



MOTOR ACCIDENT INJURIES AMENDMENT BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill implements the Government's response to the recommendations made by the 3-year statutory review of the *Motor Accident Injuries Act 2017* (MAI Act). The MAI Act established in 2017 a new scheme of compulsory third-party insurance and provision of benefits and support relating to the death of or injury to persons as a consequence of a motor accident.

On behalf of the Minister, a 3-year Statutory Review of the MAI Act was conducted by Clayton Utz and Deloitte instructed by the State Insurance Regulatory Authority (SIRA).

The Statutory Review made 73 recommendations. Clayton Utz made 49 recommendations related to scheme design. Of these, 33 require consideration by Government as they propose (or require) amendment to legislation or regulation. Fifteen of these are reflected in the Bill. All eight requiring changes to existing guidelines or new guideline provisions are in progress or have been implemented. All eight-requiring other SIRA or administrative action are in progress or have been implemented.

Deloitte made 24 recommendations and 20 suggestions related mostly to the supervision of insurers and scheme monitoring. All are supported except for two which are matters for the Personal Injury Commission. The other 22 either have been addressed, or are being addressed, through ongoing business activities.

The review and the Report were informed by stakeholder feedback from 31 organisations or individuals, as well as submissions to the 2020 Law & Justice Committee review into the Compulsory Third-Party (CTP) scheme. The report was tabled in Parliament in November 2021. SIRA has made progress on many of the recommendations.

Objectives: What is the policy's objective couched in terms of the public interest?

The amendments extend and allow faster access to benefits and support for injured people and make regulatory enhancements to improve the operation of the scheme without material impact to the structure of the scheme or scheme affordability. The Bill also includes several important miscellaneous amendments that are consistent with the delivery of the policy objectives of the Act and made in response to stakeholder concerns and feedback.

The proposed amendments extend and allow for speedier access to benefits and damages for injured people:

- with minor injuries and those wholly or mostly at fault access to statutory benefits for up to 52 weeks (currently 26 weeks)
- to access weekly payments for the period before the claim is made even if made more than 28 days after the date of injury
- removing the need for an internal review by the insurer of a permanent impairment assessment
- removing the time restriction for an injured person to make a claim for damages (currently 20 months before lodgement)

The proposed amendments increase access and availability of rehabilitation and trauma support services to:

- expand SIRA's guideline-making powers to provide for circumstances in which the treatment and care is taken to be reasonable and necessary
- enable SIRA to approve rehabilitation providers to deliver services in the CTP scheme
- allow SIRA to institute, administer or co-ordinate the provision of services including trauma counselling support to family members of persons who are catastrophically injured or who have died in motor accidents
- change the terminology "minor injury" to minimise potential distress caused by the term.

The proposed amendments make regulatory enhancements to improve the operation of the scheme to:

- amend the Act to require the Minister to review the Act three years after commencement of this Act and every five years thereafter
- amend the Act so that SIRA has greater oversight of the Lifetime Care and Support Authority's (LCSA 's) determination of the Motor Accident Injuries Treatment and Care (MAITC) Benefits Fund.

The Bill includes miscellaneous amendments to clarify and improve the operation of the scheme including:

- removing the three-year time limit for commencing damages claim in the Commission
- making clear that the provisions of the principal Act relating to the liability of the Nominal Defendant in connection with a motor accident apply to a claim for statutory benefits in the same way as they apply to a claim for damages.
- allowing SIRA to impose a civil penalty without referral to a special committee
- clarifying a Medical Assessor and Review Panel can determine a claim for treatment and care to be provided.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The recommendations made by the statutory review will be implemented in a number of ways including:

- organisational and operational changes by SIRA
- amendments to guidelines and regulations
- regulatory activities, or
- legislative amendment

All recommendations were considered by the Government. Recommendations that required legislative change were identified. The Bill addresses 15 of the 33 recommendations contained in the Clayton Utz report that either recommend or require an amendment to the legislation or regulation. For these recommendations the only way to implement them is through legislative amendment.

The remaining recommendations that require legislative change:

- require further consultation
- would significantly alter the underlying structure of the scheme
- other legislative mechanisms for implementation were identified
- are substantively addressed by other changes, or
- the report asks SIRA to further consider potential changes

Of the remaining recommendations SIRA will continue to investigate and assess appropriate resolutions for those not included. SIRA will work with stakeholders to identify appropriate responses where required.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Expert actuarial advice was provided to the Government from Ernst and Young. The impact to premiums was a key consideration for the Government in assessing which recommendations should be taken forward from the Statutory Review to form this reform package.

To ensure the reforms are effectively implemented by licensed insurers, consideration was given to the commencement of some of the proposed amendments. This includes the extension of weekly statutory benefits and treatment and care expenses from 26 to 52 weeks for minor injuries and those wholly or mostly at fault for an accident. These reforms will commence from 1 April 2023, allowing insurers the time to collect premiums from policy holders.

The benefits for injured persons could not be implemented or adopted without legislative change. For the amendments not contained in the Bill that would have a significant scheme design impact, they are being further considered with stakeholders.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

As part of the implementation considerations, the Bill provides for transitional arrangements for some of the proposed amendments. This will ensure licensed insurers are provided the opportunity to update operational requirements and collect premiums from policy holders. For example, the extension of weekly statutory benefits and treatment and care will be expanded from 26 to 52 and these reforms will commence from 1 April 2023.

Where appropriate, SIRA will provide support to licenced insurers in updating operational requirements to align with the proposed reforms

Additionally, some of reforms will create new provisions for guideline making powers. SIRA will develop and publish updates to the Motor Accident Guidelines in consultation with stakeholders to support the implementation of the reforms.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Statutory Review, considered 31 submissions organisations or individuals, including insurers, legal practitioners, peak bodies, medical and allied health professionals, and individual injured motorists.

In developing the Bill, SIRA consulted with key stakeholders, including the legal profession peak bodies; insurers and the Insurance Council of Australia (ICA); the Independent Review Office; the Personal Injury Commission; and the Road Trauma Support Group. To date, the proposed changes have been generally well supported.

Subsequent consultation will also occur with stakeholders in the development of guidelines, that will be required through new provisions in the Bill.