



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON JUSTICE  
AND COMMUNITY SAFETY**

(Reference: [Inquiry into Dangerous Driving](#))

**Members:**

**MR P CAIN (Chair)**  
**DR M PATERSON (Deputy Chair)**  
**MR A BRADDOCK**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**WEDNESDAY, 7 DECEMBER 2022**

**Secretary to the committee:**  
**Ms K de Kleuver (Ph: 620 70524)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

**WITNESSES**

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## **Privilege statement**

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

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While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

*Amended 20 May 2013*

**The committee met at 11.01 am.**

**CLARK, MS NICOLA**, Motor Accident Injuries Commissioner, Motor Accident Injuries Commission, and Acting Executive Branch Manager, Insurance Branch, Economic and Financial Group

**HOLMES, MS LISA**, Motor Accident Injuries Commissioner, Motor Accident Injuries Commission and Acting Revenue Commissioner and Executive Group Manager, Revenue Group, Motor Accident Injuries Commission

**THE CHAIR:** Good morning. Welcome to this public hearing of the Standing Committee on Justice and Community Safety inquiry into dangerous driving. The committee has been hearing from a number of individuals, organisations, ministers and their officials over five days.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending or viewing online or later.

Today's proceedings are being recorded and transcribed by Hansard and will be published. When taking a question on notice, it would be useful if witnesses used these words: "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

In this session we will hear from the Motor Accident Injuries Commission. I welcome Ms Lisa Holmes and Ms Nicola Clark. I remind each of you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement? That is an acknowledgement from both; thank you.

We are not taking an opening statement, so I will lead off. I have a few questions about the funeral benefits that are provided under a claim. Correct me if I am wrong—\$15,000 indexed; is that the correct benefit? I am just wondering: how did you come to that amount? Is that based on an actual calculation of the cost of a funeral in Canberra?

**Ms Clark:** I am currently performing the functions of the MAI Commissioner. I acknowledge the privilege statement. The \$15,000 was the amount that was recommended to us as part of the citizens jury process that occurred over 2017 and 2018. It is not intended to cover the full amount of a funeral. Obviously, it has been AWE indexed since that time. In terms of any benchmarking against funerals, what we do observe, where funeral benefits have been claimed, is that there have been a range, from about \$10,000 up to \$21,000.

**THE CHAIR:** What is the current amount?

**Ms Clark:** It is \$16,400, I believe, but I can confirm that.

**THE CHAIR:** You will take that on notice?

**Ms Clark:** Yes.

**THE CHAIR:** Okay. Thank you. You might also take this on notice. How much has been paid by the insurers or the nominal defendant in funeral benefits since the scheme commenced, in particular with respect to motor vehicle accidents? Since 2019 we have had 42 deaths—six, seven, 11 and 18 in each of those years. Can you provide the figure of what has been paid by insurers or the nominal defendant in funeral benefits?

**Ms Clark:** We could certainly provide you with those figures where it has been claimed. Not all the people who have motor vehicle accidents have actually made an application since the scheme commenced on 1 February 2020.

**THE CHAIR:** Okay. Then how much has been paid after a claim?

**Ms Holmes:** The amount that has been paid under the scheme to date, to the end of September, is \$109,668. By the way, I have also read and acknowledge the privilege statement. My substantive position is Motor Accident Injuries Commissioner, although I am currently acting in another position in Treasury in the short term.

**THE CHAIR:** I want to confirm one point you just said. You said that there have been claims. So when were payments actually available on such claims?

**Ms Clark:** The payment is available if somebody makes an application to an MAI insurer. What we are aware of is that, as you stated, there have been 42 accidents since 2019 and not every person has accessed that entitlement.

**THE CHAIR:** Why is that?

**Ms Clark:** It may be that they have not been provided with information by the funeral directors, despite us providing to funeral directors information about the scheme. It may be that they have their own funds available to cover that. They may just not have been aware of it being a new benefit under this scheme.

**THE CHAIR:** If people have their own funeral insurance—

**Ms Clark:** They may well have their own funeral insurance.

**THE CHAIR:** they would not claim from you?

**Ms Clark:** They may choose not to.

**THE CHAIR:** Thank you.

**DR PATERSON:** What was the citizens jury process? What was that that you mentioned?

**Ms Clark:** In 2017 the ACT government conducted a deliberative democracy process. We call it the citizens jury. Fifty Canberrans were selected at random to undertake, over several weekends, a deep dive into the CTP scheme. They had witnesses from the insurance companies, lawyers and motor vehicle accident victims themselves.

**Ms Holmes:** They could basically hear from whoever they wanted to in terms of what information they wanted to know to better understand the current CTP scheme. Ultimately, after the second weekend, they decided that they did want to make some changes to the scheme. Various models were then drafted up and went back to the citizens jury. They then voted on which of those models they actually preferred.

**DR PATERSON:** And what other aspects of the insurance scheme were decided on at that point?

**Ms Holmes:** It covered everything.

**DR PATERSON:** Okay.

**Ms Clark:** Everything, yes. The four models looked at the different ways that you could structure a motor accident injury scheme. The citizens jury voted on model D, which is what the ACT government then implemented through the legislation that was introduced in 2018 and passed by the Assembly in 2019.

**DR PATERSON:** Great. Thank you. In estimates I asked a question relating to families who have really struggled in accessing the Motor Accident Injuries Insurance Scheme and the money. Your response said, “We are certainly aware that some people, including in the incidents you have talked about, have had some difficulties navigating the scheme.” I am interested to know what can be done to improve the scheme for victims or for information getting to victims to support them so that it is not a traumatising process to go through.

**Ms Holmes:** One of the discussions which was had about the CTP scheme through that citizens jury process was that with the old CTP scheme you had to prove someone was at fault. People were having to continually tell their story, and mentally that was not a good situation. That was one of the reasons for moving to defined benefits. We are certainly very conscious about trying to streamline the forms as much as possible so that people are not having to provide the same information multiple times. We acknowledge that it is a new scheme. As we get feedback, we think, “Okay. That’s a way we can improve the forms.” We have been making changes to the forms. Particularly at the moment, we are working on changes to the funeral form to make that more streamlined, in recognition of some of the feedback that we are getting on particular issues. Ms Clark can talk further on that.

**Ms Clark:** Yes. As Ms Holmes said, we have been looking at, in particular, the funeral benefits form. There is a hurdle that people come across, which is that if there is a death on a road in the ACT it does become a coronial matter, so the information becomes quite closely held. One of the things we have been trying to look at is to see whether we can just not have that requirement so that people do not actually need to know who was the at-fault vehicle. It is a third-party scheme, so you do need to know who is going to be the responding insurer. That is why that detail about the

registration is important, because it tells you who the insurer is.

However, we are working with the insurers to not require that, so that, as much as possible, they facilitate that early payment of the funeral benefits. We do acknowledge that it is a stressful time for people to realise that they have got to find \$16,000 or \$17,000 at relatively short notice. So we do want to try and remove that as a stressor for people and look at the way that the form can provide that. Ultimately, there does need to be a death on an ACT road for that benefit to be paid.

**DR PATERSON:** Given that other agencies—for example, ACT Policing—hold a lot of information, do you think there are avenues to reduce the burden on victims, through interagency collaboration and data sharing or information sharing?

**Ms Clark:** Both as the MAI Commission and the predecessor, CTP Regulator, we have worked and engaged with ACT Policing over a number of years to try and deal with getting that information for people. As I said, because it is a coronial process we do need to continue to work with the courts as well to try and find ways that people can actually get it. That is why we think that maybe the better approach here is to actually just not force people to know who the at-fault registration vehicle is, so long as they can demonstrate that it was an accident on an ACT road.

**DR PATERSON:** Is there something that you can point to in terms of the committee making recommendations to improve that interagency? Whether it is the court or policing, is there a gap? If you have been working together, is there something that is not quite working or that would be helpful to be in place or helpful as a recommendation to improve that?

**Ms Clark:** I think one of the issues that ACT Policing have is that it is a process that they need to work through and it is a process that they need to investigate. Obviously, that investigation process is on top of all their other duties. Whilst it would be useful for them to be able to more quickly look into some matters, there are some matters that are just complex and you cannot give an answer straight away as to who was actually the vehicle at fault. It does require investigation.

**MR BRADDOCK:** Going further, in terms of what steps are required to implement that, such as no longer having a requirement to demonstrate fault in order to have that funeral payout, what are you going to do over the next months, years, whatever, to achieve that?

**Ms Clark:** We think we can actually do that fairly quickly. We have already consulted with the insurers about how we can implement a change. As we said, one of the things that we did build into the new scheme was to streamline the ability to transfer applications between insurers. In the past you might have put a claim in to an insurer and the insurer would have just knocked it back and said, “Not us.”

What we have encouraged our insurers very strongly to do is to take the application and then manage it until such time as they realise: “Actually, we are not the at-fault insurer.” Then they can streamline it behind the scenes so that they transfer it and a bit of money might move between insurers, just so that we do not have the run-around that people might feel that they were getting into when the insurer was going,

“It’s not us.”

Sometimes it is still a hard thing for somebody to go and find out who is actually going to be the correct insurer. So that is where we have worked very hard with our insurers, over a number of years, particularly with it being a no-fault scheme. We say, “Yes, we acknowledge that it is still a third-party scheme, but come on, guys. You can work together on this and make sure that you actually are helping people from day one.”

**MR BRADDOCK:** So you are trying to encourage the insurers. Has that been demonstrated to be successful? Are the insurers actually displaying that behaviour?

**Ms Clark:** Yes, on the whole they do. Occasionally, things slip through the cracks. They get the form and they see that there is no information about the at-fault vehicle and they might go back to the person and say, “We need more information,” or “Can you tell us this?” We are advised of that by the individual themselves. They often come to us because they are going, “We don’t know what to do here.” We then go to the insurer and say, “Hang on; no. You are the insurer. You have done the wrong thing. Fix this.”

**DR PATERSON:** What is Access Canberra’s role? In the particular incident relating to Matthew McLuckie’s death, the car was stolen. The family has been saying that Access Canberra cancelled the insurance for that vehicle at some point. Is that a process of the car being stolen and the insurance being cancelled and then it is in an accident and—

**Ms Clark:** The first thing is that an MAI insurer cannot cancel a policy.

**DR PATERSON:** Okay. The government can? Access Canberra can?

**Ms Clark:** It is more because we have a one-stop registration process in the ACT. You receive your registration notice. It says, “Pay this much for your car registration and you pay this much for your MAI insurance policy.” They act as an agent for the insurer. They then pass those premiums on to the insurer and you have your policy in place and the legislation provides for how that policy is in effect. In the circumstances of Mr McLuckie, we did investigate. In that instance it was the comprehensive motor vehicle insurer that sought to cancel the registration. In this instance the individual had their insurer say, “Yes, we agree it was a write-off.” Under the systems that are in place in Access Canberra that have evolved over many years, they did the write-off back to the date it was stolen.

**DR PATERSON:** Okay.

**Ms Clark:** The MAI Commission has certainly expressed concerns to Access Canberra about that, because it does mean that at the time of that accident it was actually insured. It did have MAI insurance at the time of the accident. So it was just this unfortunate backdating that happened.

**DR PATERSON:** So is there legislative reform that could mean that, until that car is recovered, basically it will remain insured?



**Ms Holmes:** It is important to note that, insured or not, a person is covered under the scheme. This is a question of who is the correct insurer to be responding and how do we make sure that the family of the person is not affected by this question as to which insurer.

**DR PATERSON:** Clearly they are, though.

**Ms Clark:** Yes, but in this instance the family did contact us when they found out all of that information from Access Canberra. We made a referral to the Nominal Defendant because the scheme has been designed so that, even if there is no MAI insurer, there is a nominal defendant who can then step in and provide support to that family or injured person whilst the matter is sorted out behind the scenes.

**DR PATERSON:** Okay. Still on the Access Canberra issue, so that this does not happen again—

**Ms Clark:** As I said, we have made representations to Access Canberra to address it. The situation is that anybody can come and ask for their registration to be cancelled, for whatever reason. They may say, for example, “Look, the car was damaged in a hailstorm, and I have not driven it since that day. I want to cancel my registration and therefore my MAI insurance on the date that it was no longer driveable.” Government policy has been supportive of that.

**DR PATERSON:** Backdating it; okay.

**Ms Clark:** It is more about the cancellation, the ability to cancel in various different types of circumstances. In this instance it may not have been disclosed to Access Canberra that the car was involved in an accident and therefore they should not have taken any action, for example, or it could have been that the best option was to not backdate it at all and just do it on the date that you were notified in relation to that. So there are a number of ways that it could potentially have gone. In this particular instance it was a backdate.

**DR PATERSON:** Do you think that perhaps police could alert Access Canberra to stolen vehicle numberplates so that they are on a watch list, for example, in case they are involved in an accident, so that this does not happen?

**Ms Clark:** That is a question that you would have to put to ACT Policing.

**DR PATERSON:** All right. Thanks.

**MR BRADDOCK:** How do you regulate for a minimum standard of service from the insurers? The commercial incentive is on them to try to provide as little as possible. How do you ensure that victims are actually taken care of?

**Ms Holmes:** We have been very aware of that, and that is in part why the legislation is as detailed as it is. It is setting out exactly what all of those entitlements are. The aim is that there is not the ability for them to—how do I describe it?

**Ms Clark:** Make alternative decisions.

**Ms Holmes:** Yes. It is prescriptive so that it is not a choice that they have. It is: “Does this actually meet the legislation and the requirements in the guidelines?”

**MR BRADDOCK:** Okay, so how do you monitor and manage compliance with the legislation?

**Ms Clark:** The act has quite a number of conditions on the licence that is granted to the insurers. They have an obligation to act in good faith at all times in relation to how they deal with applicants. We monitor the decisions that are made through their reporting obligations to us. As you can see, we have detailed information available on our website about payments that have been made. The scheme is probably still quite immature, in that it is quite a new scheme. It commenced not very long before COVID hit, so traffic volumes changed as well. But that has also provided us with a very good opportunity to really engage with the insurers and make sure that they are doing everything correctly and that they are making decisions in accordance with the legislation.

**Ms Holmes:** There are a number of things that we do. There is a self-assessment questionnaire that the insurers fill in every year for us on various aspects of the scheme and, depending on the outcomes of that questionnaire, it could be that particular plans are put in place to improve processes. As Nicola said, we monitor the data which is coming in and identify where there might be potential issues occurring with the insurers. We also monitor the outcomes happening through ACAT, from the external reviews. People can do an external review to ACAT. We monitor those decisions for any particular trends which might be happening, or if there are instances where there is room for improvement in our guidelines in terms of clarity of instruction.

**MR BRADDOCK:** How many requests for external reviews have been lodged and how many have been upheld?

**Ms Holmes:** There have been 24. This is for the scheme to the end of September. All this information we publicly put on our website. We report every quarter on quite a number of stats to do with the scheme, being open and transparent about how the scheme is actually progressing. There were 24 external reviews to the end of September. The stats are on the website, and I am happy to furnish the committee with a copy of this. It goes through: in process, decisions affirmed, decisions substituted, and dismissed. Three of those were dismissed, three are still in progress, four of them had decisions affirmed and 14 of them had decisions substituted. Overall, though, that is 24 external reviews. When you think that the scheme has been operating for over 2½ years, and think of all of the decisions which are being made by the insurers, 24 external reviews is an extremely low number.

**MR BRADDOCK:** Any lessons learned from those 14 substituted decisions?

**Ms Holmes:** We certainly have made some changes to guidelines. Ms Clark can talk about those.

**Ms Clark:** In a couple of decisions where the ACAT has made comments about the treatment and care guidelines, we have taken those on board. We undertook an exercise in 2021 to update the treatment and care guidelines to more clearly set out those obligations and how they make their decisions around reasonable and necessary treatment and care.

We have also had observations by ACAT about the internal review process that is undertaken by the insurers. Prior to going to ACAT for an external review, insurers have an internal review process so that an injured person can say to the insurer themselves, “I am not sure about your decision, I would like you to have an internal review by someone who is not closely aligned or involved in the original decision.” So far we have had 65, to the September quarter. If you look at those numbers between 65 and how many actually went to ACAT, obviously the internal review process we consider is working because the insurers then may change their decision or substitute, having taken on board new information in relation to that decision.

We did also make some changes to our internal review guidelines because we found that there were some issues with how that process was also being run. So we do look very closely at the decisions that ACAT makes so that we can remove any friction points that might be coming up, as much as we can.

**MR BRADDOCK:** Thank you.

**Ms Holmes:** For clarity, it was 65 in the previous quarter. There were another 12 in the September quarter, so 77 internal reviews to the end of September.

**THE CHAIR:** What information do you provide to a claimant about their review rights?

**Ms Clark:** It is the duty of the insurer to provide information about review rights. In sending out a decision about, for example, the number of treatment and care physiotherapy sessions, they outline in that information that if they are not satisfied with the decision they can discuss it with their claim consultant, in the first instance. The claims consultant may consider that new information and that it does not require any steps to do an internal review, or they will explain how they can apply for an internal review. They then provide information, after the internal review decision, about where they can go if they say they still have an issue.

**THE CHAIR:** Which is to the ACAT, I assume.

**Ms Clark:** Yes.

**THE CHAIR:** So what about the nominal defendant, what information do they provide?

**Ms Clark:** They have the same duties. They will advise people that they have an opportunity to have a review.

**THE CHAIR:** Is that in the form of an internal review notice?

**Ms Clark:** It will be in the form of a letter or information in a separate attachment.

**THE CHAIR:** I have been provided with a copy of a determination of income replacement benefit entitlement and it simply said, “If you are not happy with this, just give me a call or send us an email.”

**Ms Clark:** As I flagged, we do encourage our insurers to invite people to raise concerns with them, in the first instance, so that it can be discussed with the individual, because there may be something about how the information was communicated or there may be something about how that person was—

**THE CHAIR:** But if the person has reached a point where they have said, “I have spoken to you enough, so what is the point of speaking with you again?” perhaps more is needed to tell that individual that they can have a formal internal review and then an appeal right to the ACAT, rather than: “Just talk to us again.” If someone has got sick of talking to the nominal defendant again, that is not really informing them of their statutory review rights.

**Ms Clark:** I certainly can take that back and have a conversation with the nominal defendant as to exactly what was provided to that individual and whether or not there was an attachment or something.

**THE CHAIR:** It looked like a standard response: “Just call us back if you are not happy.” It is not really a proper informing of statutory review rights.

**Ms Clark:** As I said, we would need to have a look at the actual correspondence about that.

**THE CHAIR:** Is that something you can take on notice, to confirm the approach for this committee?

**Ms Clark:** We can certainly take it on notice and then discuss it with our colleagues.

**THE CHAIR:** For example, a copy of the formal notice that was sent to the claimant.

**Ms Clark:** We can take that on notice and discuss it with them.

**THE CHAIR:** Thank you. Do you agree with the time limit set for claimants? I think it is 13 weeks.

**Ms Clark:** That is the standard, 13 weeks. But we do allow for late applications under the legislation.

**THE CHAIR:** Okay.

**Ms Holmes:** Up to two years for things such as treatment and care.

**Ms Clark:** Yes, and one year for funeral benefits and death.

**THE CHAIR:** How do people know that they have got 13 weeks or even a longer

period? Again, it is about people going through traumatic experiences and obviously needing to know about the options and services available, including from the MAI.

**Ms Clark:** We have undertaken a number of steps to try and have that information as out there as possible. As you can appreciate, some people do not pay much attention to information until they need it. This is one of the typical types of examples. We have a very comprehensive website at the Motor Accident Injuries Commission. We outline all of the steps people can follow. We communicate with ACT Policing, because ACT Policing can often be the first contact for people. They might say, “Look, there is a scheme. There was CTP and now MAI.” We have worked with the hospital social workers so that they are as informed as they can be about the scheme. Obviously, there is the Defined Benefits Information Service, and we have done more to try and advertise that as well. Ultimately, you have the legal profession.

**Ms Holmes:** We have been purchasing Google analytics terms as well. The first thing people do these days, usually, is to go online to find information. We have been purchasing terms so that when people are searching, hopefully, our website is popping up, so people understand to go there.

**THE CHAIR:** And do you have a phone assistance line of some sort?

**Ms Clark:** The Defined Benefits Information Service is currently our most prominent phone line. We do currently rely on Access Canberra for people to contact us. We are investigating ways that we at the MAI Commission can have our own phone number. The government has set up Access Canberra to be the one-stop contact centre for ACT government services. But we realise and acknowledge from feedback that we have had from people that they feel like they have been left on hold or that they are not necessarily getting through quickly enough. That is something we are investigating, as to how the MAI Commission can actually have our number out there.

**Ms Holmes:** That is the role of the Defined Benefits Information Service. We certainly have made changes to our website to make that number much more prominent. We have been making changes to the forms themselves to make that number much more prominent. We are continuing to search for ways to get the information out to people about the role of the Defined Benefits Information Service.

**DR PATERSON:** We heard evidence from a woman who was incredibly badly injured by a drunk driver, and she was in hospital for many months. She was waiting for outcomes. She could not pay the medical costs because I think they needed to go through some court processes or something. It sounded like things needed to progress or there needed to be someone at fault. Anyway, she was very delayed in getting support and I think still is struggling with covering the medical costs for surgeries and things.

**Ms Clark:** That is a pre-MAI scheme matter.

**DR PATERSON:** Okay.

**Ms Clark:** That does demonstrate some of the issues that were occurring under the CTP scheme, in that people were having to wait in some instances to see whether or

not particular surgery was required or whether the injuries were related to the accident.

I can say that the decision on liability was reasonably quick for that, under that previous scheme, but there were some delays—and that is a feature of the previous scheme. It might take several months, from when you first apply or ask for a medical report which says this surgery is required, before a decision is actually made, and then you have several months before the surgery can actually be scheduled. So that is one of the tension points that did exist under the old scheme.

**DR PATERSON:** But that is resolved now? So people should be able to get it if they require it?

**Ms Clark:** She will remain in the CTP scheme because of when her accident happened. That means that she is still being managed through the requirements and the legislation that applied under the previous scheme.

**Ms Holmes:** That is one of the benefits with the new scheme. Under the old scheme, it was common law, needing to prove someone else was at fault. Usually, you are talking years for settlements to actually be finalised. Under the new scheme, anyone who is injured as a result of a motor vehicle accident can come through to the scheme. You are not needing to prove fault. You do not have that legal settlement, the adversarial aspect to the scheme. It is around not having those hurdles and people being able to get that treatment and care that they need.

**DR PATERSON:** Looking at your website, it has lifetime catastrophic injury—

**Ms Holmes:** Lifetime care. That is a different scheme.

**DR PATERSON:** Okay.

**Ms Holmes:** It is for people who are catastrophically injured on the roads. Once again, no fault is required to be proven with that scheme. If you meet the criteria then this scheme is about providing the treatment and care that those people need for the rest of their lives.

**DR PATERSON:** And the definition of catastrophic injury is quite small.

**Ms Holmes:** Yes.

**Ms Clark:** It is five injuries, essentially: spine, brain injury, amputation and burns.

**Ms Holmes:** Yes.

**DR PATERSON:** But there may be people who would have lifelong impacts of car accidents that are not those things?

**Ms Clark:** They are not captured by the catastrophic injury scheme. That is a deliberate way that those schemes are set up around the country.

**DR PATERSON:** Okay.

**Ms Clark:** But it does provide treatment and care on a lifetime basis. That is why the MAI scheme is designed as a defined benefits scheme with common-law components. With people who do have permanent impairment, that is assessed once they reach maximum medical improvement, and if they were not at fault for the accident they will obviously get damages and be in the system. That will pay for lifelong treatment and care, potentially also replacing any income they have lost through the fact that they may not work, or may not be able to work as much as they did previously because of the accident.

**Ms Holmes:** As Ms Clark said, the criteria for the lifetime care scheme were national criteria. Every jurisdiction has a similar scheme, which was set up at the time when the NDIS was coming in. It was set up as a companion scheme for this particular cohort, for these people, rather than going into the NDIS.

**DR PATERSON:** Okay. With personal accident insurance, do you think there are things that need to be improved there, or gaps there that, as a committee, we could make some recommendations on for that scheme?

**Ms Clark:** I am not sure what you mean by personal accident insurance.

**DR PATERSON:** When someone is injured. Actually that would not come under you, would it? No. Okay.

**MR BRADDOCK:** I have a question about pedestrians, cyclists and scooter riders. If they happen to be in an accident with a car and the car is not at fault, are they still covered under your scheme? How does that work?

**Ms Clark:** Yes, it being a no-fault scheme they would get defined benefits—pedestrians and cyclists and so on—where they collide with a motor vehicle. Scooters are not a motor vehicle. If you fall off a scooter you are not covered by the MAI scheme.

**Ms Holmes:** If a scooter has an accident with a vehicle then they would be.

**Ms Clark:** Yes. If you collide with it or the vehicle runs into you or reverses into you because you are scooting across a driveway then you are covered.

**MR BRADDOCK:** Sure. Does that cover footpaths and other things where they interact with the vehicle?

**Ms Clark:** “Road related” is the definition in the road transport legislation.

**MR BRADDOCK:** But if a cyclist runs into a pedestrian, the scheme does not cover that?

**Ms Clark:** Because there is no motor vehicle involved and there is no insurance policy.

**MR BRADDOCK:** Thank you for clarifying.

**THE CHAIR:** When someone puts a claim in, why is a medical certificate not sufficient to support their claim of injuries? I think you have an MAI benefits form. Would someone be able to get a medical certificate?

**Ms Clark:** There are two forms that have been required for both the CTP scheme and the MAI scheme. One is the application form, where you provide your personal details, and you provide information about the accident and any other information that is required on that form. As we stated before, we have tried to simplify it and make it as streamlined as possible. You then have to have a medical form which attests to the injuries that the person has. It is not just a person saying, "I was in an accident." There need to be injuries associated with the accident or, in the case of the associated trauma, then that is where the injury comes in. So that is why there is a medical form. Some insurers have been flexible and accepted a doctor's certificate, but ultimately it is about that additional bit of information about what actual injuries a person has.

**Ms Holmes:** The purpose of the forms is really to clarify, to make sure that the information required to assess and accept those applications is actually coming through to the insurer.

**THE CHAIR:** I imagine that sometimes a medical certificate may not give the details that you require. Do you liaise with the medical profession so that that could be just one process? They are already getting a medical certificate for other purposes, I guess. Would that suffice, with doctors and hospitals knowing what they have to say?

**Ms Clark:** Yes. The medical form is a simple form and it is very similar to what you might see for a certificate for not being able to attend work, but the certificate for not attending work may not have the necessary detail that the insurer needs about what the actual injuries are. Certainly, as part of filling out the personal injury application form, there is a consent, an authority, and once the insurer knows who is the treating doctor they do engage with that treating doctor to collect any further information that they require or to clarify and so on. It is about having that information about who is actually the treating doctor, which does need to be provided to the insurer because they cannot just go randomly calling medical practices and asking, "Is Joe Bloggs your client?"

**THE CHAIR:** Is the physician or GP consulted every time a medical report claim is put in?

**Ms Clark:** There is a medical form that is submitted to start your application process. In the event that you are unable to work and you want to claim the income replacement benefit, there is a fitness for work certificate that is completed and that fitness for work certificate also includes a declaration by the injured person about the fact that they have not been able to work.

**THE CHAIR:** That requires a medical appointment as well?

**Ms Clark:** That requires a medical appointment.

**THE CHAIR:** I am just wondering if there is anything you would like to say in



closing, in summary?

**Ms Holmes:** As we have said, the scheme has been operating for 2½ years. Despite best efforts, there will be things which will come up that we will identify as things perhaps that do need to be improved with the scheme. As those things come up, we are working to make changes where we can. I think it is important to note the stage that the scheme is at. There is a lot of detail in the scheme, but, as we have said, that is necessary, given that it is a compulsory scheme which is administered by private sector insurers and that detail is necessary to provide clarity in terms of exactly what the benefits are that people actually are entitled to under the scheme. We are always open to feedback as to ways that the scheme can be improved.

**MR BRADDOCK:** Is there a legislated review date for the scheme?

**Ms Holmes:** The act requires that the scheme is reviewed every three years. The first three-year mark is coming up on 1 February. There are various criteria which are specified in the legislation that the review needs to cover off. We can always add other things into that review. For this first review in particular, there are a number of aspects of the scheme which we have not hit yet. I think we are just starting to get a couple of common-law claims through. It will take time for common-law claims to be worked through.

There are things such as medical payments after five years in particular circumstances, and there is significant occupational impact, so there are a number of aspects of the scheme that we just have not reached yet. Those things therefore we cannot look at or really test in this first review. They will need to be looked at in future reviews. We will need to be very careful about what it is that we think we have sufficient evidence on in terms of what we can review for this first time.

**MR BRADDOCK:** Thank you.

**THE CHAIR:** Thank you. On behalf of the committee, I would like to thank the Motor Accident Injuries Commission for your attendance today. I believe there were some questions taken on notice. Would you please provide answers to those questions to the committee secretary within five working days of receipt of the uncorrected proof transcript. The committee's hearing for today is now adjourned. Thank you for coming and speaking with us.

**The committee adjourned at 11.47 am.**