

Claims Against the Department

| Damage type | 2016/2017 | 2017/2018 Financial | Totals |
|------------------------------|----------------|---------------------|--------------|
| | Financial year | year | |
| Vegetation | 8 | 9 | 17 |
| Roadworks | 45 | 58 | 103 |
| Potholes | 58 | 64 | 122 |
| Debris | 27 | 21 | 48 |
| Edge Break | 1 | 7 | 8 |
| Fence Damage | 1 | 3 | 4 |
| Mowing | 15 | 17 | 32 |
| Non specified | 119 | 76 | 195 |
| Claim status | | | |
| Active | 4 | 45 | 49 |
| Completed/Closed | 155 | 325 | 480 |
| Payment made | | | |
| | \$ 23,935.17 | \$ 7,149.18 | \$ 31,164.35 |
| Number of paid claims | | | |
| | 29 | 16 | 45 |

Claims by the Department

| Damage type | 2016/2017 | 2017/2018 | Totals |
|------------------------------|----------------|----------------|---------------|
| | Financial year | Financial year | |
| Asphalt | 28 | 8 | 36 |
| Bollards | 7 | 2 | 9 |
| Debris clean up | 87 | 39 | 126 |
| Guardrail | 428 | 196 | 624 |
| Intelligent Transport System | 1 | 2 | 3 |
| Light Pole | 217 | 113 | 330 |
| Oil/fuel/paint/other spill | 126 | 20 | 146 |
| Rock Wall | 1 | | 1 |
| Signage | 175 | 75 | 250 |
| Structure | 20 | 12 | 32 |
| Tow to safety | 2 | 1 | 3 |
| Traffic/pedestrian signal | 223 | 129 | 352 |
| Traffic/pedestrian signals | 7 | 0 | 7 |
| Wire rope barrier | 325 | 242 | 567 |
| Claim status | | | |
| Active | 226 | 628 | 854 |
| Completed/Closed | 1390 | 368 | 1758 |
| Payment made | | | |
| | \$ 456,701.21 | \$ - | \$ 456,701.21 |
| Number of paid claims | | | |
| | 54 | 0 | 54 |

| 2016/2017 Financial year | | 2017/2018 Financial year | |
|--------------------------|-------------|--------------------------|---------------------|
| Claim 1 | \$ 350.00 | Claim 30 | \$ 200.00 |
| Claim 2 | \$ 250.00 | Claim 31 | \$ 1,752.00 |
| Claim 3 | \$ 489.50 | Claim 32 | \$ 950.00 |
| Claim 4 | \$ 415.00 | Claim 33 | \$ 110.00 |
| Claim 5 | \$ 250.00 | Claim 34 | \$ 561.00 |
| Claim 6 | \$ 350.00 | Claim 35 | \$ 466.15 |
| Claim 7 | \$ 315.32 | Claim 36 | \$ 405.00 |
| Claim 8 | \$ 200.00 | Claim 37 | \$ 1,135.09 |
| Claim 9 | \$ 495.00 | Claim 38 | \$ 770.00 |
| Claim 10 | \$ 600.00 | Claim 39 | \$ 600.00 |
| Claim 11 | \$ 2,015.86 | Claim 40 | \$ 1,160.00 |
| Claim 12 | \$ 308.00 | Claim 41 | \$ 3,375.00 |
| Claim 13 | \$ 396.00 | Claim 42 | \$ 770.00 |
| Claim 14 | \$ 320.00 | Claim 43 | \$ 637.00 |
| Claim 15 | \$ 174.50 | Claim 44 | \$ 347.03 |
| Claim 16 | \$ 220.00 | Claim 45 | \$ 80.00 |
| Claim 17 | \$ 582.50 | | |
| Claim 18 | \$ 5,273.95 | | |
| Claim 19 | \$ 780.00 | | |
| Claim 20 | \$ 300.00 | | |
| Claim 21 | \$ 230.00 | | |
| Claim 22 | \$ 445.00 | | |
| Claim 23 | \$ 1,375.45 | | |
| Claim 24 | \$ 300.00 | | |
| Claim 25 | \$ 275.00 | | |
| Claim 26 | \$ 220.00 | | |
| Claim 27 | \$ 465.00 | | |
| Claim 28 | \$ 330.00 | | |
| Claim 29 | \$ 120.00 | | |
| Total | | \$ 17,846.08 | \$ 13,318.27 |

Please note the following:

The Department of Transport and Main Roads (the department) is responsible for the management and maintenance of department owned property. Where the department's actions, or failures to take action, in relation to department property cause third parties damage, a third party may be able to claim compensation. These claims are termed as "Against the department" as it is an external party seeking compensation from the department.

The department is responsible for management, construction, maintenance and operation of state controlled infrastructure. Where the department's actions, or failures to take action, in relation to department property cause third parties damage, a third party may be able to claim compensation. These claims are termed as "Against the department" as it is an external party seeking compensation from the department.

The department is responsible for 33,353 kilometres of road out of approximately 180,000 kilometres of road in the State, the longest in Australia.

Damage to the roads can and is caused by weather events, including tropical cyclones and floods that produce unpredictable maintenance issues.

| 2016/2017 Financial year | | |
|--------------------------|--------------|----------------------|
| Claim 1 | \$ 1,055.60 | |
| Claim 2 | \$ 400.00 | |
| Claim 3 | \$ 2,396.16 | |
| Claim 4 | \$ 2,187.46 | |
| Claim 5 | \$ 18,000.00 | |
| Claim 6 | \$ 3,925.22 | |
| Claim 7 | \$ 4,396.36 | |
| Claim 8 | \$ 7,930.70 | |
| Claim 9 | \$ 4,286.14 | |
| Claim 10 | \$ 7,810.58 | |
| Claim 11 | \$ 6,674.52 | |
| Claim 12 | \$ 3,974.63 | |
| Claim 13 | \$ 2,318.60 | |
| Claim 14 | \$ 86,816.29 | |
| Claim 15 | \$ 5,203.04 | |
| Claim 16 | \$ 1,885.24 | |
| Claim 17 | \$ 5,371.33 | |
| Claim 18 | \$ 1,500.00 | |
| Claim 19 | \$ 6,129.53 | |
| Claim 20 | \$ 10,524.82 | |
| Claim 21 | \$ 1,066.68 | |
| Claim 22 | \$ 10,033.68 | |
| Claim 23 | \$ 11,825.06 | |
| Claim 24 | \$ 7,540.18 | |
| Claim 25 | \$ 10,285.24 | |
| Claim 26 | \$ 5,400.00 | |
| Claim 27 | \$ 8,021.56 | |
| Claim 28 | \$ 1,536.00 | |
| Claim 29 | \$ 7,378.68 | |
| Claim 30 | \$ 6,331.63 | |
| Claim 31 | \$ 14,052.47 | |
| Claim 32 | \$ 1,831.20 | |
| Claim 33 | \$ 3,700.00 | |
| Claim 34 | \$ 6,305.98 | |
| Claim 35 | \$ 1,662.68 | |
| Claim 36 | \$ 928.68 | |
| Claim 37 | \$ 1,900.34 | |
| Claim 38 | \$ 5,045.11 | |
| Claim 39 | \$ 29,565.18 | |
| Claim 40 | \$ 1,936.00 | |
| Claim 41 | \$ 820.72 | |
| Claim 42 | \$ 1,201.68 | |
| Claim 43 | \$ 9,778.68 | |
| Claim 44 | \$ 25,261.64 | |
| Claim 45 | \$ 400.00 | |
| Claim 46 | \$ 6,097.50 | |
| Claim 47 | \$ 12,305.15 | |
| Claim 48 | \$ 1,055.60 | |
| Claim 49 | \$ 9,778.68 | |
| Claim 50 | \$ 25,261.64 | |
| Claim 51 | \$ 6,097.50 | |
| Claim 52 | \$ 12,305.15 | |
| Claim 53 | \$ 24,204.70 | |
| Claim 54 | \$ 3,000.00 | |
| Total | | \$ 456,701.21 |

Advice for Minister for Transport and Main Roads

Subject: Advice regarding compensation claims

Document ID: DLO2350

- The claim process is standard across Queensland.
- The best way for a customer to submit a compensation claim against the Department of Transport and Main Roads (TMR) is to complete a Claim Form.
- The Claim Form is located on TMR's website and can be found by searching 'damage claim' in the search bar (www.qld.gov.au/transport/conditions/report/claim).
- Customers can also email their local TMR office to request a Claim Form and one will be emailed to the customer. Contact details for TMR road offices can be found by visiting www.qld.gov.au and searching 'road offices'.
- Each claim is investigated and assessed on its own merits.
- Claims that arise from roadworks are directed to the contractor.
- The Claim Form and Claim Manual were developed in consultation with TMR's Legal Services Branch.
- Provisions in the *Civil Liability Act 2003* may assist TMR to avoid liability in certain circumstances.
- As a government agency, TMR is subject to the Model Litigant Principles and must adhere to the principles of fairness and firmness.

Claims for the M1 upgrade to Mudgeeraba to Varsity Lakes

- Nil claims

Claims for Toowoomba Second Range Crossing (FY17/18) includes:

- 2017 – two damage claims submitted to NR only one was compensated by NR
- 2018 – eight damage claims submitted to NR (to date), four were compensated by NR four were not.

| Action Officer/Approved by: | Endorsed by GM | Endorsed by DDG | Endorsed by DG |
|-------------------------------------|---|--|------------------|
| Les Dunn | Amanda Yeates | Bill Lansbury | Neil Scales |
| Regional Director (Metropolitan) | General Manager (Program Delivery and Operations) | A/Deputy Director-General (Infrastructure Management and Delivery) | Director-General |
| Tel: 3066 4299 | Tel: 3066 5498 | Tel: 3066 7118 | Tel: 3066 7316 |
| Date: 5 July 2018 | Date: 5 July 2018 | Date: 9 July 2018 | Date: |

Claims for GUN (FY17/18) includes:

- 2017 – 11 damage claims submitted to Not Relevant
- 2018 – five damage claims submitted to Not Relevant
- All claims were not covered by TMR, and handled by Not Relevant

Minister Comments

Noted / Not Noted

Minister's signature.....

Date/...../.....

Released under RTI - DTMR

Advice for Minister for Transport and Main Roads

Subject: Centenary Highway Resurfacing Works

Document ID: EE5859

- Department of Transport and Main Roads (TMR) officers have investigated concerns raised by the office of Mrs Charis Mullen MP, Member for Jordan.
- TMR advises that due to recent weather events, road works at this location have been delayed.
- The nature of these works require a dry road surface and works are now programmed for completion by the end April 2018.
- For road users who have suffered any damages to their vehicles and would like to proceed with a claim against TMR, please visit:
www.qld.gov.au/transport/conditions/report/claim
- TMR apologises for the inconvenience caused to commuters and will work closely with our contractors to minimise future impacts. The safety of road users is our number one priority.

| Action Officer/Approved by: | Endorsed by GM | Endorsed by DDG | Endorsed by DG |
|---------------------------------------|---|--|------------------|
| Les Dunn | Amanda Yeates | Bill Lansbury | Neil Scales |
| A/Regional Director (Metropolitan) | General Manager (Program Delivery and Operations) | Acting Deputy Director- General (Infrastructure Management and Delivery) | Director-General |
| Tel: 3066 4299 | Tel: 3066 5498 | Tel: 3066 7118 | Tel: 3066 7316 |
| Date: 29 March 2018 | Date: 29 March 2018 | Date: 29 March 2018 | Date: |

EE5859

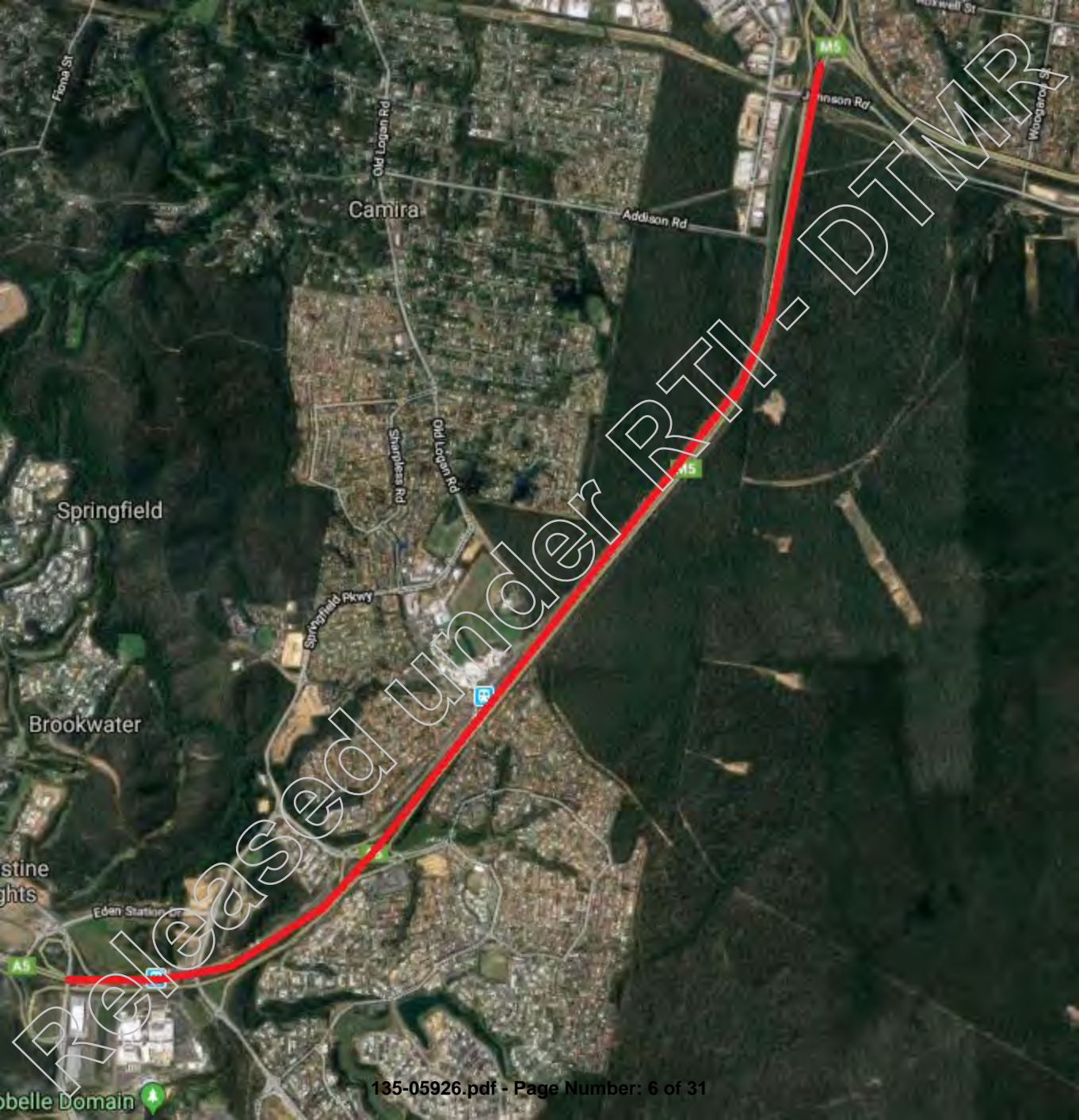
Minister Comments

Noted / Not Noted

Minister's signature.....

Date/...../.....

Released under RTI - DTMR



Ferna St

Old Logan Rd

Camira

Addison Rd

Johnson Rd

Wargara St

Springfield

Shunplaza Rd

Old Logan Rd

Springfield Pkwy

Brookwater

stine
ghts

Edon Station

Abelle Domain

Advice for Minister for Transport and Main Roads

Subject: Compensation for victims of a motor vehicle accident

| | |
|--------------|--------|
| Document ID: | EE6286 |
|--------------|--------|

- The Compulsory Third Party (CTP) Insurance scheme in Queensland is regulated by the Motor Accident Insurance Commission (MAIC). Transport and Main Roads acts as a collection agent only for CTP scheme insurance premiums on behalf of licensed insurance companies.
- MAIC and the Nominal Defendant are statutory bodies established under the *Motor Accident Insurance Act 1994* to regulate and support the CTP scheme. The emphasis of the scheme is on affordability to the motorist, speedy resolution and promotion of rehabilitation for the claimant.
- Any enquiry regarding the cost of compulsory third party insurance or other enquiries about the scheme or premiums should be directed to the MAIC by telephone on 1300 302 568, in writing at GPO Box 2203, Brisbane Qld 4001 or by visiting its web site at www.maic.qld.gov.au.

| Action Officer/Approved by: | Endorsed by GM | Endorsed by DDG | Endorsed by DG |
|--|---|---|------------------|
| Nigel Ellis | Andrew Mahon | Mike Stapleton | Neil Scales |
| A/Executive Director (Transport Access and Use) | General Manager (Transport Regulation Branch) | Deputy Director-General (Customer Services, Safety and Regulation) | Director-General |
| Tel: 3066 7175 | Tel: 3066 7512 | Tel: 3066 7222 | Tel: 3066 7316 |
| Date: 20 June 2018 | Date: 22 June 2018 | Date: XX June 2018 | Date: |

Action Taken Form

Subject: Vehicle damage claim due to pothole on Maltman St, Caloundra

Document ID: MC95159

Ms Nerida Osborne, Communications Officer from the Department of Transport and Main Roads (TMR) North Coast District, telephoned [Not Relevant] on 9 March 2017 about her request for a vehicle damage claim after her car hit a pothole/large hole on Maltman Street, Caloundra.

The following points were discussed with [NR]

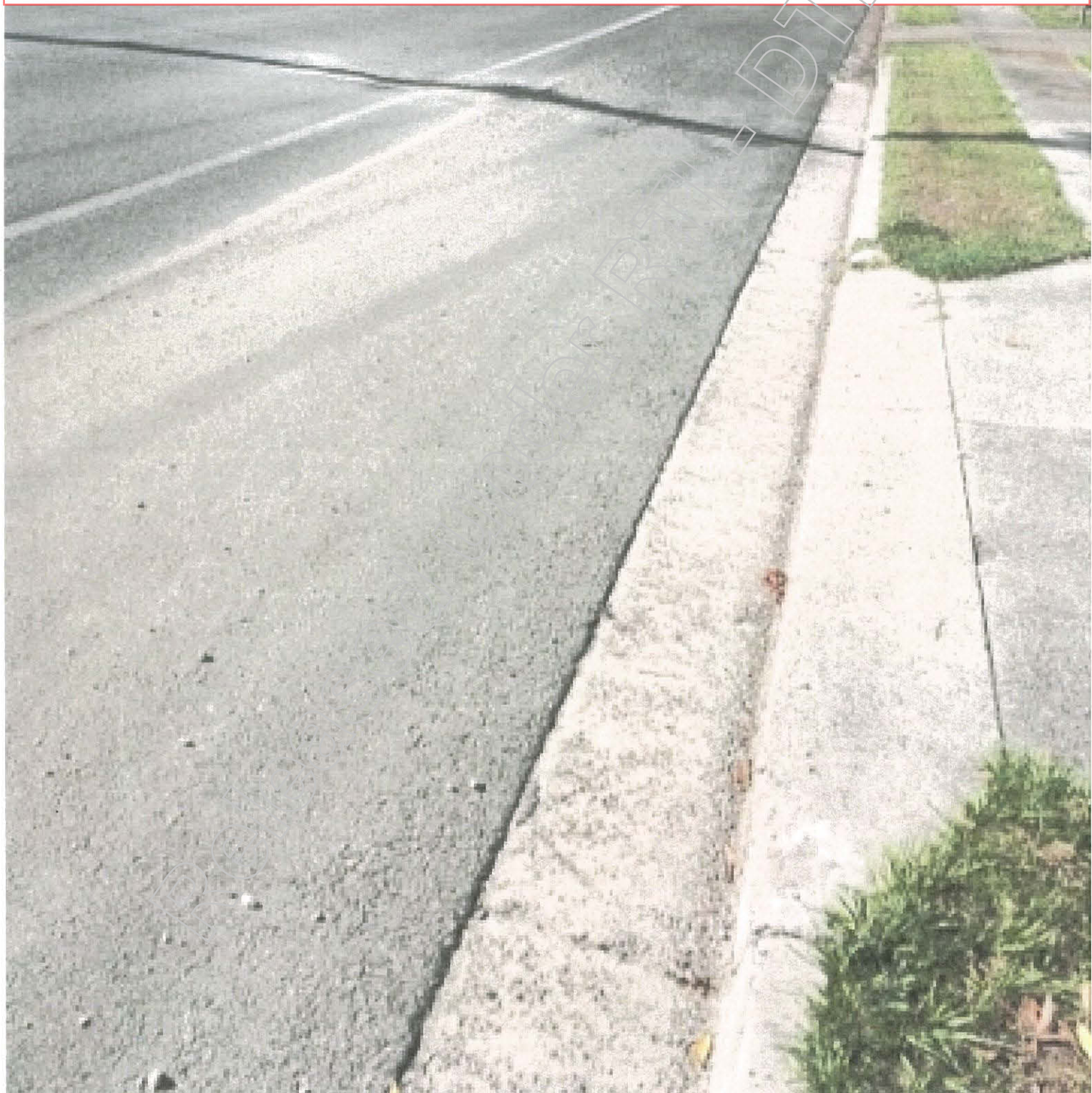
- Ms Osborne empathised with [NR] after her experience. [Not Relevant] advised she was frustrated but most concerned about the expense to repair her vehicle.
- Ms Osborne also advised [NR] that Maltman Street, Caloundra is not a state-controlled road and is within Sunshine Coast Council's jurisdiction. Ms Osborne advised [NR] that she could submit her complaint online at the Sunshine Coast Council website.
- [NR] thanked Ms Osborne for her call and for taking the time to provide advice about her complaint.

| Action Officer/Approved by: | Endorsed by GM | Endorsed by DDG | Endorsed by DG |
|---------------------------------|---|--|--------------------|
| Doug Wass | Amanda Yeates | Miles Vass | Mike Stapleton |
| District Director (North Coast) | General Manager (Program Delivery and Operations) | Deputy Director-General (Infrastructure Management and Delivery) | A/Director-General |
| Tel: 5451 7055 | Tel: 3066 5498 | Tel: 3066 7118 | Tel: 3066 7316 |
| Date: 14 March 2017 | Date: progressed under DD approval | Date: | Date: |

Not Relevant



Not Relevant



Not Relevant

Revised Engineering Report - DTMR

Not Relevant

Released under RTI - DTMR

Advice for Office of the Deputy Director-General

Subject: Vehicle damage claim – Beerburrum Road, Glasshouse Mountains

Document ID: MC99340

- On ^{NR} March 2017 at approximately ^{Not Relevant} was driving her vehicle along Beerburrum Road at Glasshouse Mountains.
- Due to heavy rainfall, ^{NR} pulled off the road and onto the entrance to a forestry service road. Not wanting to block the entrance, ^{NR} drove her vehicle forward and into an unmarked culvert (refer to location pictures in **Attachment 1** and **Attachment 2**). This caused her vehicle to become partially submerged and resulted in water damage to the interior of her car, electrical damage and a twisted bullbar.
- On 3 April 2017, ^{NR} submitted a Vehicle Damage Claim (VDC) to the Department of Transport and Main Roads (TMR) North Coast District (NCD) for \$2,536.71.
- On 5 May 2017, NCD wrote to ^{NR} to reject her claim based on sections 35 and 37 of the *Civil Liability Act 2003* (the Act) (**Attachment 3**).
 - Section 37 states that a road authority, such as TMR, is not liable for claims that arise out of an alleged lack of maintenance or repair of a road if the road authority had no prior knowledge of that particular damage or defect.
 - However, even if a road authority did have actual knowledge of a particular risk, it may not be liable for the damage caused. This is because section 35 of the Act recognises that road authorities have large maintenance obligations which need to be considered against the following factors when determining liability. These include:
 - the limited funds available to the authority
 - the range of functions that the authority is responsible for
 - the need to prioritise maintenance and repair work.

| Action Officer/Approved by: | Endorsed by GM | Endorsed by DDG | Endorsed by DG |
|--|---|--|------------------|
| Barbara van Heerden | Amanda Yeates | Bill Lansbury | Neil Scales |
| Regional Director (North Coast and Wide Bay/Burnett) | General Manager (Program Delivery and Operations) | A/Deputy Director-General (Infrastructure Management and Delivery) | Director-General |
| Tel: 5451 7000 | Tel: 3066 5498 | Tel: 3066 7118 | Tel: 3066 7316 |
| Date: 21 November 2017 | Date: 24 November 2017 | Date: | Date: |

- Section 35 of the Act also allows TMR to rely on its compliance with standard maintenance procedures as evidence that it has properly exercised its function. TMR records show that TMR did not have actual knowledge of the culvert without a guide post. Therefore, TMR does not accept that it was liable for the damage caused to the vehicle and declined the request for payment.
- Based on the culvert location, NCD can confirm that one guide post should have been installed at the location. Following the submission of the VDC, NCD inspected the culvert and two guideposts were installed approximately one month following the VDC.
- Not Relevant subsequently emailed NCD on 26 May 2017 and 8 June 2017 to request a re-investigation of the matter.
- On 21 June 2017, NCD wrote to NR again to confirm that it had re-investigated the matter and found no additional evidence to demonstrate that the alleged damage was a result of improper actions of its maintenance contractor or employees, or failure to take precautions against a risk of harm (**Attachment 4**).
- On 16 October 2017 Not Relevant emailed NCD with a copy to the Honourable Mark Bailey MP, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply, Mr Andrew Powell MP, Member for Glasshouse, and Mr Andrew Wallace MP, Federal Member for Fisher, questioning the installation of the guideposts at the culvert following the rejection of their VDC (MC99340).
- NCD has sought advice from the Office of the Corporate Counsel regarding the matter. Confidential legal advice received is included in **Attachment 5**.

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Part Exempt Sch.3(7) Legal Professional Privilege



Released under RTI - DTMR





Civil Liability Act 2003

Section 35

Principles concerning resources, responsibilities etc. of public or other authorities

The following principles apply to a proceeding in deciding whether a public or other authority has a duty or has breached a duty—

- (a) the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising the functions;
- (b) the general allocation of financial or other resources by the authority is not open to challenge;
- (c) the functions required to be exercised by the authority are to be decided by reference to the broad range of its activities (and not merely by reference to the matter to which the proceeding relates);
- (d) the authority may rely on evidence of its compliance with its general procedures and any applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceeding relates.

Section 37

Restriction on liability of public or other authorities with functions of road authorities

(1) A public or other authority is not liable in any legal proceeding for any failure by the authority in relation to any function it has as a road authority—

- (a) to repair a road or to keep a road in repair; or
- (b) to inspect a road for the purpose of deciding the need to repair the road or to keep the road in repair.

(2) Subsection (1) does not apply if at the time of the alleged failure the authority had actual knowledge of the particular risk the materialisation of which resulted in the harm.

(3) In this section—

road see the [Transport Operations \(Road Use Management\) Act 1995](#), schedule 4.

road authority means the entity responsible for carrying out any road work.



Queensland
Government

Our ref Mrs Christine Brindley
Your ref
Enquiries northcoast@tmr.qld.gov.au

Department of
Transport and Main Roads

5 May 2017

Not Relevant

Dear Not Relevant

I refer to your letter about an incident on Beerburrum Road on NR March 2017.

In your letter you stated that you pulled off the road for unknown reasons and your vehicle went into a culvert which was not marked by a guide post.

In Queensland, civil liability matters are governed by the *Civil Liability Act 2003* (the Act). For claims against TMR regarding culverts and guide posts, sections 35 and 37 of the Act are relevant.

Section 37 states that a road authority, such as TMR, is not liable for claims that arise out of an alleged lack of maintenance or repair of a road if the road authority had no prior knowledge of that particular damage or defect.

However, even if a road authority did have actual knowledge of a particular risk, it may not be liable for the damage caused. This is because section 35 of the Act recognises that road authorities have large maintenance obligations which need to be considered against the following factors when determining liability. These include:

- the limited funds available to the authority
- the range of functions that the authority is responsible for
- the need to prioritise maintenance and repair work

Section 35 of the Act also allows TMR to rely on its compliance with standard maintenance procedures as evidence that it has properly exercised its function.

Our records show that TMR did not have actual knowledge of the culvert without a guide post. Therefore TMR does not accept it is liable for the damage caused to your vehicle and will not meet your request for payment.

Should you wish to take this matter further, I recommend you seek independent legal advice.

If you have any further questions, please contact Mrs Christine Brindley, who will be pleased to assist.

Yours sincerely

for Doug Wass
District Director (North Coast)

Department of Transport and Main Roads
Program Delivery & Operations
North Coast District
PO Box 1600
Maroochydore Qld 4558

Telephone +61 7 5451 7055
Facsimile +61 7 5451 7098
Website www.tmr.qld.gov.au
Email northcoast@tmr.qld.gov.au
ABN 39 407 690 291



Queensland
Government

Our ref 465/00697
Your ref
Enquiries northcoast@tmr.qld.gov.au

Department of
Transport and Main Roads

21 June 2017

Not Relevant

Dear Not Relevant

I refer to your email requesting reinvestigation into alleged damages caused to your vehicle while travelling on Beerburum Road on NR March 2017.

The Department of Transport and Main Roads has reinvestigated your claim and has found no additional evidence to demonstrate that the alleged damage was as a result of improper actions of its maintenance contractor or its employees or a failure to take precautions against a risk of harm.

Should you wish to take this matter further, I recommend you seek independent legal advice.

If you have any further questions, please contact Mr Gerry Logan. Mr Logan will be please to assist.

Yours sincerely

for Doug Wass
District Director (North Coast)

Department of Transport and Main Roads
Program Delivery & Operations
North Coast District
PO Box 1600
Maroochydore Old 4558

Telephone +61 7 5451 7055
Facsimile +61 7 5451 7098
Website www.tmr.qld.gov.au
Email northcoast@tmr.qld.gov.au
ABN 39 407 690 291

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Exempt Sch.3(7) Legal Professional Privilege

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Exempt Sch.3(7) Legal Professional Privilege

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Exempt Sch.3(7) Legal Professional Privilege

Action Taken Form

Subject: Vehicle damage from pothole on Burleigh-Southport Road/Nerang-Broadbeach Road

Document ID: MPE3835

- [Not Relevant] called Minister Bailey's office on 25 August 2016 frustrated that his claim for compensation for damages to his tyre caused by a pothole on [NR] June 2016 had not been resolved.
- Mrs Brigitte Bennelli, Principal Program Support Officer (Customer & Stakeholder Management), Department of Transport and Main Roads (TMR), South Coast District, phoned [NR] on Monday 29 August 2016 at 3.00pm to discuss his concerns.
- [NR] stated the he was unhappy with the response he had received from TMR's maintenance contractor [Not Relevant]. He queried [NR] statement in the response that they 'had no works order for the pothole'.
- Mrs Bennelli advised [NR] that TMR had referred his claim to [NR] as the independent maintenance contractor for this section of road, and that [NR] was responsible for investigating the claim and, based on their findings, make a decision whether to accept or deny the claim.
- [NR] questioned why [NR] had repaired the pothole that night if they did not have a works order. Mrs Bennelli advised [NR] that he would be within his rights to ask [NR] that question, however, advised him that the pothole could have been identified as part of a routine inspection.
- [NR] asked how he could find out whether there was a works order in place as he did not trust [NR] statement that they did not have a works order.
- Mrs Bennelli assured [NR] that TMR and its maintenance contractors have transparent processes under the contract agreements as all information is accessible through the Right for Information process.
- [NR] asked how he could can access the information and what it would cost. Mrs Bennelli referred [NR] to TMR's website which states the information and process for 'Right for Information'.
- Mrs Bennelli also advised [NR] that he is well within his rights to get legal advice if he wishes to pursue the claim.
- [NR] advised that, out of principle, he would pursue all avenues open to him, including media exposure.
- [NR] thanked Mrs Bennelli for the phone call.

Contact officer details:

| | |
|------------|---|
| Name: | Brigitte Bennelli |
| Position: | Principal Program Support Officer (Customer & Stakeholder Management) |
| Telephone: | 5563 6588 |
| Date: | 29 August 2016 |

Approved by (If applicable):

| | |
|------------|---------------------------------|
| Name: | Paul D Noonan |
| Position: | Regional Director (South Coast) |
| Telephone: | 5563 6521 |
| Date: | 30 August 2016 |

DD-G Approval details (If applicable):

| | |
|------------|--|
| Name: | |
| Position: | |
| Telephone: | |
| Date: | |

Released under RTI - DTMR

Action Taken Form

Subject: Not Relevant – rejection of claim for damage to vehicle from hitting a pothole on Mundoolun Connection Road

Document ID: MPE4201 & MPE 4211

- Not Relevant hit a pothole on Mundoolun Connection Road on NR April 2017. He lodged a claim for the damage to his vehicle as a result of hitting the pothole.
- The Department of Transport and Main Roads (TMR) South Coast office rejected his claim on 9 May 2017 (refer **Attachment 1**).
- NR was unhappy with this advice and phoned Minister Bailey's office the same day.
- On 11 May 2017 Mr Peter Harrison, Project Manager at TMR's South Coast office phoned NR to discuss his claim.
- NR explained that he saw work crews repairing the road and had to drive around them. In the process he hit a pothole.
- Mr Harrison reiterated the advice provided in the 9 May 2017 response and confirmed the denial of his claim.
- NR was not happy with this advice and advised he would be going to his solicitor.
- NR has since called the Minister's office again (MPE4211) reiterating that he wants an explanation as to why his claim was denied.
- Attachment 1 fully explains why his claim was denied. TMR sees no benefit in trying to further reiterate this information to NR as he did not accept the detailed explanation that was emailed to him, nor the advice of Project Manager Peter Harrison.
- There is no further explanation that TMR can provide on this matter.

Contact officer details:

| | |
|------------|-----------------------|
| Name: | Robyn Bambry |
| Position: | Communication Officer |
| Telephone: | 5563 6533 |
| Date: | 12 May 2017 |

Robyn L Bambray

From: SCR Compensation Claims
Sent: Tuesday, 9 May 2017 10:36 AM
To: Not Relevant
Subject: Not Relevant Denial of Claim - Transport and Main Roads not liable

Dear NR

I wish to apologise for the time it has taken to reply to your claim and any inconvenience this may have caused. The department takes road safety very seriously and investigating incidents often requires consultation with a number of parties to ensure the matter is assessed thoroughly.

I refer to your Claim lodged with the Department of Transport and Main Roads (TMR) relating to an incident on Mundoolun Connection Road, Canungra on NR April 2017.

Whilst the Department has a common law duty of care to road users to maintain the road network under its control, if you think the department has failed to meet our duty of care to you as a road user, then the law provides that the burden of proof rests with you. In other words, a claim has to be proven. In general terms, you have to show that reasonable steps were not taken to maintain the road network to prevent foreseeable risks of harm. "Reasonable steps" means considerations like whether TMR knew about the hazard, what resources were available to the department and if there were any competing responsibilities at the relevant time (like other road safety projects). Reasonable steps also includes whether response times were met and the department is satisfied in this regard.

The common law can be overridden by legislation. In this regard, the Queensland Parliament passed the *Civil Liability Act 2003*. This Act provides a framework for the law of negligence and some possible limitations on the departments liability. As our maintenance contractors cannot be everywhere all the time, this Act provides (at section 35) that road authorities such as the department may not be liable for damage or loss arising from a road hazard, unless we had prior knowledge of the particular hazard.

Section 35 of the Act allows TMR to rely on its compliance with standard maintenance procedures as evidence that it has properly exercised its function, and recognises that road authorities have large maintenance obligations which need to be considered against the following factors when determining liability. These include:

- Limited funds available to the authority
- Range of functions that the authority is responsible for
- Need to prioritise maintenance and repair work for example the NDRRA works after cyclone Debbie

Unfortunately, anomalies are beyond the control of the road authority and may occur at times that cannot be predicted. TMR is satisfied that it has complied with an appropriate inspection, maintenance and repair schedule for this structure and that response times were met as per contractual obligations.

The department is therefore satisfied that the particulars or circumstances outlined in your claim were not the direct result of any negligent act or omission by the department or its agents. Therefore, TMR does not accept liability for the damage to your vehicle and will not meet your request for payment.

Please note, there are no avenues for appeal within the department regarding this claim. Should you wish to take this matter further, it is recommended you seek independent legal advice.

Kind regards

South Coast Region Compensation Claims | South Coast District / Gold Coast Office
Program Delivery & Operations | Department of Transport and Main Roads

First Floor | Nerang - Gold Coast Office | 36-38 Cotton Street | Nerang Qld 4211
PO Box 442 | Nerang Qld 4211
P: (07) 55636600 | F: (07) 5563 6611
E: scr_compensation_claims@tmr.qld.gov.au
W: www.tmr.qld.gov.au

Customers first Ideas into action **Unleash potential** **Be courageous** **Empower people**

Released under RTI - DTMR

Action Taken Form

Subject: Vehicle Damage Claim

| | |
|--------------|---------|
| Document ID: | MPE4841 |
|--------------|---------|

- Ms Michelle Sippel, Program Support Officer, from the Department of Transport and Main Roads (TMR) spoke with [NR] on 9 April 2018 about a damage claim he had recently submitted to TMR for his motorcycle.
- Ms Sippel advised that the process generally takes 2 – 4 weeks to complete the investigation and to advise of the outcome.
- Ms Sippel further advised that after [NR] contacted the office with his initial claim enquiry, TMR had forwarded the necessary forms to [NR] to complete on the same day [NR] March 2018.
- TMR's Toowoomba office received the signed forms via Australia Post on 9 April 2018.
- Further to [NR] contacting the Minister's Office 9 April 2018 and TMR's Toowoomba office responding on the same day, Ms Sippel advised the customer that his claim was now sitting with the Project Manager to assess and that an outcome would be finalised by end-April 2018.
- [Not Relevant] was frustrated with how long the process was taking, including how long the forms took to reach TMR's office via Australia Post, however understood that the process had been expedited as quickly as possible.

Contact officer details:

| | |
|------------|-----------------------------|
| Name: | Lauren Tomkins |
| Position: | Program Support Coordinator |
| Telephone: | 4639 0732 |
| Date: | 11/04/18 |

Action Taken Form

Subject: Claim for Damage to Vehicle

Document ID: MPE4890

- Mr Mahendra Mistry, Principal Engineer (Maintenance) from the Department of Transport and Main Roads (TMR) contacted [Not Relevant] on Friday, 4 May 2018 about damage to [Not Relevant] vehicle at a roadworks site.
- [Not Relevant] expressed his disgust at TMR and the contractor [NR] about how long it was taking for his claim to be paid.
- [NR] was not happy with the way the contractor has spoken to him about the claim and suggested the damage could not have occurred when they delivered a complying product.
- [NR] was not happy that the contractor has not paid the claim and suggested TMR should pay the claim and follow up with the contractor later.
- Mr Mistry advised that TMR has discussed the matter with the contractor and is waiting for a reply from the contractor about their management of the claim.
- Mr Mistry also advised that TMR has requested information from the contractor to ensure the claim was being appropriately evaluated.
- [Not Relevant] suggested this should be a discussion between TMR and the contractor and TMR should pay the claim.
- [Not Relevant] advised he has unsuccessfully attempted to contact the Minister for Transport and Main Roads because he is not able to locate a phone number.
- The connection was lost at this point.
- [Not Relevant] contacted Mr Mistry again on Wednesday, 9 May 2018 to stress the duration (six weeks from the incident) without resolution is unacceptable.
- [Not Relevant] advised that he believes [NR] is no longer taking his calls, but have requested more information about the claim.
- [Not Relevant] believes this confirms that damage did occur on the [NR] worksite and has made him angry that he is being asked to provide information that he has previously provided.
- [Not Relevant] believes TMR and [NR] are delaying payment of his claim and again suggested TMR pay the claim and settle with [NR] later.
- Mr Mistry advised due to legal implications of such actions TMR have to follow the claims process.
- [NR] advised the phone service dropped out on Friday and he is still trying to make contact with the Premier's and Minister's offices about his claim.

- TMR will continue to liaise with Not Relevant and NR in an effort to resolve this issue.

Contact officer details:

| | |
|------------|-------------------------------|
| Name: | Leanne Robertson |
| Position: | A/Program Support Coordinator |
| Telephone: | 4639 0692 |
| Date: | 9 May 2018 |

Approved by (If applicable):

| | |
|------------|-------------------|
| Name: | Dereck Sanderson |
| Position: | District Director |
| Telephone: | 4639 0720 |
| Date: | 9 May 2018 |

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