

14 March 2019

Dr Jennifer Buckley
Committee Secretary
Economic Policy Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

By email: EPSC@nt.gov.au

Dear Dr Buckley,

Thank you for the opportunity to provide comment in relation to the *Motor Accidents (Compensation) Amendment Bill 2019* and its Explanatory Memorandum.

Maurice Blackburn has three main concerns with the proposed changes, which can be summarised as follows:

- The test is based on pension age rather than when someone actually stops working or *planned* to stop working;
- Pension age for some, depending on their date of birth, can be as low as 65.5 years, yet research shows people are continuing to work longer than this; and
- There appears to be no option, as there is in Return to Work legislation¹ (RTW), to argue that an individual would have worked past their pension age. Under current RTW provisions, it is possible to argue that the person's retirement age is later than their pension age - however this is not accommodated in the Bill.

Our submission:

We understand that the proposed changes have come as a result of the discovery that Territorians who have reached pension age and beyond are required to pay the compulsory third party contribution as part of their vehicle registration, despite having no entitlement to receiving economic benefits if they were to suffer an injury in a motor accident.

The Explanatory Statement² notes that the purpose of the Bill is to ensure that anyone who is working and injured in a motor accident, regardless of age, is eligible to receive LOEC, subject to a two year limit.

Currently, the Act³ says that 'a person ceases to be entitled to benefits under this section on the day the person reaches pension age'⁴. Unlike the RTW Act, there is currently no provision for an extension of benefits if that person can prove that he/she would have continued to work past the normal retirement age for their position.



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¹ <https://legislation.nt.gov.au/Legislation/RETURN-TO-WORK-ACT-1986>

² https://parliament.nt.gov.au/_data/assets/pdf_file/0009/653589/Explanatory-Statement.-Motor-Vehicles-Compensation-Amendment-Bill-2019-Serial-78.pdf, p.1

³ https://parliament.nt.gov.au/_data/assets/pdf_file/0011/653591/Motor-Accidents-Compensation-Act-.pdf.

⁴ *Ibid*, s.13 (5)(a)

Under the changes, Territorians who are injured within two years of pension age or past pension age will potentially be entitled to a maximum of 104 weeks of compensation if they are earning an income and are injured on or after the day they reach their pension age.

Maurice Blackburn notes that this is more than what the Act currently provides, which is nil, however these clients will have a maximum entitlement to 104 weeks. Therefore while the two years of benefits now proposed is better than nothing, it remains far from sufficient in our view.

Maurice Blackburn argues that the test should not be based on pension age, but when someone planned to stop working, but for their injuries.

We further note that the pension age for some, depending on their date of birth, can be as low as 65.5 years, yet research shows people are continuing to work much longer than this. We remind the Committee that the Attorney-General only recently introduced a bill⁵ to increase the retirement age of the judiciary, which reflects this growing trend.

Maurice Blackburn is pleased that the amendments are much clearer and expressed in simpler terms than the complicated RTW provisions in relation to retirement age maximum benefits. Maurice Blackburn is concerned however about the potential issues and ambiguity arising from the term 'income from personal exertion' and what this may include or exclude.

Maurice Blackburn is also concerned 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. This means that Territorians injured on the road are in many cases in a worse position than those injured in the course of employment. The maximum amount for LOEC currently is only \$844.98 - \$965.98 per week, depending on residency.

We encourage the Committee to consider how the current ambiguity with terms such as 'primary residence' and 'primary employment' could be similarly clarified in the Act. With the changing nature of employment relationships, clarity around what constitutes 'primary employment' would be useful – for example, whether it includes contractor relationships, cash work etc. Similarly, 'primary residence' is often a difficult concept in the Territory where we have a highly mobile population with many engaged in FIFO or DIDO work.

⁵ See <https://www.ntnews.com.au/news/lawyers-against-attorneygeneral-natasha-fyless-plan-for-northern-territory-judges/news-story/4bccdfb0b14c1def2a67e1114e1c6ac5>

Our key recommendations:

1. That the test be based on when someone actually stops working or planned to stop working, rather than pension age.
2. That the bill include an option to argue that an individual would have worked past their pension age.
3. 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.

We would be pleased to discuss the above comments and recommendations in greater detail with the Committee. If we can assist the Committee further in its important work, please do not hesitate to make contact via 08 8914 2300 or MMeyers@mauriceblackburn.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Meyers', with a long horizontal flourish extending to the right.

Melissa Meyers
Senior Associate
Maurice Blackburn Lawyers