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

**MOTOR ACCIDENT INJURIES AMENDMENT Bill 2023
SUPPLEMENTARY EXPLANATORY STATEMENT
GOVERNMENT AMENDMENTS**

Presented by

Chris Steel

Special Minister of State

Supplementary Explanatory Statement

Government Amendments to the Motor Accident Injuries Amendment Bill 2023

Background

This explanatory statement accompanies amendments to be moved by the Special Minister of State to the Motor Accident Injuries Amendment Bill 2023 (the Bill). In preparing the Bill an issue was raised in relation to the interactions between the Motor Accident Injuries (MAI) Scheme and Workers Compensation Schemes. The Government decided to introduce the Bill and undertake a further, targeted, consultation on legislation to provide certainty regarding an injured person's entitlements under the MAI scheme. In addition, the amendments address technical and minor drafting issues which have arisen since the presentation of the Bill.

Amendment 1: Clause 2

The amendment replaces the commencement provisions in clause 2 of the Bill. The Act (other than section 11A) will commence on the 7th day after its notification day. Section 11A of the Act will commence on the later of the commencement of the Act, or the commencement of the *Road Safety Legislation Amendment Act 2023*, section 17. This is due to a listing of a new offence, further discussed under amendment 2.

Amendment 2: Proposed new Clause 11A

Section 48 of the *Motor Accident Injuries Act 2019* (MAI Act) ends a person's entitlement to income replacement, treatment and care and quality of life benefits when a person is convicted or found guilty of a serious offence in relation to the motor accident, and any appeal upholding the conviction or finding of guilt is finalised.

The amendment inserts clause 11A to the Bill, to amend the definition of a serious offence in section 48(7) of the MAI Act to include an additional offence following the introduction of a new aggravated penalty included in the Road Safety Legislation Amendment Bill 2022 for section 5A (Races, attempts on speed records, speed trails etc) of the *Road Transport (Safety and Traffic Management) Act 1999* (RTSTM Act). The explanatory statement to the Road Safety Legislation Amendment Bill outlines the rationale for the increase in penalties for section 5A, and the reader is referred to the analysis regarding the penalty could engage and limit a person's right to liberty and security and rights in criminal proceedings.

The new aggravated penalty will apply to conduct in relation to the motor accident which is consistent with other serious offences listed in section 48(7) of the MAI Act. This conduct is intentional conduct, which causes or increases the risk of serious injuries or death, from a motor accident. The ending of a person's entitlements on conviction for a serious offence also aligns with one of the main objects of the MAI Act, being to support and promote the prevention of motor accidents and the safe use of motor vehicles. It applies a disincentive to people who engage in criminal behaviour and put other road users at significant risk.

The explanatory statement to the Motor Accident Injuries Bill 2018 provides a detailed analysis of the human rights implications relevant to the exclusions in the MAI Scheme. In summary, the provisions may discriminate in the way that the defined benefits entitlements apply to a person that may not apply to another person. The limitations on the entitlement where an offence occurs in connection with a motor accident represents a balance between the rights of injured persons and the protection of the community. A reasonable and objective criterion has

been used in cases of discrimination by using the least restrictive means to achieve the purpose, including access to entitlements until such time that a court imposes a conviction or finding of guilt.

Clause 11A also amends a cross reference to an aggravated penalty in section 48(7)(c)(i) of the MAI Act to correctly refer to an offence under Section 7 (Furious, reckless, or dangerous driving,) rather than an offence under section 7A of RTSTM Act. This is because section 7A of the RTSTM Act defines an aggravated offence but does not contain the actual offence provision which is found in section 7 of the RTSTM Act.

Amendment 3: Clause 12

Section 50 of the MAI Act limits entitlements to defined benefits if a person's claim is accepted by a workers compensation scheme. A workers compensation scheme is defined in the MAI Act as being a scheme under the *Workers Compensation Act 1951* (ACT), the *Safety, Rehabilitation and Compensation Act 1988* (Cwth), or a statutory workers compensation scheme of a place out of the ACT.

The amendment expands section 50(2) of the MAI Act to provide clarity about when a work-related motor accident is accepted by a workers compensation insurer or otherwise dealt with by the workers compensation insurer. In addition, the amendment also recasts section 50 to align terminology with the terminology used in workers compensation legislation. References to a workers compensation "application" and "applicant" have been replaced with references to a "claim" and "claimant", and references to a person's "application" for workers compensation being "denied" are replaced with references to a person's "claim" for workers compensation being "rejected".

A new defined term being *relevant defined benefits*, is also adopted to describe the three defined benefits - income replacement, treatment and care and quality of life benefits which are covered by limitations in section 50 of the MAI Act.

The intent of section 50 of the MAI Act is to prevent a person double dipping between the two statutory compensation schemes. The amendments will make it clear a workers compensation insurer can accept or deal with the claim (e.g., through making a lump sum payment to settle a claim), however, this does not entitle a person to come to the MAI Scheme to obtain defined benefits when those benefits have already been paid by the workers compensation insurer. Where a person does have liability for their claim for workers compensation rejected, with the only payments being statutory benefits up to the date of the rejection of liability, the person can revive their application with the MAI insurer (section 73 of the MAI Act provides that if an applicant has made a workers' compensation claim, they are to notify the relevant MAI insurer). This will then allow for a clean break between the two schemes and allow the MAI insurer to take over the management of the injured person's relevant defined benefits being their treatment and care, income replacement, and quality of life benefits.

The amendment also inserts a new note to section 50(3) to refer to the requirement to give an insurer a written notice of the withdrawal of a worker compensation application in section 73(4) of the MAI Act.

Amendment 4 – Clauses 17 and 18

The amendment recasts section 73 of the MAI Act, to align terminology with the terminology used in workers compensation legislation. References to a workers compensation "application" and "applicant" have been replaced with references to a "claim" and "claimant", and references to a

person's "application" for workers compensation being "denied" are replaced with references to a person's "claim" for workers compensation being "rejected".

In addition, the amendment replaces the note in section 73(4) and with a new note at the end of section 73 of the MAI Act to provide clarity about a person's entitlement to defined benefits under section 50 of the MAI Act on the withdrawal or rejection of a workers compensation application.

Amendment 5

The amendment aligns terminology in section 112(2)(e) of the MAI Act with terminology used in workers compensation legislation. It replaces the reference to a workers compensation "applicant" with a workers compensation "claimant".

Amendment 6

The amendment aligns terminology in section 132(2)(g) of with the MAI Act with terminology used in workers compensation legislation. It replaces the reference to a workers compensation "applicant" with a workers compensation "claimant".

Amendment 7: Proposed New Clause 64A

The amendment inserts new clause 64A to the Bill, so terminology in section 238 of the MAI Act aligns with terminology used in workers compensation legislation. References in section 238 of the MAI Act to a workers compensation "application" and "applicant" have been replaced with references to a "claim" and "claimant".

Amendment 8: Proposed new clause 65A

The amendment inserts new clause 65A to the Bill, so the terminology in section 239(1)(d) of the MAI Act aligns with terminology used in workers compensation legislation. It replaces the reference to a successful "application" for workers compensation benefits with a reference to a successful "claim" for workers compensation benefits.

Amendment 9: proposed new clauses 66A to 66C

The amendment inserts new clauses 66A to 66C to the Bill. The first amendment is to section 239(4) which mirrors the amendment made in clause 12, by clarifying in section 239(4)(b) of the MAI Act that a successful workers compensation claim is a claim accepted by an insurer or otherwise settled by the insurer. Clauses 66B and 66C also aligns terminology in section and 240 of the MAI Act with terminology used in workers compensation legislation. It replaces references to a workers compensation "application" and "applicant" with references to a workers compensation "claim" and "claimant".

Amendment 10: New section 241(4)(ca)

This amendment makes a minor editorial amendment to clause 70 of the Bill. The amendment removes the direction that new section 241(4)(ca) be located before the note, which would result in the new section being incorrectly located in the Act.

Amendment 11: Compliance with certain provisions New Section 365(h)

This amendment makes a minor editorial amendment to clause 73 of the Bill. The amendment removes the direction that new section 365(h) be located before the note, as there is no note in section 365.