feedback. The analysis is proposed to commence in the 3rd quarter of 2024, with the review concluded at end of 1st quarter 2025. The Commission notes that action item 7 provides for the Commission to provide further information to general practitioners about the MAI Scheme, which may also help to address any issues around the treatment recommendations.

Action item 5

The MAI Commission should explore ways to streamline the process for seeking reimbursement and submission of invoices/receipts to an insurer.

Agreed

The Commission was concerned by the feedback from some injured people that reimbursement was not being sought because of difficulties they perceived in seeking reimbursement from MAI insurers. The Commission considers this to be a serious matter as a person should not be out of pocket if they have an entitlement to benefits under the MAI Scheme. The Commission is aware of issues arising with invoices getting to the relevant insurer, with some service providers sending their invoices to the Commission directly instead of the insurer.

To progress this action item, the Commission will discuss with each of the insurers how they can improve and streamline their processes so that a person is reimbursed. It is proposed to commence work on this action in the 3rd quarter of 2024, with changes identified by end of 4th quarter 2024.

Action item 6

The MAI Commission should consider providing greater detail on the various treatment and care processes in an information booklet.

Agreed

The Commission acknowledges the frustration expressed by some injured people in relation to accessing treatment and care and agrees an information booklet would be invaluable assistance to injured people in understanding the MAI Scheme's treatment and care processes.

The booklet will include information on processes such as the requirement under the Scheme for insurers to assess whether the proposed treatment and care is reasonable and necessary; the provider is appropriate; and that approved treatment is conducted in a manner consistent with the principles of the nationally endorsed Clinical Framework for the Delivery of Health Services. It will also explain the recovery planning process.

As noted against action item 1, the Commission will need to develop a design for the information booklet prior to inserting relevant content. In the interim, the Commission will update its website to provide greater detail with respect to the processes. It is

expected to complete this action item concurrently with action item 1 over the coming year.

Action item 7

The MAI Commission should provide further information to assist general practitioners.

Agreed

The Commission notes the feedback that general practitioners appear to be unaware or unfamiliar with the MAI Scheme. The Review Report notes that the Commission's efforts in communicating with general practices was impacted by the commencement of the MAI Scheme coinciding with the onset of the COVID-19 global pandemic. The Commission undertook limited outreach during the pandemic.

For this action item the Commission will liaise with the Office of the Chief GP and Primary Care Advisor in the ACT Health Directorate regarding how best to consult on the most appropriate ways to provide information that will assist general practitioners so they may best assist their patients who are applicants in the MAI Scheme. It is expected to complete this action item concurrently with action item 1 and 6 over the coming year.

Action item 8

The MAI Commission should continue to monitor the process for recovery planning by MAI insurers.

Agreed

Recovery plans are a central part of the design of the MAI Scheme, as they provide for the management and coordination of an injured person's approved treatment and care, if the insurer is satisfied the injured person is likely to require longer-term treatment and care. The Commission introduced streamlined consultation processes for recovery plans in December 2023 and the reviewers considered that no further changes to recovery plans are required.

However, the reviewers considered there would be benefit in the MAI Commission continuing to monitor the effectiveness of recovery plan provisions and the Commission agrees. The Commission will undertake this monitoring action item through its compliance activities and notes this will be an ongoing process.

Action item 9

The MAI Commission should consider providing more website information about the purpose and processes associated with the quality of life benefit.

Agreed

The Commission acknowledges the feedback in the Review Report about concerns around processes to do with the quality of life benefit. The Act and guidelines outline the process to be undertaken by the MAI insurer once the quality of life application is lodged, including referral to the authorised Independent Medical Examiner (IME) provider for a Whole Person Impairment (WPI) assessment. The quality of life application process and form were

amended in 2022 to clarify when an information pack about the process is to be provided. The referral process to an authorised IME provider was also improved.

While it has detailed website information on the quality of life benefit, the Commission appreciates it is necessary to provide further information about the purpose and processes involved, to hopefully address some of the concerns and misunderstanding about the benefit and how it is obtained via the WPI assessment. The Commission has been especially concerned by the perception that an insurer selects the person(s) who conducts a WPI assessment and can influence the report. This is not the case and the Commission intends to update the website to include clearer information on this point.

It is expected to complete this action item concurrently with action item 1, 6 and 7 over the coming year.

Action item 10

The MAI Commission should provide more website information and examples about how income support is worked out under the MAI Scheme, and review the information provided by MAI insurers.

Agreed

Income support is an important feature in the design of the MAI Scheme. Some injured people provided feedback that they felt the income support provided to them was inadequate. While the reviewers acknowledged this feedback, they recognised that the feedback largely related to the policy settings of the Scheme set by the Government that provides a higher level of support for lower income injured people. They also recognised that the Scheme provided a timelier payment to a person unable to work compared to waiting for back payment for loss of income through legal proceedings.

Given the feedback to the review, the Commission agrees it is important to provide more website information and examples outlining the income support policy settings and how income support is to be worked out by the MAI insurers. The Commission considers this will remove the element of surprise some people experience when they apply for the income replacement benefit. It is expected to complete this action item concurrently with action item 1, 6, 7 and 9 over the coming year.

Action item 11

The MAI Commission should develop more information material on the various means to dispute an insurer's decision through complaints and internal review.

Agreed

One of the findings from the survey undertaken as part of the review was that injured people lacked confidence in disputing a MAI insurer's decision. The Commission acknowledges it plays an important role in providing information to injured people and the general public on the various ways to dispute an insurer's decision. Sometimes people would

like information on the best way to raise a concern with an insurer, i.e., should they make a complaint first or seek internal review.

It is proposed that the Commission develop additional information material that will help an applicant in understanding the means and process to dispute an insurer's decision. This will cover both complaint and internal review processes. It is expected to complete this action item concurrently with action item 1, 6, 7, 9 and 10 over the coming year.

Action item 12

The MAI Commission should review the amount in legal costs that can be awarded by ACAT, including whether allowance is made for the costs of some reports.

Agreed

The MAI Scheme currently caps the amount of legal and associated costs that can be awarded by the ACT Civil and Administrative Tribunal (ACAT) where a person is legally represented in the external review of an MAI insurer's decision. Generally, for most of the things that ACAT is empowered as a tribunal to consider it is for each party to bear their own costs. As part of the MAI Scheme design, it was recognised that for some external review matters legal assistance may be necessary, and so ACAT was given the power to award costs that are paid by the MAI insurer to the applicant. These costs are paid from MAI premiums collected by insurers. Some submissions to the review called for the cap amount to be increased.

The Commission has been monitoring costs awarded by the ACAT to ascertain the actual costs, however, to date there have only been a handful of entries on costs reported by the legal profession. The Commission agrees with the reviewers that in the absence of current evidence from the Lawyer Information Portal on legal costs in the ACAT, that other evidence should be considered by the Commission to inform a review and in considering whether an adjustment is required. There are important considerations that will need to be worked through and consultation will be required with the legal profession, ACAT, the Scheme Actuary and MAI insurers. The Commission proposes to complete this review in the 1st quarter of 2025.

Action item 13

The MAI Commission should work with the MAI insurers to identify ways that can address the concerns raised about information overload.

Agreed

The Commission acknowledges the feedback included the Report and notes the action item directly relates to particularly concerning feedback from an individual that they felt overwhelmed by the amount of information and felt they were being taken advantage of because they lacked knowledge about the MAI Scheme.

Injured people receive information about the Scheme and their application at various points from their MAI insurer. This is in part due to the obligation placed on insurers to

provide information to the injured person about their entitlements with the application receipt notice. This information should include information on the process for obtaining treatment and care, as well as gathering up the information for the income replacement benefit (the Commission intentionally separated out the provision of information on the income replacement benefit by putting the onus on insurers to collect this information). The Commission notes that the free Defined Benefit Information Service is also available to assist injured people in understanding and navigating the MAI Scheme. An injured person can contact the free service as many times as they feel necessary.

The Commission will explore with the MAI insurers on whether to stagger the process of providing information to applicants to the Scheme. The Commission also considers the information booklet(s) to be developed may be of assistance because people will be able to refer to it at key points during the application process and receipt of defined benefits. It is intended to commence this action item in 2nd quarter 2024 and concluded it in 3rd quarter 2024.

Action item 14

The MAI Commission should consider a review of the scope of services provided by the Defined Benefits Information Service.

Agreed

The free Defined Benefits Information Service (DBIS) is an important element of the MAI Scheme that came out of the Citizens' Jury who wanted a service that would support Canberrans in navigating the new MAI Scheme. Since 1 February 2020, CARE Inc has been providing the service under contract with technical support and advice from the Commission. The services of the DBIS were expanded after an initial pilot to include some legal services where a person has identified a particular vulnerability, though the DBIS cannot act as a representative. The Commission acknowledges that some submissions to the review suggested that additional support be provided by the DBIS to vulnerable people who have more complex needs.

The Commission agrees that it is important to review the scope of the services that are currently provided by the DBIS, prior to the Commission going out to tender in 2025 for the next contract to provide this service. Consultation with the current DBIS provider, MAI insurers, Scheme Actuary and relevant stakeholders will be required. This review will occur in the 4th quarter of 2024.

Action item 15

The MAI Commission should develop the regulation on net profit under section 411 of the MAI Act, noting a consultation process with the Scheme Actuary and MAI Insurers on the regulation is to be undertaken.

Agreed

The Commission notes there has been ongoing interest in the financial aspects of the MAI Scheme from members of the Legislative Assembly and member of the public. The review provided an opportunity to explain how MAI premiums are set, including the components of insurance pricing, and report on the Scheme's experience to date. Attachment A to the Review Report is a report prepared by the MAI Scheme's Actuary on the financial aspects of the MAI Scheme.

The Actuary's report found that the largest part (65 per cent) of the MAI premium relates to claims costs associated with defined benefits and common law. The overall average profit margin across the full MAI Scheme premiums filings is 9.5 per cent which is broadly consistent with profit margins achieved in other states. Importantly, MAI premiums are meeting the 'fully funded' and 'not excessive' scheme requirements. However, there is potential for significant divergence between the assumptions made by insurers in premium filings, such as the expected number of claims, and actual experience as the MAI Scheme matures. Insurers intend to make a profit when underwriting insurance, and it is appropriate they are compensated for risk and the opportunity cost of capital. However, given there is still significant uncertainty around scheme costs and there is evidence of lower-than-expected claims, on balance, the Commission agrees that it would be appropriate for the regulation to be put in place.

The action item is to give effect to a provision in the Act that allows a regulation to be made on how to assess or work out the reasonable industry net profit for a licensed insurer for a year. The Commission is to then assess the actual net profit of the MAI insurer, and if one differs from the other, the regulation is also to specify the action the MAI Commission may take.

The Commission will need to liaise with the Scheme Actuary and MAI insurers on the potential mechanism to be developed. Only one large jurisdiction in Australia has a profit mechanism for a similar scheme and when developing the ACT's mechanism careful consideration will need to be given to creating a mechanism suitable to a small jurisdiction. The Commission notes that it will require the support of the Insurance Branch to develop the regulation. This will take most of 2024 to undertake, with the Commission expecting to complete mechanism development by the end of 4th quarter 2024. It will then work with the Insurance Branch in briefing Parliamentary Counsel's Office to draft the regulation.

The table below outlines when an action item is anticipated to commence and its expected completion. The Commission has grouped action items where appropriate.

Commencement	Action items	Expected completion
2024 - 2nd Quarter	Undertake audit of forms with a view to updating the forms (action item 2)	End of 3 rd Quarter 2024
	Refresh information material (action items 1, 6, 7, 9, 10, 11)	End of 4 th Quarter 2024
	Identify ways to address concerns about information overload (action item 13)	End of 3 rd Quarter 2024
	Net profit regulation (action item 15)	Mechanism development completed end of 4 th Quarter 2024 to feed into a regulation developed for commencement by end of 1 st Quarter 2025
	Monitor the process for recovery planning (action item 8)	Ongoing given legislative requirement
2024 - 3rd Quarter	Explore the feasibility of establishing a digital portal for notifying insurers of a person's intention to apply to the MAI Scheme (action item 3)	Feasibility study concluded end of 1 st Quarter 2025
	Consider whether changes are required to minimise barriers and disputes in accessing treatment and care (action item 4)	Review concluded end of 1 st Quarter 2025
	Explore ways of streamlining the process for seeking reimbursement and submission of invoice/receipts to an insurer (action item 5)	Changes identified end of 4 th Quarter 2024
	Review into the amount of legal costs that can be awarded by ACAT (action item 12)	Review concluded end of 1 st Quarter 2025
2024 - 4th Quarter	Review into the scope of services provided by the Defined Benefits Information Service (action item 14)	Review concluded end of 4 th Quarter 2024