

**RECENT DECISIONS**

## When Motor Accidents meet Workers Compensation – fixing the “unintended consequences”

### Summary

Our July 2017 Newsletter included an article on [“How changes to the Motor Accidents Scheme affect workers compensation in NSW”](#)

The article looked at how the *Motor Accident Injuries Act 2017* (‘the MAIA’) which introduced a hybrid model providing access to both statutory no-fault benefits and modified damages, might affect workers compensation rights and entitlements; and whether those changes might cause workers to act differently when pursuing claims for work injuries suffered as a result of motor vehicle accidents.

Now almost one year since the MAIA commenced (1 December 2017) questions still remain as to the interplay between the motor accidents and workers compensation schemes in NSW.

Enter the *Workers Compensation Legislation Amendment Bill 2018* (‘the Bill’).

### The Intent of the Bill

In the second reading speech of the Bill in the Legislative Council on 19 September 2018, Mr Scot MacDonald on behalf of the Hon Don Harwin noted:

*“Schedule 6 to the bill seeks to address unintended consequences arising from the implementation of the new compulsory third party [CTP] scheme and the interaction between the Motor Accident Injuries Act 2017 and the Workers Compensation Act 1987 in circumstances where a person injured in a motor accident also has workers compensation rights arising from the same injury.”*

He then went on to say:

*“The bill aims to clarify the nature and extent of the workers compensation benefits that may be deducted from CTP damages, and that those injured in motor accidents in the course of their employment have an entitlement to claim ongoing treatment and care, payable by the CTP insurer even after they recover damages*

....

*These amendments support a fair and equitable outcome and seek to provide workers injured in motor accidents with similar rights to CTP compensation under the Motor Accident Injuries Act 2017 as other people injured in motor accidents. The amendments will be retrospective to cover motor accidents involving workers with concurrent motor accident and workers compensation rights that occurred from the commencement of the Motor Accident Injuries Act 2017, on and from 1 December 2017, to ensure that those workers are not disadvantaged.”*

### The Changes in the Bill

So which of the “unintended consequences” have been addressed?

The position was that a worker injured in a motor accident on and after 1 December 2017 would receive weekly compensation and medical expenses from the workers compensation insurer first. If they then recovered damages under the CTP scheme (being restricted to damages for Non-Economic Loss and past or future economic loss due to loss of earnings or earning capacity), they would be required to repay all the compensation received out of the damages.

This meant that the worker was not entitled to any statutory benefits under the MAIA for ongoing treatment and care expenses, or for any further benefits under the Workers Compensation Act 1987 (their entitlement to compensation having been extinguished by the receipt of damages).

The change now introduced that perhaps brings most clarity to the interplay between the motor accidents scheme and the workers compensation scheme is the new section 3.35(8) in the MAIA which states:

*“Workers injured in motor accidents are entitled to claim statutory benefits under MAIA for ongoing treatment and care expenses, after they cease to be entitled to workers compensation statutory benefits and/or after they have recovered CTP damages.”*

Some further changes have been introduced so that if a worker recovers damages under the CTP scheme, he/she will need to repay to a workers compensation insurer:

1. Only weekly payments of compensation and they will not have to repay compensation for medical, hospital, and rehabilitation and care expenses; and

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2. Permanent impairment compensation (pursuant to sections 66 and 67) but only if damages are recovered for Non-Economic Loss.

### When does it take effect?

Schedule 6 commenced on 26 October 2018 (the date of assent) and is retrospective to cover motor accidents involving workers that occurred from the commencement of the MAIA, that is, on and from 1 December 2017.

### The Consequences

Some of the potential consequences of these changes may be that:

1. Workers will now comfortably pursue their workers compensation entitlements first, knowing that they retain their rights to claim statutory benefits under MAIA, for ongoing treatment and care expenses;
2. CTP damages claims will become more attractive to worker's because:
  - a. They remain entitled to ongoing treatment and care under the MAIA after they recover CTP damages;
  - b. Only weekly payments of compensation will need to be repaid to the workers compensation insurer out of any CTP damages they recover; and
  - c. Permanent impairment compensation (under sections 66 and 67) will only have to be repaid to the workers compensation insurer if damages are recovered for Non-Economic Loss.
3. Workers who can bring CTP damages claims (i.e. not a "minor injury" under MAIA, and able to prove fault) will do so in almost every claim because of the reduced payback required to be made to the workers compensation insurer, and because of the ability to claim ongoing entitlements to treatment and care under the MAIA after they recover CTP damages;
4. If CTP damages are paid, then the workers compensation claim can be finalised once and for all; and
5. Section 151Z recoveries brought directly against CTP insurers will also be reduced by virtue of the restrictions that apply to workers (noted in 2 above), on what they are required to repay to the workers compensation insurer.

This is by no means an exhaustive list and we invite feedback based on any first hand experiences arising from these changes.

### For more information, please contact:



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