

SUBMISSION

Disability Care and Support - Draft Report

Submission to the Productivity Commission

Motor Accidents Insurance Board Tasmania

INTRODUCTION

The Motor Accidents Insurance Board (the MAIB) was established under the *Motor Accidents (Liabilities and Compensation) Act 1973* and is the single insurer for compulsory third party (CTP) motor accident insurance in Tasmania. It is a Government Business Enterprise constituted under the *Government Business Enterprises Act 1995* (GBE Act). It has legislative obligations to operate commercially and pay dividends and tax equivalents to the State Government. Importantly, the MAIB-run scheme has remained fully funded, financially strong and survived the global economic crisis.

The MAIB has delivered a combined no fault/common law motor accident scheme since 1974. The no fault scheme allows the MAIB to deliver benefits to claimants without delay. Benefits include the payment of medical and hospital fees and disability allowance for loss of wages, together with the reimbursement of housekeeping expenses. Death and funeral benefits are payable in the case of fatal injury.

The scheme compares most favourably with other Australian State and Territory schemes. Its capacity to deliver no fault benefits, including unrestricted no fault benefits to the catastrophically injured (see next paragraph), while retaining largely unfettered rights to sue for damages where another party is at fault is unparalleled in Australia. It should be noted that the applicable discount rate for the calculation of damages for economic loss in Tasmania is 5% and not 7% as stated in the Commission's draft report (section 15 Table 15.2). This places Tasmania on a par with, or better than, most other States of Australia. In addition, MAIB has the lowest premium for jurisdictions which deliver no fault benefits.

In 1991, the head of damage pertaining to care and support and medical costs for the catastrophically injured was removed from the common law and replaced with no fault benefits without monetary limits. This means that the benefits envisaged by NIIS have been available to Tasmanians injured in motor vehicle accidents for 20 years. As further evidence of MAIB's commitment in this area, purpose-built facilities in Hobart, Launceston and Ulverstone have been constructed and funded by the MAIB to provide accommodation options for seriously injured MAIB clients for short term, respite or the longer term. Where there is additional capacity, accommodation is offered to other seriously injured Tasmanians.

The MAIB has been funding accident prevention through the Road Safety Task Force (now known as the Road Safety Advisory Council) since 1996 with current funding of approximately \$3 million per annum. Since the program's inception claim frequency has been reduced by some 50% and there

has been a sustained incremental reduction in the number of serious injury claims received during this period also.

It is for the Tasmanian Government to decide whether the MAIB's remit is expanded to a NIIS style scheme as proposed by the Commission. However if MAIB should be required to administer such a proposed scheme, there are a number of serious concerns which are fundamental to the design of the scheme.

SUMMARY OF IDENTIFIED CONCERNS

- The MAIB is of the strong view that, in its current form, the proposal will almost certainly erode the MAIB's financial position and viability and is incompatible with the objectives of the GBE Act.
- While the ideals of the proposal are admirable, the MAIB is concerned that the funding and underwriting arrangements proposed are not sufficiently robust to prevent the proposed scheme suffering the same financial crises that have beset other such schemes and the resultant unacceptable unfunded liabilities.
- MAIB operates on an "insurance" model. For example, vehicle owners/drivers are ineligible for statutory benefits if no premium is paid or no driver's licence held. This provides a strong incentive for motorists to register their motor vehicles and be licensed. The NIIS model erodes that discipline. Drivers who are convicted of serious traffic offences (such as driving while under the influence of alcohol or drugs) or crimes, for example, dangerous driving causing death, are also ineligible for statutory benefits. This feature provides another very positive incentive for drivers to behave responsibly and within the law. It should be noted that many people in the groups which flout the law by driving unregistered vehicles, unlicensed or in an unlawful way are high risk takers and display a much higher incidence of involvement in motor accidents than the rest of the population. MAIB premiums would have to be increased to cover the actuarially calculated premium shortfall. (Table 16.1 on the Commission's report indicates no additional costs for "motor vehicles".)
- The "general injury" additional scheme costs detailed in Table 16.1 of the Commission's report appear to be very seriously underestimated. Anecdotally, it is understood that admissions to the Royal Hobart Hospital Intensive Care Unit for head injuries result from one third motor vehicle accidents, one third from assault and one third from other causes. The MAIB's pricing is set by Government following a recommendation by the Tasmanian Economic Regulator. The MAIB's consulting actuary has insufficient data to accurately quantify the additional cost to the scheme but considers that the assessed additional costs of lifetime care and support is likely to be considerably higher than \$9 million per annum (as quoted in Table 16.1). The risk seems very high of initial premiums and revenue contributions being set too low, and having to be rapidly increased to maintain scheme viability.
- The funding proposals will be difficult to implement and are totally unsatisfactory – there is a very high risk that the funding collected from local councils and medical insurers will be insufficient, collections will be difficult and most likely add a considerable administrative overhead. The rationale of local councils providing the funding for claims costs is difficult to understand. Councils are likely to strongly oppose their involvement as a revenue collecting agency for the scheme. The risk of the State Government being forced into providing budget support in lieu of Council contributions seems high.

- There is uncertainty as to the status of people catastrophically injured in skateboarding, rollerblading, motor racing, horse racing, ocean racing, professional surfing, professional boxing and other extreme sports, including, hang gliding, gliding and parachuting. Most of these sports are unregulated, or have limited regulation, and in many cases would currently be uninsurable. This creates a severe potential risk for the scheme. Contrasting this, the active policing of traffic laws and regulations provide a significant incentive for road users to adopt safe driving practices which minimises the MAIB's claims costs.
- NIIS would provide coverage for work related accidents not covered by workers' compensation, i.e. self employed and contractors, together with people injured in bicycle accidents not involving a motor vehicle.
- There may be cost shifting opportunities for the Commonwealth to direct cases to State NIIS schemes rather than retain them in the Commonwealth funded NDIS where there are conflicting views for example, congenital disorder or a condition resulting from an accident or a negligent act.
- As there will be no benefit available under NIIS for less severe injuries (such as mild brain injuries) in instances other than motor accidents, there will be an incentive for various parties to overstate injury/disability to qualify for NIIS benefits.
- The proposed changes to the scheme have already created significant uncertainty for the MAIB's reinsurers in relation to risk type in an unregulated environment, claim frequency and insufficient data for analysis. It is possible that reinsurers may cease to provide coverage or charge premiums on a worse case scenario basis.

CONCLUSION

There is a real danger that unless prudent underwriting principles are in place, MAIB's financial strength will be severely compromised if its role is to be expanded to become a NIIS type scheme.

It is therefore considered imperative that the Commission:

- Engage an independent consultant to "test" the costing assumptions in the draft report;
- Clarify the boundaries between coverage under NDIS and NIIS to overcome ongoing disputation;
- Clarify the extent of coverage (and ongoing liability) under NIIS e.g. tourists both interstate and overseas, extreme sports and the like; and
- Include in its final report adequate and practical funding arrangements.

(21 April 2011)