



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

Inquiry into the Motor Accidents (Compensation) Bill 2019

May 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Motor Accidents (Compensation) Amendment Bill 2019.

Under the Motor Accidents (Compensation) Act, loss of earnings capacity (LOEC) benefits cease once a person attains the Commonwealth pension age. This exclusion has been in place since the commencement of the Act and was based on the assumption that individuals of pension age or older were unlikely to be employed and, as they would probably be receiving the aged pension or have access to private retirement funds, were unlikely to require loss of earnings compensation. As a result of demographic ageing, and the consequent shift towards longer working lives, this exclusion is no longer relevant or appropriate.

The purpose of this Bill is to ensure that anyone who is working and injured in a motor vehicle accident is eligible to receive LOEC benefits, subject to a two-year time limit for those who have reached or exceeded the Commonwealth pension age. The Committee welcomes the Bill as an important step in creating a fairer and more equitable system.

As highlighted in Chapter 3, some concern has been expressed regarding the use of the Commonwealth pension age to determine the two year limit on LOEC benefits, rather than the age at which an individual plans to retire. The Committee has given careful consideration to this concern but notes that the Bill is consistent with industry practice and other existing schemes.




On behalf of the Committee, I thank those who made submissions for their comments on the Bill. I would also like to thank the Department of the Legislative Assembly for the support provided to the Committee, and my fellow Committee members for their bipartisan commitment to the legislative review process. I also acknowledge the work of the Department of Treasury and Finance in providing written responses to the Committee's questions regarding the issues raised in submissions.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

Mr Tony Sievers MLA

Chair

Committee Members

	Tony Sievers MLA Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
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	Committee Membership	
	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
	Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition
	Committee Membership	
	Standing:	Privileges
	Sessional:	Economic Policy Scrutiny Social Policy Scrutiny
	Lawrence Costa MLA Member for Arafura	
	Party:	Territory Labor
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	Sessional:	Economic Policy Scrutiny
	Yingiya Mark Guyula MLA Member for Nhulunbuy	
	Party:	Independent
	Committee Membership	
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On 22 March 2019, Member for Daly, Mr Gary Higgins MLA, was discharged from the Committee and replaced by the Member for Spillett, Mrs Lia Finocchiaro MLA.		

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Acknowledgments

The Committee acknowledges the organisations that have made written submissions to this inquiry and the Department of Treasury and Finance for providing comments on concerns raised in submissions.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Motor Accidents (Compensation) Amendment Bill 2019.

1 Introduction

Introduction of the Bill

- 1.1 The Motor Accidents (Compensation) Bill (the Bill) was introduced into the Legislative Assembly by the Treasurer, the Hon Nicole Manison, MLA, on 13 February 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 7 May 2019.¹

Conduct of the Inquiry

- 1.2 On 15 February 2019 the Committee called for submissions by 11 March 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 1, the Committee received two submissions to its inquiry.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Motor Accidents (Compensation) Amendment Bill 2019.

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

¹ Hon Nicole Manison MLA, Treasurer, Parliamentary Record, *Debates Day 2 – 12 February 2019*, p. 1, <http://www.territorystories.nt.gov.au/jspui/handle/10070/306106>

2 Overview of the Bill

Background to the Bill

- 2.1 Under the *Motor Accidents (Compensation) Act 1979*, loss of earning capacity (LOEC) benefits cease once a person attains the Commonwealth pension age. This exclusion has been in place since the Motor Accident Compensation (MAC) Scheme commenced and was based on the assumption that individuals who were over the pension age were unlikely to be employed and, as they would probably be receiving the aged pension, were unlikely to require loss of earning compensation.
- 2.2 Given demographic ageing, and the shift towards longer working lives, this exclusion is now considered to be outdated, with these concerns widely reported in the media and reflected in a petition presented to the Assembly on 30 October 2018. The petition expressed the view that the current legislation amounts to age-based discrimination because it excludes Territorians who are over the pension age from receiving compensation for loss of earning capacity, despite their compulsory contribution to the Motor Accident Compensation scheme through payment of annual motor vehicle registration fees.²

Purpose of the Bill

- 2.3 As noted in the Explanatory Statement:

The purpose of this Bill is to ensure anybody who is working and injured in a motor vehicle accident (regardless of their age) is eligible to receive LOEC benefits, subject to a two-year time limit for those who have reached or exceed pension age.³

² Lia Finocchiaro MLA, Member for Spillett, Parliamentary Record, *Debates Day 4 – 30 October 2018*, p. 4719, <http://hdl.handle.net/10070/304283>; Parliamentary Record, *Debates Day 3 – 14 February 2019*, pp. 74-75, <http://hdl.handle.net/10070/306107>

³ Explanatory Statement, Motor Accidents (Compensation) Amendment Bill (Serial 78), p. 1, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

3 Examination of the Bill

Introduction

3.1 The Committee received two submissions to its inquiry, one of which unreservedly supported the Bill and one which supported the Bill but also recommended amendments.

Clause 4 – Section 13 amended (Compensation for loss of earning capacity)

3.2 Maurice Blackburn Lawyers (Maurice Blackburn) made the following key recommendations:

- That the test be based on when someone actually stops working or planned to stop working, rather than pension age.
- That the Bill include an option to argue that an individual would have worked past their pension age.
- That the proposed cap of a maximum of 104 weeks of compensation is inadequate and should at least match the compensation available through RTW provisions.⁴

3.3 Maurice Blackburn commented that while the Bill is an improvement on what is currently available in the *Motor Accidents (Compensation) Act 1979*, the limit of 104 weeks imposed on loss of earnings capacity (LOEC) benefits does not take into account the current trend for people to work beyond the Commonwealth pension age. They argue that the eligibility test for LOEC benefits should take into account when a person actually stops working or plans to stop working rather than pension age. In support of their argument they note that the *Return to Work Act 1986* includes a provision for benefits to be extended if ‘that person can prove that he/she would have continued to work past the normal retirement age for their position’.⁵

3.4 The Committee notes that while the *Return to Work Act 1986* provides the potential for a person to receive benefits for a longer period of time than is available under the *Motor Accidents (Compensation) Act 1979*, this is only the case where the injury occurs two or more years before the worker’s normal retirement age or, if the normal retirement age is not later than the worker’s pension age, before pension age. Normal retirement age for a worker is defined as ‘the age that workers in the industry or occupation in which the worker is employed usually retire’.⁶ Effectively, if a worker’s normal retirement age is 70, and they are injured at 67, they could receive benefits until age 70, 52 weeks longer than would be available through the *Motor Accidents (Compensation) Act 1979*.

⁴ Submission 2 – Maurice Blackburn Lawyers, p. 3.

⁵ Submission 2 – Maurice Blackburn Lawyers, p. 1.

⁶ *Return to Work Act 1986* (NT), s65(14), p. 59.

3.5 Where an injury occurs within the periods listed below, the *Return to Work Act 1986* limits benefits to the same 104 week period as included in this Bill:

- Within two years before the date of either the worker's normal retirement age or their future pension age, whichever is applicable;
- On or after the date on which the worker attains their normal retirement age or their future pension age, whichever is applicable.

3.6 The Committee sought comment from the Department of Treasury and Finance (the Department) regarding Maurice Blackburn's recommendation that the eligibility test should be based on planned retirement age rather than pension age and was advised that:

The provisions that are referred to by Maurice Blackburn relate to workers whose injuries occur at least two years before pension age and who are not the focus of the Bill.⁷

3.7 The Department further advised that:

As a no-fault scheme, the MAC Scheme is premised on the principles of fairness, simplicity, and ease-of-access to medical, rehabilitation and financial support to help people recover from serious and sometimes permanent injuries caused by a road accident. Moving towards an industry based retirement age would substantially alter the structure of the MAC Scheme (which assumes a single retirement age) by introducing significant administrative complexity into the Scheme, and was therefore not adopted.⁸

3.8 Given the increasing trend for people to work beyond pension age, the Committee sought clarification from the Department as to the rationale for placing a 104 week limit on benefits for individuals approaching pension age, or who are of pension age or older and still in paid employment. The Department advised that:

the proposed amendments are more generous than LOEC benefits provided under interstate workers compensation and motor accidents schemes. In general, interstate schemes only extend access to LOEC benefits for 12 months post pension age (as opposed to two years under the proposed Bill).

The policy objective to extend benefits for up to two years post retirement age (where claimants were employed at the date of accident), is to ensure that people in these circumstances continue to receive LOEC payments whilst they recover and return to work or transition to retirement.

As a no-fault scheme, LOEC benefits are intended to be a safety net to support people back to work and health. For those that have reached or exceed the pension age, there are additional safety nets available that are not available to those who are younger than the Pension Age (including superannuation and the aged pension).

There is also a need to strike a balance between people being able to access LOEC and the financial viability of the MAC Scheme. To ensure that premiums remain affordable for Territory motorists, the scope of cover and benefits payable must be balanced with the cost to the scheme. To achieve this, the *Motor Accidents (Compensation) Act 1979* prescribes caps on benefits, including

⁷ Hon Nicole Manison, Treasurer, Response to Written Questions from the Committee (a), p. 2, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

⁸ Hon Nicole Manison, Treasurer, Response to Written Questions from the Committee (a), p. 2, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

limiting the duration in respect of which claimants are entitled to receive LOEC benefits.⁹

3.9 Two additional issues were raised that are beyond the scope of the Bill but will be briefly addressed here. Maurice Blackburn commented that ‘the cap on the amount that can be claimed for LOEC each week, which is based on average earnings, is very limited and less than the RTW provision currently provide for’.¹⁰

3.10 The Committee raised this concern with the Department and was advised that:

there are fundamental differences in the nature of workers compensation and motor accident compensation schemes, including: injury types; scope of people covered; and cost of premiums. As such, benefits payable under the Northern Territory MAC Scheme are not directly comparable with the Northern Territory Workers Compensation Scheme.

All no-fault schemes apply some kind of limits on statutory benefits so as to ensure the financial viability of the scheme.¹¹

3.11 Maurice Blackburn also queried how residency is determined for the purpose of determining eligibility for LOEC benefits, noting that the Territory has ‘a highly mobile population with many engaged in FIFO or DIDO work’.¹²

3.12 The Committee sought clarification from the Department and was advised that:

The MAC Scheme covers people who are injured as a result of an accident involving a registered motor vehicle in the Northern Territory, irrespective of where the motor vehicle is registered or where the injured person resides. The Scheme also covers drivers/passengers of Northern Territory registered vehicles involved in accidents interstate.

As such, registration (in that the vehicle must be registered at the time of the accident) rather than residency, is the key issue when determining eligible for LOEC benefits under the MAC Scheme.¹³

Committee’s Comments

3.13 The Committee acknowledges the concerns raised by Maurice Blackburn but is satisfied with the Department’s explanation concerning the use of age as the criterion for limiting the period of time over which older Territorians can access LOEC benefits. In particular, the Committee notes the importance of balancing the availability of LOEC benefits to senior Territorians with the long term sustainability of the scheme and the maintenance of affordable premiums for Territory motorists.

⁹ Hon Nicole Manison, Treasurer, Response to Written Questions from the Committee (b), p. 2, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

¹⁰ Submission 2 – Maurice Blackburn, p. 2.

¹¹ Hon Nicole Manison, Treasurer, Response to Written Questions from the Committee (a), pp. 2-3, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

¹² Submission 2 – Maurice Blackburn, p. 2.

¹³ Hon Nicole Manison, Treasurer, Response to Written Questions from the Committee (a), p. 3, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

Appendix A: Submissions Received

Submissions Received

1. Automobile Association of the Northern Territory Inc.
2. Maurice Blackburn Lawyers

Note: Copies of submissions and tabled papers are available at:
<https://parliament.nt.gov.au/committees/EPSC/78-2019>

Bibliography

Explanatory Statement, Motor Accidents (Compensation) Amendment Bill 2019 (Serial 78), <https://parliament.nt.gov.au/committees/EPSC/78-2019>

Department of Treasury and Finance, Response to Written Questions from the Committee (a), 27 March 2019, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

Department of Treasury and Finance, Response to Written Questions (b), 8 April 2019, <https://parliament.nt.gov.au/committees/EPSC/78-2019>

Hon Nicole Manison MLA, Treasurer, Parliamentary Record, *Debates Day 2 – 12 February 2019*, p. 1, <http://www.territorystories.nt.gov.au/jspui/handle/10070/306106>

Parliamentary Record, *Debates Day 2 – 12 February 2019*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/306106>

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Motor Accidents (Compensation) Act 1979 (NT)

Return to Work Act 1986 (NT)