

**2020**

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

**Motor Accident Injuries Amendment Bill 2020**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004*, s 37)**

**Presented by**

**Andrew Barr MLA**

**Treasurer**

## **Motor Accident Injuries Amendment Bill 2020**

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This Explanatory Statement relates to the *Motor Accident Injuries Amendment Bill 2020* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Explanatory Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### **OVERVIEW OF THE BILL**

The *Motor Accident Injuries Act 2019* (MAI Act) commenced on 1 February 2020. This Act replaced the *Road Transport (Third-Party Insurance) Act 2008* that was an at-fault common law scheme. The Motor Accident Injuries Scheme provides a hybrid no-fault defined benefits common law scheme.

A key feature of the new scheme is that it is no longer necessary to prove another driver was at-fault in order to access defined benefits following injury in a motor accident. Defined benefits, for treatment and care as well as income replacement, are provided for up to five years. There are some exceptions and exclusions that apply to the receipt of defined benefits.

The *Motor Accident Injuries Amendment Bill 2020* addresses an unintended consequence with two provisions of the MAI Act. Subsection (1) of the sections (203 and 284) specifies that a regulation may prescribe the legal costs and fees payable to a lawyer in relation to the MAI scheme. Subsection (2) states that a lawyer is not entitled to be paid any legal costs or fees other than the prescribed costs and fees. This means that a regulation must be made to entitle a lawyer to be paid or recover fees and costs.

This is inconsistent with the intention of the provisions which was that if no regulation was made, lawyers would be entitled to be paid or recover fees and costs. It is proposed to address this unintended effect through the amendment bill which makes clear that if a legal cost or fee is not prescribed by a regulation, a lawyer is able to be paid or seek the recovery of their fees for provided services in relation to the Motor Accident Injuries Scheme.

Legal advice is one mechanism available for injured people to receive assistance in navigating processes under the scheme. The Government's intention in relation to injured people being able to access legal services was clear in the explanatory statement that accompanied the *Motor Accident Injuries Bill 2019* and in

correspondence with the legal profession. The Bill proposes a retrospective commencement, to the day the scheme commenced, to ensure no party is prejudiced by this unintended effect of sections 203 and 284.

## **CONSULTATION ON THE PROPOSED APPROACH**

These amendments have arisen as a result of concerns that lawyers are prevented from charging client's legal costs and fees in relation to the MAI scheme. As the Motor Accident Injuries Scheme commenced on 1 February 2020, it has been necessary to develop an amendment bill without consultation.

## **CONSISTENCY WITH HUMAN RIGHTS**

Legal advice is one mechanism available for injured people to receive assistance in navigating processes under the Motor Accident Injuries Scheme. By addressing an unintended consequence of two provisions of the MAI Act, a potential constraint on an individual being able to engage a lawyer to assist them with an application or claim is being addressed.

### **Rights engaged**

No rights under the *Human Rights Act 2004* identified as engaged.

### ***Rights Promoted***

The right to access advice, including legal advice, is promoted by this amendment bill.

## Motor Accident Injuries Amendment Bill 2020

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Motor Accident Injuries Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA  
Attorney-General

## CLAUSE NOTES

### **Clause 1      Name of Act**

This clause provides for the name of the Act to be the *Motor Accident Injuries Amendment Act 2020*.

### **Clause 2      Commencement**

This clause provides for the commencement of the Act to be 1 February 2020. This is necessary as the *Motor Accident Injuries Act 2019* commenced on 1 February 2020. This is a retrospective provision. However, as it will clarify the intended effect of the two provisions in the Act and remove the potential for prejudice from lawyers being unable to be paid or recover for their services it is appropriate.

### **Clause 3      Legislation amended**

The Bill amends the *Motor Accident Injuries Act 2019*.

### **Clause 4      Legal Costs and fees payable by applicants and insurers Section 203 (2)**

This clause amends section 203 (2). Section 203 (1) provides that the Executive may make a regulation to prescribe legal costs and fees payable by applicants and insurers in relation to applications for defined benefits (including in relation to dispute resolution). Section 203(2) is proposed to be amended to provide that if a legal cost or fee is prescribed under subsection (1) then a lawyer is entitled only to the cost or fee that is prescribed. This amendment means that if a legal cost or fee is not prescribed by a regulation, a lawyer is able to be paid or seek the recovery of their fees for provided services in relation to the Motor Accident Injuries Scheme.

### **Clause 5      Legal Costs and fees payable by claimants and insurers Section 284 (2)**

This clause amends section 284 (2). Section 284 (1) provides that the Executive may make a regulation to prescribe legal costs and fees payable by claimants and insurers in relation to motor accident claims. Section 284 (2) is proposed to be amended to provide that if a legal cost or fee is prescribed under subsection (1) then a lawyer is entitled only to the cost or fee that is prescribed. This amendment means that if a legal cost or fee is not prescribed by a regulation, a lawyer is able to be paid or seek the recovery of their fees for provided services in relation to the Motor Accident Injuries Scheme.