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Mr Tony Sievers MLA
Chair
Economic Policy Scrutiny Committee
GPO Box 3721
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Dear ~~Chair~~ Tony

Thank you for your correspondence of 22 March 2019, seeking clarification on a number of issues raised in relation to the Motor Accidents (Compensation) Amendment Bill 2019.

The Bill seeks to ensure anybody who is working and injured in a motor vehicle accident (regardless of their age) would be eligible to receive loss of earning capacity benefits, subject to a two-year time limit for those who have reached or exceed pension age. Responses to the issues raised are provided at Attachment A.

I do not have any objection to this response being published on the Economic Policy Scrutiny Committee's website.

Yours sincerely

NICOLE MANISON

27 MAR 2019

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

1. **Given that a person may intend to work a number of years beyond the Commonwealth pension age, why does the Bill specify a two year limit on the length of time for which a person who is of pension age, or who is approaching pension age, can obtain benefits?**

Currently, the MAC Act provides that people are entitled to receive LOEC benefits until they reach their pension age, as prescribed by the *Social Security Act 1991*.

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.

While LOEC benefits will have a limit of two years for older workers, an eligible person who exceeds the pension age remains entitled to receive all other benefits (including medical, rehabilitation and attendant care benefits) as prescribed by the MAC Act, irrespective of age, and with no time limits.

The Bill applies the same two year limit on the benefits available to senior Territorians under the *Return to Work Act* (the RTW Act).

Under the RTW Act, a worker of any age may make a claim for loss of earning capacity (LOEC). However, Section 65 of the RTW Act limits how long an older person, specifically near to or above pension age, is entitled to be paid compensation. In high level terms, the RTW Act provides:

- if a worker is injured within two years of their pension age, the worker is entitled to a maximum of 104 weeks compensation
- a worker already older than their pension age will get a maximum of 104 weeks compensation.

There is also a need to strike a balance between people being able to access LOEC and the financial viability of the Motor Accidents (Compensation) (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* (the MAC Act) prescribes caps on benefits, including limiting the duration in respect of which claimants are entitled to receive LOEC benefits.

2a. Why are the provisions in the Motor Accidents (Compensation) Amendments Bill more limited?

The provisions in the Bill are not more limited when compared with section 65 of the RTW Act. The Bill is focused on the LOEC benefits payable to workers who are injured close to or beyond the pension age. As set out in the response to Question 1 above, section 65 provides, in relation to these workers:

- if a worker is injured within two years of their pension age, the worker is entitled to a maximum of 104 weeks compensation
- a worker already older than their pension age will get a maximum of 104 weeks compensation.

The amendments align directly with the RTW Act. 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. The methodology recognises different industries are likely to have different retirement ages (for example, the RTW Act recognises that manual labour industries, such as builders, are likely to have a retirement age lower than a professional, such as a judge).

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.

2b. What would be the effect on the operation of the Bill of introducing comparable provisions to those contained in the Return to Work legislation?

As discussed in the response to Question 2a above, it is contended that the provisions in the MAC Amendment Bill align with the provisions in the RTW Act for claimants who are at or near pension age.

An eligible person who exceeds the pension age remains entitled to receive all other benefits (including medical, rehabilitation and attendant care benefits) as prescribed by the MAC Act, irrespective of age.

3. Please clarify why benefits payable for loss of earnings through an accident at work are potentially greater than benefits payable for loss of earnings through a motor accident.

The question raised relates to a matter that goes beyond the purpose of the Bill – which is to introduce the ability for people who are beyond the pension age to claim for LOEC benefits.

In the interests of providing clarification, 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.

Generally, loss of earning capacity benefits are payable until pension age for motor accident schemes around Australia. As such, the MAC Scheme is consistent with compensation schemes in other jurisdictions.

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

4. **How effective are the current provisions in clearly determining residency for the purpose of determining eligibility for loss of earnings benefits, for example, a worker may have a residence in two jurisdictions and move between them depending on where there is available work.**

The question raised relates to a matter that goes beyond the purpose of the Bill.

In the interests of providing clarification, 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.