

# EXPOSURE DRAFT

**Treasurer**

(Prepared by Parliamentary Counsel's Office)

## Motor Accident Injuries Bill 2018

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# EXPOSURE DRAFT

**Treasurer**

(Prepared by Parliamentary Counsel's Office)

## **Motor Accident Injuries Bill 2018**

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### **A Bill for**

An Act about motor accident injuries, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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## Chapter 1 Preliminary

### Part 1.1 Preliminary

#### 1 Name of Act

This Act is the *Motor Accident Injuries Act 2018*.

#### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

#### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*road transport legislation*—see the [Road Transport \(General\) Act 1999](#), section 6.’ means that the term ‘road transport legislation’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).



## **4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## **5 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **6 Objects of Act**

The main objects of this Act are to—

- (a) ensure benefits are available to support all people injured in motor accidents on a no-fault basis, subject to some exclusions and limitations; and
- (b) encourage early and appropriate treatment and care of people injured in motor accidents to achieve optimum recovery and return to pre-accident levels of activity and work; and
- (c) support people injured in motor accidents to access defined benefits; and
- (d) promote and encourage the early, quick, cost-effective and just resolution of disputes; and

- (e) continue and improve the system of motor accident injury insurance, and the scheme of statutory insurance for uninsured and unidentified vehicles, operating in the ACT; and
- (f) keep the costs of motor accident injury insurance at an affordable level; and
- (g) provide frameworks that allow competition in setting premiums for motor accident injury insurance policies; and
- (h) provide for the licensing and supervision of insurers providing motor accident injury insurance; and
- (i) establish and keep a register of motor accident claims to help the administration of the statutory insurance scheme and the detection of fraud; and
- (j) support and promote the prevention of motor accidents and the safe use of motor vehicles.

## **7 Application of Act**

- (1) This Act applies to the death or injury of a person that results from a motor accident if the motor accident—
  - (a) happened in the ACT on or after the day this Act commenced; and
  - (b) at least 1 motor vehicle involved in the motor accident had MAI cover under this Act at the time of the motor accident.
- (2) For subsection (1) (b), a motor vehicle involved in a motor accident is taken to have had MAI cover under this Act at the time of the motor accident if—
  - (a) an MAI policy was in force for the motor vehicle at that time; or

- (b) at that time—
  - (i) the motor vehicle was owned by the Territory, or a territory authority; and
  - (ii) an MAI policy was not in force for the motor vehicle; or
- (c) a compulsory third-party insurance policy was in force for the motor vehicle under the law of a jurisdiction other than the ACT at that time; or
- (d) the motor vehicle was owned by the Commonwealth, or an entity representing the Commonwealth, at that time; or
- (e) there is a right of action against the nominal defendant under this Act in relation to the motor accident; or
- (f) there would be a right of action against the nominal defendant under this Act in relation to the motor accident if the cause of the motor accident was the fault of the responsible person for, or driver of, the motor vehicle in the use or operation of the motor vehicle.

*Note* For the application of this Act to motor vehicles owned by the Territory, the Commonwealth or a territory or Commonwealth authority, see s 416.

## Part 1.2 Important concepts

### Division 1.2.1 Injury concepts

#### 8 Meaning of *person injured in a motor accident*

In this Act:

*person injured in a motor accident* means an individual who sustains a personal injury as a result of a motor accident.

*Note* *Injured person*—see the dictionary.

#### 9 Meaning of *personal injury*

In this Act:

*personal injury* means bodily injury and includes—

- (a) psychological or psychiatric injury; and
- (b) damage to spectacles, contact lenses, dentures, hearing aids, crutches, wheelchairs, artificial limbs and prosthetic devices; and
- (c) death.

**Examples—psychological or psychiatric injury**

mental or nervous shock

**10        *Meaning of motor accident***

In this Act:

***motor accident*** means an incident that—

- (a) involves the use or operation of a motor vehicle; and
- (b) causes personal injury to an individual; and
- (c) happens when—
  - (i) someone is driving the motor vehicle; or
  - (ii) someone or something collides with the motor vehicle; or
  - (iii) someone takes action to avoid colliding with the motor vehicle; or
  - (iv) the motor vehicle runs out of control.

**11        *Meaning of use motor vehicle***

(1) In this Act:

***use***, a motor vehicle, includes the following:

- (a) drive, park or stop the motor vehicle on a road or road related area;
- (b) maintain the motor vehicle;
- (c) if the motor vehicle is towing a trailer—use the trailer while attached to the vehicle;
- (d) if the motor vehicle is a tow truck towing or carrying an uninsured motor vehicle—use or operate the uninsured vehicle being towed or carried;
- (e) anything else prescribed by regulation.

- (2) Also, if a trailer towed by a motor vehicle becomes detached from the vehicle and runs out of control, the *use* of the vehicle is taken to include the trailer while it is running out of control.

**12      *Meaning of impairment and whole person impairment (or WPI)***

In this Act:

*impairment* means the loss, the loss of the use, or the damage or malfunction, of any of the following:

- (a) a part of the body;
- (b) a bodily system or function;
- (c) a part of a bodily system or function.

*whole person impairment* (or *WPI*), of a person, means the permanent impairment of the person resulting from an injury sustained as a result of a motor accident.

**Division 1.2.2      Insurance concepts**

**13      *Meaning of no-fault motor accident***

In this Act:

*no-fault motor accident* means a motor accident not caused by the fault of—

- (a) the responsible person for, or the driver of, any motor vehicle involved in the accident in the use or operation of the vehicle;  
or
- (b) any other person.

**Examples—no-fault motor accident**

- 1    an accident that happens as the result of a driver who has a cerebrovascular accident or heart attack

- 2 an accident that happens as the result of a driver colliding with a kangaroo that hopped onto the road

**14 Meaning of *nominal defendant***

- (1) For this Act, ACTIA is the *nominal defendant*.

*Note* ACTIA—see the dictionary.

- (2) Any action or proceeding by or against the nominal defendant must be taken in the name of the ‘nominal defendant’.

**Division 1.2.3 Indexation concepts**

**15 Meaning of *average weekly earnings* (or *AWE*)**

In this Act:

*average weekly earnings* (or *AWE*) means the series of average weekly earnings issued by the Australian statistician, prescribed by regulation.

**16 Meaning of *AWE indexed***

- (1) In this Act:

*AWE indexed*, for an amount, means the amount as adjusted in line with any adjustment in the AWE—

- (a) after the commencement of the provision in which the amount appears; and
  - (b) on a day (an *indexation day*) prescribed by regulation for the amount; and
  - (c) rounded up to the nearest whole \$10.
- (2) However, if an amount to be AWE indexed would, if adjusted in line with the adjustment (the *negative adjustment*) to the AWE, become smaller, the amount is not reduced in line with the negative adjustment.

- (3) An amount that, in accordance with subsection (2), is not reduced may be increased in line with an adjustment in the AWE that would increase the amount only to the extent that the increase, or part of the increase, is not one that would cancel out the effect of the negative adjustment.
- (4) Subsection (3) does not apply to a negative adjustment once the effect of the negative adjustment has been offset against an increase in line with an adjustment in the AWE.

## **17 Indexation of defined benefits**

- (1) The MAI commission must, on or before each indexation day for an amount that is AWE indexed, declare—
  - (a) the AWE indexation factor for the amount; and
  - (b) the amount as indexed; and
  - (c) that the amount as indexed applies on the indexation day for the amount.

- (2) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (3) In this section:

***AWE indexation factor***, for an amount, means the factor prescribed by regulation for the amount.

***indexation day***—see section 16 (1) (b).



## Division 1.2.4 Duties in relation to motor accidents

### 18 Duty to act in good faith—applicants, claimants and insurers

- (1) This section applies to the following people:
  - (a) a licensed insurer;
  - (b) an applicant for defined benefits in relation to a motor accident;
  - (c) a claimant for a motor accident claim.
- (2) Each person to whom this section applies—
  - (a) has a duty to act in good faith in relation to an application for defined benefits or a motor accident claim; and
  - (b) must endeavour to finalise the application, or resolve the motor accident claim, as justly and promptly as possible.

*Note* The MAI commission may include a condition on an MAI insurer licence that the licensed insurer comply with this section (see s 315).

- (3) The duty of an applicant or claimant to act in good faith in relation to an application for defined benefits or a motor accident claim includes the following:
  - (a) a duty to act honestly and with integrity at all times, and not to mislead, in all dealings and communications in relation to the application or claim;
  - (b) a duty to disclose, in a timely manner—
    - (i) all relevant information in relation to the application or claim, including reports by health practitioners; and
    - (ii) any other information reasonably requested by an insurer in relation to the application or claim;

*Note* **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

- (c) a duty to do all things reasonably necessary to facilitate the resolution of a dispute in relation to the application or claim;
- (d) a duty to take all reasonable steps to minimise the loss caused by the applicant's or claimant's personal injury, including—
  - (i) undertaking reasonable and necessary treatment and care, rehabilitation and vocational training; and
  - (ii) applying for treatment and care benefits as soon as practicable after the motor accident or after the applicant or claimant becomes aware of the personal injury; and
  - (iii) starting or returning to work as soon as practicable after a health practitioner certifies that the applicant or claimant is fit for starting or returning to work.
- (4) The duty of a licensed insurer to act in good faith in relation to an application for defined benefits or a motor accident claim includes the following:
  - (a) a duty to disclose, as soon as practicable, all information that an applicant or claimant may reasonably need to understand the process for applying for defined benefits or making a motor accident claim;
  - (b) a duty to give an applicant information about the applicant's entitlements to defined benefits;
  - (c) a duty to keep an applicant or claimant informed at all times about the status or progress of their application or claim;
  - (d) a duty to give the applicant or claimant written reasons for all decisions having a material effect on an entitlement to defined benefits or damages;
  - (e) a duty to tell an applicant or claimant about the applicant's or claimant's right to review of a decision of the insurer;

- (f) a duty to promptly pay any defined benefits to which a person is entitled or damages agreed to in settlement of the motor accident claim or ordered by a court.
- (5) If a court is hearing a dispute involving an insurer and an applicant or claimant in relation to an application for defined benefits or a motor accident claim, the court may—
  - (a) take into account a duty the insurer, applicant or claimant has under this section; and
  - (b) make an order in relation to the exercise of the duty.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

## **19 Obligation to cooperate with MAI insurer—responsible person and driver**

- (1) This section applies if personal injury results from a motor accident.
- (2) The responsible person for, or driver of, a motor vehicle involved in the motor accident must comply fully with any reasonable request made by the MAI insurer for the motor vehicle for information in relation to an application for defined benefits or a motor accident claim resulting from the motor accident.

Maximum penalty: 20 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the request.

## **Part 1.3 Motor accident injuries commission**

*Note* The governance of territory authorities, including the MAI commission, is regulated by the [Financial Management Act 1996](#) (the *FMA*), pt 9 as well as the Act that establishes them.  
For example, the [FMA](#), pt 9 deals with the corporate status of territory authorities and their powers.

### **20 Establishment of MAI commission**

The Motor Accident Injuries Commission is established.

### **21 Constitution of MAI commission**

The commission consists of the MAI commissioner.

### **22 Appointment of MAI commissioner**

- (1) The Minister must appoint a public servant as the MAI commissioner.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) An appointment must be for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

## **23 Functions of MAI commission**

The MAI commission has the following functions:

- (a) to regulate the licensing of insurers operating under the motor accident injuries insurance scheme under this Act, including to issue, suspend or cancel licences for insurers and supervise insurers;
- (b) to ensure that premiums fully fund the present and likely future liability under this Act but are not excessive;
- (c) to keep the insurance industry deed under review and make recommendations for its amendment;
- (d) to monitor insurers' compliance with their obligations under this Act;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (e) to approve or reject MAI premiums and make guidelines in relation to premiums under this Act;
- (f) to provide, or facilitate or regulate the provision of, information to the public about the motor accident injuries insurance scheme, causes of motor vehicle accidents, the insurance business, licensed insurers, defined benefits and claims for damages, and dispute resolution;
- (g) to manage complaints about the market practices of licensed insurers and the handling practices of insurers in relation to applications for defined benefits and claims for damages;
- (h) to issue, monitor and review the MAI guidelines and other statutory instruments under this Act;

- (i) to monitor, and advise the Minister about, the administration, efficiency and effectiveness of the motor accident injuries insurance scheme;
- (j) to investigate any issue affecting the viability of the motor accident injuries insurance scheme;
- (k) to support and promote safety in the use of motor vehicles and the prevention of motor accidents and ;
- (l) to develop and coordinate strategies to identify and combat fraud in or related to motor accident claims;
- (m) to keep the motor accident injuries insurance scheme generally under review and make recommendations for its amendment;
- (n) any other function given to the MAI commission under this Act or another territory law.

## **24 Functions of MAI commissioner**

The MAI commissioner has the functions given to the MAI commissioner under this Act or another territory law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## **25 Meaning of *staff of the MAI commission***

In this Act:

*staff of the MAI commission* means—

- (a) staff employed under section 26; and
- (b) consultants and contractors engaged under section 27.

**26 MAI commission employed staff**

- (1) The MAI commission may employ staff on behalf of the Territory.
- (2) The staff must be employed under the *Public Sector Management Act 1994*.

*Note* The *Public Sector Management Act 1994*, div 8.2 applies to the MAI commission in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

**27 MAI commission consultants and contractors**

- (1) The MAI commission may, on behalf of the Territory, engage consultants and contractors to assist the commission in exercising its functions.
- (2) However, the MAI commission must not enter into a contract of employment under this section.

**28 Delegation by MAI commission**

- (1) The MAI commission may delegate the MAI commission's functions under this Act or another territory law to—
  - (a) the MAI commissioner; or
  - (b) a member of staff of the MAI commission; or
  - (c) an authorised person.

*Note* For the making of delegations and the exercise of delegated functions, see the *Legislation Act*, pt 19.4.

- (2) A delegate may subdelegate to an authorised person a function delegated under subsection (1) if the subdelegation is authorised, in writing, by the MAI commission.

(3) In this section:

***authorised person*** means—

- (a) a public employee; or
- (b) a person prescribed by regulation.

*Note* ***Public employee***—see the [Legislation Act](#), dictionary, pt 1.

## **29 Delegation by MAI commissioner**

The MAI commissioner may delegate the MAI commissioner's functions under this Act or another territory law to—

- (a) a member of staff of the MAI commission; or
- (b) a public employee; or
- (c) a person prescribed by regulation.

*Note 1* ***Public employee***—see the [Legislation Act](#), dictionary, pt 1.

*Note 2* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

## **30 MAI commission arrangements for staff and facilities**

The MAI commission may arrange with the head of service to use the services of a public servant or Territory facilities.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).



## Chapter 2                      Motor accident injuries— defined benefits

### Part 2.1                      Interpretation—ch 2

#### 31                      Meaning of *defined benefits*

In this Act:

*defined benefits* means the following benefits:

- (a) income replacement benefits;
- (b) treatment and care benefits;
- (c) quality of life benefits;
- (d) death benefits;
- (e) funeral benefits.

#### 32                      Meaning of *relevant insurer* for motor accident

(1) In this Act:

*relevant insurer*, for a motor accident, means—

- (a) for a single vehicle accident—the insurer of the motor vehicle;  
and
- (b) for a multiple vehicle accident—the insurer of the motor vehicle  
determined under the insurance industry deed to be the most at-  
fault motor vehicle.

*Note*                      *Insurance industry deed*—see s 310.

(2) In this section:

***insurer***, of a motor vehicle, means—

- (a) for an insured motor vehicle—the MAI insurer for the motor vehicle; or
- (b) for an uninsured motor vehicle—the nominal defendant; or
- (c) for an unidentified motor vehicle—the nominal defendant.

### 33 **Meaning of *driving offence***

In this Act:

***driving offence*** means an offence against any of the following provisions:

- (a) the *Crimes Act 1900*, section 20 (Recklessly inflicting grievous bodily harm);
- (b) the *Road Transport (Alcohol and Drugs) Act 1977*—
  - (i) section 19 (Prescribed concentration of alcohol in blood or breath), if the convicting court finds that the concentration of alcohol in the person’s blood or breath was at level 3; or
  - (ii) section 24 (Driving under the influence of intoxicating liquor or a drug), if—
    - (A) the offence relates to driving under the influence of intoxicating liquor; and
    - (B) the convicting court finds that the concentration of alcohol in the person’s blood or breath was at level 3; or
  - (iii) section 24, if the offence relates to driving under the influence of a drug; or

- (iv) section 24A (Driver etc intoxicated), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 3; or
- (v) section 25 (Consuming alcohol—driver or driver trainer), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 3;
- (c) the *Road Transport (Driver Licensing) Act 1999*—
  - (i) section 31 (2) (Driver must be licensed); or
  - (ii) section 32 (1) (a), (2) (a) and (3) (a) (Offences committed by disqualified drivers etc); or
  - (iii) section 33 (1) (Contravention of conditions of restricted licence); or
  - (iv) section 33A (1) (Contravening interlock condition);
- (d) the *Road Transport (Driver Licensing) Regulation 2000*, section 21 (4) (Restrictions on learner car licence drivers);
- (e) the *Road Transport (Safety and Traffic Management) Act 1999*—
  - (i) section 5C (Failing to stop motor vehicle for police); or
  - (ii) section 6 (1) (a) or (b) (Negligent driving); or
  - (iii) section 7 (Furious, reckless or dangerous driving);
- (f) a provision prescribed by regulation.

**34      *Meaning of full and satisfactory explanation by applicant—ch 2***

- (1) For this chapter, a *full and satisfactory explanation* by an applicant for a delay in applying for defined benefits is a full account of the conduct, including the actions, knowledge and belief of the applicant, from the date of the motor accident until the date of providing the explanation.
- (2) The explanation is not a satisfactory explanation unless a reasonable person in the position of the applicant would have been justified in experiencing the same delay.

**Examples—full and satisfactory explanation**

- 1 An application for defined benefits in relation to a motor accident is delayed because a person injured in the motor accident becomes aware of the person's injury some time after the motor accident.
- 2 An application for death benefits is delayed because the appointment of an executor for the dead person's estate is delayed.
- 3 An application for death benefits is delayed because the dead person's personal representative delayed in working out whether they were entitled to make the application.

**35      *Meaning of person who died as a result of a motor accident***

In this Act:

*person who died as a result of a motor accident* means an individual who dies—

- (a) as a result of a personal injury the person sustained as a result of a motor accident; and
- (b) within 2 years after the date of the motor accident.

*Note*      **Dead person**—see the dictionary.

**36        Meaning of *independent medical examiner*—ch 2**

In this chapter:

*independent medical examiner* (or *IME*) means a doctor who, under an arrangement with an authorised IME provider, conducts medical examinations under this Act for WPI assessments.

**37        Authorisation of IME providers**

- (1) The MAI commission must authorise IME providers for this Act (*authorised IME providers*).
- (2) The MAI commission must not authorise an entity to be an IME provider unless satisfied that the entity—
  - (a) has expertise in arranging medical examinations for WPI assessments; and
  - (b) has entered into a deed of services with the MAI commission; and
  - (c) otherwise meets the criteria set out in the MAI guidelines for authorising an entity to be an IME provider.
- (3) The MAI guidelines may make provision for the following:
  - (a) criteria for authorising an entity to be an IME provider;
  - (b) operational requirements to be imposed on an IME provider;
  - (c) fees that may be charged by an IME provider for provision of services for WPI assessments.

**38**      **Meaning of *private medical examiner*—ch 2**

In this chapter:

*private medical examiner*, for an injured person, means a doctor who—

- (a) meets the requirements under the WPI assessment guidelines to conduct WPI assessments; and
- (b) has qualifications or experience relevant to the nature of the injured person's injuries.

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## Part 2.2 Entitlement to defined benefits

### Division 2.2.1 Entitlement to defined benefits

#### 39 Person injured in motor accident entitled to defined benefits

If a person sustains a personal injury as a result of a motor accident in the Territory, defined benefits are payable under this chapter in relation to the personal injury.

#### 40 Defined benefits payable by relevant insurer

The defined benefits payable to a person under this chapter in relation to a personal injury are payable by the relevant insurer for the motor accident.

#### 41 Payment of defined benefits by interstate relevant insurer

(1) This section applies—

- (a) if the relevant insurer for the motor accident is an interstate insurer (the *interstate relevant insurer*); and
- (b) whether or not a no-fault compensation scheme operates in relation to motor accident injuries in the jurisdiction where the interstate insurer is licensed.

*Note* *Interstate insurer*—see the dictionary.

(2) The interstate relevant insurer must—

- (a) pay the defined benefits payable as a result of the motor accident; or
- (b) enter into an arrangement with a licensed insurer that is an associated entity of the interstate relevant insurer for the licensed insurer to be the relevant insurer for the motor accident; or

- (c) enter into an arrangement with the nominal defendant for the nominal defendant to manage the payment of the defined benefits on behalf of the interstate relevant insurer.
- (3) If the interstate relevant insurer enters into an arrangement with the nominal defendant, the nominal defendant—
  - (a) has complete authority to make decisions for the management of the payment of the defined benefits; and
  - (b) may request an advance from the nominal defendant fund to fund the payment of the defined benefits; and
  - (c) may charge the relevant insurer a fee for managing the payment of the defined benefits.
- (4) The nominal defendant may recover as a debt from the interstate relevant insurer any costs reasonably incurred by the nominal defendant in relation to the management of the payment of the defined benefits.
- (5) The nominal defendant may bring a proceeding for recovery of costs under this section before the costs have been actually paid in full and, in that case, a judgment for recovery of costs may provide that, as far as the costs have not been actually paid, the right to recover the costs is contingent on payment.
- (6) This section does not affect a right of recovery that the nominal defendant may have, apart from this section, against the responsible person for, or the driver of, the motor vehicle at fault in the motor accident.
- (7) In this section:  
*associated entity*, of an interstate relevant insurer—see the [Corporations Act](#), section 9.



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**Division 2.2.2      Limitations and exceptions to  
entitlement**

**42      Meaning of *level* of alcohol in blood or breath—div 2.2.2**

In this division:

*level*, for a concentration of alcohol in blood or breath—see the [Road Transport \(Alcohol and Drugs\) Act 1977](#), dictionary.

**43      Entitlement limited—uninsured motor vehicle**

- (1) This section applies if a person injured in a motor accident was the responsible person for, or the driver of, an uninsured motor vehicle involved in the motor accident.
- (2) The injured person is entitled to income replacement benefits only if—
  - (a) the motor accident involved more than 1 motor vehicle and—
    - (i) another motor vehicle involved in the motor accident was an insured motor vehicle when the accident happened; and
    - (ii) the other vehicle’s insurer is the relevant insurer for the motor accident; or
  - (b) the motor accident—
    - (i) involved only 1 motor vehicle; and
    - (ii) is a no-fault motor accident; or
  - (c) the injured person—
    - (i) is the driver of the uninsured motor vehicle; and
    - (ii) believed on reasonable grounds that—
      - (A) the motor vehicle was an insured motor vehicle when the accident happened; and

- (B) the responsible person for the motor vehicle consented to the injured person driving the vehicle.
- (3) The injured person is entitled to quality of life benefits only if—
  - (a) another motor vehicle involved in the motor accident was an insured motor vehicle when the accident happened; and
  - (b) the other vehicle’s insurer is the relevant insurer for the motor accident.

#### **44 Entitlement limited—foreign nationals**

- (1) A person injured in a motor accident who is a foreign national is not entitled to defined benefits to the extent that their injuries are covered by an insurance policy they hold in relation to their stay in Australia.

*Note* **Foreign national**—see the dictionary.

- (2) The person who paid or is liable to pay the funeral expenses of a foreign national who died as a result of a motor accident is not entitled to funeral benefits in relation to the foreign national’s death to the extent that the foreign national’s funeral expenses are covered by an insurance policy the foreign national held in relation to their stay in Australia.
- (3) The estate of a foreign national who died as a result of a motor accident is not entitled to quality of life benefits or death benefits in relation to the foreign national’s death to the extent that the foreign national’s death is covered by an insurance policy the foreign national held in relation to their stay in Australia.

**45 Entitlement limited—single driving offence**

- (1) This section applies if a person injured in a motor accident is charged with a driving offence in relation to the motor accident.
- (2) If the injured person has applied for quality of life benefits, the application is suspended for the period the charge is outstanding.
- (3) Any entitlement to the following defined benefits by the injured person ends when the injured person is convicted or found guilty of the driving offence:
  - (a) income replacement benefits;
  - (b) quality of life benefits.
- (4) The relevant insurer is not entitled to recover any amount of defined benefits paid to the injured person before the person was convicted or found guilty of the driving offence.

**46 No entitlement—multiple driving offences**

- (1) This section applies if a person injured in a motor accident is charged with 2 or more driving offences in relation to the motor accident.
- (2) If the injured person has applied for quality of life benefits, the application is suspended for the period a charge is outstanding.
- (3) Any entitlement to the following defined benefits by the injured person ends when the injured person is convicted or found guilty of the second driving offence:
  - (a) income replacement benefits;
  - (b) treatment and care benefits;
  - (c) quality of life benefits.

**47 No entitlement—injuries self-inflicted**

- (1) A person injured in a motor accident is not entitled to income replacement benefits or quality of life benefits if the injury is caused by an intentionally self-inflicted injury.
- (2) The estate of a person who died as a result of a motor accident is not entitled to quality of life benefits or death benefits if the person's death is caused by an intentionally self-inflicted injury.

**48 Entitlement limited—detainees and young detainees**

- (1) A person injured in a motor accident is not entitled to income replacement benefits or treatment and care benefits during any period when the person is a detainee or a young detainee.

*Note* A person with an injury to which the [LTCS Act](#) applies is eligible to participate in the LTCS scheme even though the person is imprisoned (see [LTCS Act](#), s 15 (3)).

- (2) In this section:

*detainee*—see the [Corrections Management Act 2007](#), section 6.

*young detainee*—see the [Children and Young People Act 2008](#), section 95.

**49 Entitlement reduced—certain infringement notices**

- (1) This section applies if a person injured in a motor accident is—
  - (a) served with an infringement notice for an infringement notice offence in relation to the motor accident; or
  - (b) charged with an infringement notice offence in relation to the motor accident.

- (2) However, subsection (1) (a) does not apply if—
- (a) the injured person—
    - (i) is under 16 years old when the motor accident happens;  
and
    - (ii) is not the driver of a motor vehicle involved in the motor accident; and
  - (b) the infringement notice offence is an offence against the *Road Transport (Road Rules) Regulation 2017*—
    - (i) section 256 (Bicycle helmet); or
    - (ii) section 270 (2) (Wearing motorbike helmet).
- (3) If the injured person has applied for quality of life benefits, the application is suspended for the period the infringement notice or charge is outstanding.
- (4) Any entitlement to income replacement benefits and quality of life benefits of the injured person is reduced by 25% when the injured person—
- (a) pays the infringement notice penalty stated in the infringement notice; or
  - (b) is convicted or found guilty of the infringement notice offence:
- (5) However, subsection (4) does not apply if the injured person's entitlement has already been reduced by 25% under section 50 (3).

(6) In this section:

***infringement notice offence*** means any of the following:

- (a) an offence against any of the following provisions of the *Road Transport (Road Rules) Regulation 2017*:
  - (i) section 20 (Obeying speed limit);
  - (ii) section 256 (Bicycle helmet);
  - (iii) section 264 (Wearing seatbelt—driver);
  - (iv) section 265 (Wearing seatbelt—passenger 16 years old or older);
  - (v) section 270 (Wearing motorbike helmet);
  - (vi) section 297 (Driver to have proper control of vehicle etc);
  - (vii) section 299 (Television receiver or visual display unit in motor vehicle);
  - (viii) section 300 (Use of mobile phone);
- (b) an offence against a provision prescribed by regulation.

## **50 Entitlement reduced—certain offences**

- (1) This section applies if a person injured in a motor accident is charged with a relevant offence in relation to the motor accident.
- (2) If the injured person has applied for quality of life benefits, the application is suspended for the period the charge is outstanding.
- (3) Any entitlement to income replacement benefits and quality of life benefits of the injured person is reduced by 25% when the injured person is convicted or found guilty of the relevant offence.
- (4) However, subsection (3) does not apply if the injured person's entitlement has already been reduced by 25% under section 49 (4).

- (5) In this section:

**relevant offence** means an offence against any of the following provisions of the *Road Transport (Alcohol and Drugs) Act 1977*:

- (a) section 19 (Prescribed concentration of alcohol in blood or breath), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 1 or level 2;
- (b) section 24 (Driving under the influence of intoxicating liquor or a drug) if—
  - (i) the offence relates to driving under the influence of intoxicating liquor; and
  - (ii) the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 1 or level 2;
- (c) section 24A (Driver etc intoxicated), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 1 or level 2.

## **51 No entitlement—serious offences**

- (1) This section applies if a person injured in a motor accident is charged with a serious offence in relation to the motor accident.
- (2) If the injured person has applied for quality of life benefits, the application is suspended for the period the charge is outstanding.
- (3) Any entitlement to the following defined benefits by the injured person ends when the injured person is convicted or found guilty of the serious offence:
  - (a) income replacement benefits;
  - (b) treatment and care benefits;
  - (c) quality of life benefits.

- (4) The relevant insurer is not entitled to recover any amount of defined benefits paid to the injured person before the person was convicted or found guilty of the serious offence.

- (5) In this section:

*serious offence* means an offence against any of the following provisions:

- (a) the *Crimes Act 1900*—
  - (i) section 12 (Murder); or
  - (ii) section 15 (Manslaughter); or
  - (iii) section 19 (Intentionally inflicting grievous bodily harm); or
  - (iv) section 21 (Wounding); or
  - (v) section 29 (Culpable driving of motor vehicle);
- (b) the *Criminal Code*, section 318 (Taking etc motor vehicle without consent);
- (c) the *Road Transport (Alcohol and Drugs) Act 1977*—
  - (i) section 19 (Prescribed concentration of alcohol in blood or breath), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 4; or
  - (ii) section 20 (1) (Prescribed drug in oral fluid or blood—driver or driver trainer); or
  - (iii) section 22 (Refusing to provide breath sample), if no other test for alcohol or drugs under that Act is later undertaken in relation to the motor accident; or



- (iv) section 22A (Refusing to provide oral fluid sample), if no other test for alcohol or drugs under that Act is later undertaken in relation to the motor accident; or
- (v) section 22B (Failing to stay for screening test), if no other test for alcohol or drugs under that Act is later undertaken in relation to the motor accident; or
- (vi) section 22C (Refusing to undergo screening test), if no other test for alcohol or drugs under that Act is later undertaken in relation to the motor accident; or
- (vii) section 23 (Refusing blood test etc), if no other test for alcohol or drugs under that Act is later undertaken in relation to the motor accident; or
- (viii) section 24 (Driving under the influence of intoxicating liquor or a drug)—
  - (A) if the person is convicted or found guilty of driving under the influence of a drug; or
  - (B) if the person is convicted or found guilty of driving under the influence of intoxicating liquor and the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 4; or
- (ix) section 24A (Driver etc intoxicated), if the convicting court finds that the concentration of alcohol in the person's blood or breath was at level 4;
- (d) the *Road Transport (Safety and Traffic Management) Act 1999*—
  - (i) section 5A (Races, attempts on speed records, speed trials etc); or
  - (ii) section 5B (Improper use of motor vehicle); or

- (iii) section 7A (Aggravated offence—furious, reckless or dangerous driving); or
- (iv) section 8 (Menacing driving);
- (e) an offence against a provision prescribed by regulation.

## **52 No entitlement—act of terrorism**

- (1) If a motor accident is caused by, or attributable to, an act that it is reasonable to characterise as an act of terrorism (having regard to the nature of the act and the context in which the act was done) —
  - (a) a person injured in the motor accident is not entitled to defined benefits in relation to the injury; and
  - (b) the personal representative, or the person who paid or is liable to pay the funeral expenses, of a person who died as a result of the motor accident is not entitled to funeral benefits in relation to the person's death; and
  - (c) the estate of a person who died as a result of the motor accident is not entitled to quality of life benefits or death benefits in relation to the person's death.
- (2) For subsection (1)—
  - (a) an act cannot be characterised as an act of terrorism unless the act—
    - (i) causes or threatens to cause death, personal injury or damage to property; and
    - (ii) is designed to influence a government or intimidate the public or a section of the public; and
    - (iii) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause; and

- (b) a lawful activity or industrial action cannot be characterised as an act of terrorism.

### **Division 2.2.3      When entitlement to certain benefits ends**

#### **53      When entitlement to certain benefits ends**

- (1) This section applies if a person injured in a motor accident is entitled to—
- (a) income replacement benefits; or
  - (b) treatment and care benefits.
- (2) The person's entitlement ends on the first occurring of the following:
- (a) the person dies;
  - (b) for income replacement benefits—the person reaches the age worked out under section 93 (No entitlement to income replacement benefits—retirement-aged injured person);
  - (c) a motor accident claim for the motor accident is finalised;
  - (d) 5 years after the date of the motor accident.

## **Part 2.3 Application for defined benefits**

### **Division 2.3.1 Communicating with people in relation to motor accidents**

#### **54 Information and support for potential applicants for defined benefits—MAI guidelines**

- (1) The MAI guidelines may make provision for information and support the relevant insurer for a motor accident must give potential applicants for defined benefits.
- (2) In particular, the MAI guidelines may make provision for the following:
  - (a) the circumstances in which the relevant insurer for a motor accident must give support and information to a person injured in the motor accident;
  - (b) if a person injured in a motor accident contacts an insurer for a motor vehicle involved in the motor accident—the information that must be given to the person about the procedures relating to applying for defined benefits, including—
    - (i) accessing, completing and submitting an application; and
    - (ii) information to be given with an application; and
    - (iii) time limits applying to the making of an application; and
    - (iv) to whom an application must be given;

**Example**

if the injured person can't work out who is the relevant insurer, that the person give the application to their own insurer.

- (c) the information that must be given with a receipt notice for an application for treatment and care benefits and income replacement benefits, including information about allowable expenses for treatment and care.

*Note* See s 62 for when a receipt notice is given.

- (d) the information that must be given in relation to an application for treatment and care benefits and income replacement benefits for which the relevant insurer has accepted liability, including the following:
  - (i) the procedure for obtaining approval for treatment and care;
  - (ii) the procedure for reimbursement of treatment and care expenses;
  - (iii) the evidence the applicant must give the insurer about the applicant's fitness for work, how often the evidence must be given to the insurer and how the applicant must tell the insurer about any change in the applicant's work arrangements;
- (e) information to be given to a person injured in a motor accident to help the person decide whether the person is eligible for a quality of life payment, including information about the following:
  - (i) the WPI needed to be eligible for a quality of life benefit or to make a motor accident claim under chapter 3 (Motor accident injuries—common law damages);
  - (ii) the procedure for applying for a WPI assessment;
  - (iii) the time limits and conditions applying to the making of an application for quality of life benefits;

- (f) information to be given to a person who receives a WPI report under section 151 (WPI 10% or more—injured person entitled to make motor accident claim) or section 158 (Final offer WPI 10% or more—injured person entitled to make motor accident claim) stating that the person's whole person impairment is at least 10%, including the following information:
  - (i) the consequences of accepting a quality of life benefit;
  - (ii) the time limits for making a claim under chapter 3;
  - (iii) seeking legal advice about whether to make a claim under chapter 3.
- (3) The MAI guidelines may make provision for when and how a relevant insurer for a motor accident must give the information mentioned in subsection (2) to a person injured in the motor accident.

## **Division 2.3.2 Application for defined benefits**

### **Subdivision 2.3.2.1 Definitions—pt 2.3**

#### **55 Meaning of *information*—pt 2.3**

In this part:

*information* includes a record containing information.

#### **56 Meaning of *authority to disclose personal health information***

- (1) In this Act:

*authority to disclose personal health information*, for a person injured in a motor accident, means an authority—

- (a) signed by or on behalf of the injured person; and

- (b) stating that the injured person consents to the disclosure of personal health information about the injured person—
  - (i) by any of the following people:
    - (A) the injured person’s treating health service provider;
    - (B) a member of the injured person’s treating team;
    - (C) an independent medical examiner who conducts a WPI assessment of the person; and
  - Note*      **WPI assessment**—see s 139.
  - (ii) to a stated insurer; and
  - (iii) for the purposes of processing the injured person’s application for defined benefits or assessing or otherwise managing the injured person’s entitlement to defined benefits; and
- (c) stating that the injured person consents to the disclosure of personal health information about the injured person—
  - (i) by the stated insurer; and
  - (ii) to the injured person’s treating health service provider; and
  - (iii) for the purposes of processing the injured person’s application for defined benefits or assessing or otherwise managing the injured person’s entitlement to defined benefits; and
- (d) stating that the consents operate until the injured person either—
  - (i) revokes the authority by notice in writing to the stated insurer; or
  - (ii) is no longer entitled to defined benefits in relation to the motor accident.

- (2) Subsection (3) applies if an injured person revokes an authority to disclose personal health information while the injured person is still entitled to defined benefits.
- (3) The insurer may suspend the processing of the injured person's application, or the payment of defined benefits to the injured person, until the injured person provides any consents mentioned in subsection (1), in writing, that are reasonably required by the insurer to process the application or assess or otherwise manage the injured person's entitlement to defined benefits.
- (4) The MAI guidelines may make provision in relation to the circumstances in which an injured person must give the relevant insurer for a motor accident a consent under subsection (3).
- (5) In this section:

*treating health service provider*—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

*treating team*—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

### **Subdivision 2.3.2.2 Application for defined benefits**

#### **57 Application for defined benefits**

Any of the following people may make an application for defined benefits to the relevant insurer for a motor accident:

- (a) a person injured in the motor accident;

*Note* The person may be entitled to income replacement benefits, treatment and care benefits and quality of life benefits.

- (b) the person who has paid, or is liable to pay, the funeral expenses of a person who died as a result of the motor accident;

*Note* The person may be entitled to funeral benefits.



- (c) the estate of a person who died as a result of the motor accident.

*Note* The estate may be entitled to death benefits.

## **58 Application for defined benefits—contents**

- (1) An application for defined benefits must be made in accordance with the MAI guidelines.

*Note* The MAI guidelines are made under s 417.

- (2) The MAI guidelines may make provision for applications, including provision for—

- (a) making an application; and
- (b) to whom an application must be given; and
- (c) the form and contents of an application; and
- (d) the information that must be included with an application; and
- (e) the treatment expenses incurred by an applicant before making an application for which the applicant may be reimbursed.

- (3) The MAI guidelines may require the applicant to do 1 or more of the following:

- (a) provide a police accident notification number or police accident report for the motor accident with the application;
- (b) provide a medical certificate with the application;
- (c) authorise the relevant insurer to obtain information and documents relevant to the application from stated people;
- (d) authorise the relevant insurer to provide the information and documents to stated people.

*Note* The MAI guidelines are made under s 417.

**59 Application for defined benefits—authority to disclose personal health information**

An application for defined benefits made by a person injured in a motor accident must be accompanied by an authority to disclose personal health information.

*Note* **Authority to disclose personal health information**—see s 56.

**60 Meaning of *application period*—ch 2**

In this chapter:

***application period***, for an application for defined benefits, means—

- (a) for a person injured in a motor accident—the period of 13 weeks following the date of the motor accident; or

*Note 1* The person may be entitled to income replacement benefits, treatment and care benefits and quality of life benefits.

*Note 2* The person would be able to make an additional later application for quality of life benefits (see s 134).

- (b) for a person who has paid, or is liable to pay, the funeral expenses of a person who died as a result of a motor accident—the period of 13 weeks after the date of the injured person's death; or

*Note* The person may be entitled to funeral benefits.

- (c) for the estate of a person who died as a result of a motor accident—the period of 13 weeks after the date of the injured person's death.

*Note* The estate may be entitled to death benefits.

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**61      Application for defined benefits—must be made within application period**

- (1) An application for defined benefits in relation to a motor accident must be made within the application period.
- (2) The relevant insurer for a motor accident may accept an application for defined benefits made after the application period (a *late application*) if—
  - (a) the application is made—
    - (i) for income replacement benefits and treatment and care benefits—within 2 years after the date of the motor accident; or
    - (ii) for death benefits and funeral benefits—within 1 year after the date of the injured person's death; and
  - (b) the relevant insurer is satisfied the applicant has a full and satisfactory explanation for the late application.

*Note      Full and satisfactory explanation—see s 34.*
- (3) The relevant insurer—
  - (a) may ask the applicant for additional information in relation to the application; and
  - (b) need not make a decision about accepting the application until the insurer receives the additional information.
- (4) However, if the relevant insurer does not respond to the applicant about the applicant's explanation for the late application within 28 days after receiving it, the relevant insurer is taken to have accepted the application.

**62 Application for defined benefits—action following receipt**

- (1) If the relevant insurer for a motor accident receives an application for defined benefits, the relevant insurer must, within the period stated in the MAI guidelines—
  - (a) for an application made during the application period—give the applicant a written notice (a ***receipt notice***) that includes—
    - (i) information about how the applicant may apply for payment of allowable expenses; and
    - (ii) other information required by the MAI guidelines; or
  - (b) for a late application—give the applicant a written notice (a ***late receipt notice***) stating that defined benefits will be paid to the applicant if the insurer accepts the application; or
  - (c) for an application that is incomplete—return the application to the applicant accompanied by a notice (a ***required additional information notice***) stating the additional information needed to complete the application and that the application will not be dealt with until the relevant insurer receives the additional information.
- (2) For subsection (1) (c), an application is incomplete if the application—
  - (a) is not signed by or on behalf of the applicant; or
  - (b) does not include all the information required, under the MAI guidelines or a regulation, to be included in the application.
- (3) A receipt notice or late receipt notice must be in the form, and include the information, required by the MAI guidelines.

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## **Division 2.3.3      Payment of allowable expenses**

### **63      Meaning of *allowable expenses* and *initial period*—ch 2**

In this chapter:

*allowable expenses*, means expenses an applicant for defined benefits may incur in relation to treatment and care of the applicant's injury without the relevant insurer's approval during the initial period.

*initial period*, for an application for defined benefits, means the period—

- (a) starting on the date of the receipt notice; and
- (b) ending—
  - (i) when the relevant insurer makes, or is taken to have made, a final decision to accept or reject liability for the application; or
  - (ii) if the insurer transfers the application to another insurer—4 weeks after the date of the receipt notice; or
  - (iii) if there is a dispute between insurers about liability under section 72—4 weeks after the date of the receipt notice.

### **64      Allowable expenses—relevant insurer must pay**

The relevant insurer for a motor accident must pay an applicant for defined benefits' allowable expenses if the applicant provides the relevant insurer with a receipt for the allowable expenses.

### **65      Allowable expenses—MAI guidelines**

The MAI guidelines may make provision in relation to the allowable expenses for treatment and care for an applicant for defined benefits in relation to a motor accident, including provision in relation to the following:

- (a) the treatment and care for which the applicant may incur allowable expenses, including restrictions in relation to the treatment and care;

**Example—restrictions**

the number of GP appointments an applicant may have

- (b) verifying the injured person's allowable expenses;
- (c) the period for which allowable expenses are payable;
- (d) the amount of allowable expenses.

**66 Allowable expenses—relevant insurer later rejects liability for defined benefits**

- (1) This section applies if a relevant insurer pays an amount of allowable expenses to an applicant.
- (2) If the relevant insurer later rejects liability for defined benefits for the applicant, the following applies:
  - (a) if the relevant insurer (the *first insurer*) rejects liability for the defined benefits because another insurer is the relevant insurer for the application—
    - (i) the amount of allowable expenses paid is not recoverable from the applicant; but
    - (ii) the first insurer may recover the amount as a debt from the other insurer;
  - (b) if the relevant insurer rejects liability for the defined benefits because the application was based on false or misleading information, the insurer may recover the amount of allowable expenses paid as a debt from the applicant.

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## **Division 2.3.4      Accepting or rejecting liability for defined benefits**

### **67      Relevant insurer must decide liability for defined benefits**

- (1) If a relevant insurer for a motor accident receives an application for defined benefits, the relevant insurer must, within 28 days after the day the relevant insurer receives the application—
  - (a) decide whether the relevant insurer accepts or rejects liability for the defined benefits; and
  - (b) give the applicant a notice about the decision under this section.
- (2) If the relevant insurer accepts liability for the defined benefits, the relevant insurer must give the applicant a written notice (a *defined benefits notice*)—
  - (a) stating that the insurer accepts liability for the defined benefits; and
  - (b) including any information required under the MAI guidelines.
- (3) If the relevant insurer does not accept liability for the defined benefits, the relevant insurer must give the applicant either—
  - (a) a written notice (a *transfer notice*) stating—
    - (i) that the insurer does not accept liability for the defined benefits because another insurer is liable; and
    - (ii) that the application has been given to another insurer; and
    - (iii) the name and contact details of the other insurer; or

*Note*      Transfers of applications are dealt with in s 71.
  - (b) a written notice (a *rejection notice*) stating—
    - (i) that the insurer does not accept liability for the defined benefits; and

- (ii) the reasons for the decision; and
  - (iii) how the applicant may dispute the decision.
- (4) If the relevant insurer fails to give the applicant a transfer notice or rejection notice within the 28 days, the relevant insurer—
  - (a) is taken to have accepted liability for the defined benefits; and
  - (b) is liable for the defined benefits; and
  - (c) must give the applicant a defined benefits notice.

*Note 1* A decision by a relevant insurer to accept liability does not prevent the insurer from making a later decision to reject the liability (see s 70).

*Note 2* For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (5) This section is subject to section 72 (Dispute about liability for application).

## **68 Application for defined benefits—accepting liability—payment of defined benefits**

- (1) If a relevant insurer accepts liability for defined benefits, the insurer must pay the applicant the defined benefits to which the applicant is entitled under this chapter.
- (2) The MAI guidelines may make provision in relation to the payment of defined benefits.

## **69 Application for defined benefits—rejecting liability**

- (1) If a relevant insurer gives an applicant a rejection notice, liability for the application is taken to have been rejected on the day the relevant insurer gives the notice to the applicant.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.



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- (2) If the relevant insurer rejects liability for defined benefits for any of the following reasons, the relevant insurer may recover as a debt from the applicant any amounts paid to the applicant under this part:
- (a) the applicant was not entitled to defined benefits under either of the following sections when the applicant applied for defined benefits:
    - (i) section 46 (No entitlement—multiple driving offences);
    - (ii) section 51 (No entitlement—serious offences);
  - (b) information in the application is false or misleading;
  - (c) information the applicant gave a doctor or other health practitioner in relation to the applicant's injury is false or misleading;
  - (d) information the applicant gave the police or a lawyer in relation to the motor accident is false or misleading.
- (3) This section is subject to section 71 (Transfer of application to another insurer).

**70 Insurer may change decision about accepting or rejecting liability**

- (1) A decision by a relevant insurer to accept liability for defined benefits does not prevent the insurer from making a later decision to reject the liability.
- (2) However, if a relevant insurer later rejects a liability, the insurer may only recover amounts paid to the applicant under this part from a relevant insurer who later accepts liability for the defined benefits.
- (3) A decision by a relevant insurer to reject liability for defined benefits does not prevent the insurer from making a later decision to accept the liability.

## **Division 2.3.5      Transfer of application to another insurer**

### **71      Transfer of application to another insurer**

- (1) This section applies if the relevant insurer for a motor accident (the *first insurer*) intends to reject liability for defined benefits because another insurer (the *second insurer*) appears to be liable for the application.
- (2) Before the first insurer gives the applicant a transfer notice under section 67 (Relevant insurer must decide liability for defined benefits), the first insurer must give the second insurer the applicant's application for defined benefits, and any information the applicant gave the first insurer in relation to the application.
- (3) The application is taken to have been given to the second insurer on the date it was given to the first insurer.
- (4) If, after assessing the application, the second insurer decides to accept liability for the application, as soon as practicable, but not later than 28 days after the day the first insurer gives the applicant a receipt notice—
  - (a) the first insurer must give the applicant the transfer notice; and
  - (b) the second insurer must tell the applicant—
    - (i) about the decision to accept liability for the application; and
    - (ii) that the applicant must give the second insurer an authority to disclose personal health information.

*Note      Authority to disclose personal health information—see s 56.*

- (5) Liability for the application is taken to have been transferred to the second insurer when the applicant receives notification of the second insurer's decision under subsection (4).
- (6) The first insurer may recover the following amounts as a debt from the second insurer:
  - (a) any amounts of the applicant's allowable expenses already paid; and
  - (b) the cost of managing the application.

## **72      Dispute about liability for application**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident (the *first insurer*) intends to reject liability for the application because another insurer (the *second insurer*) appears to be the relevant insurer for the motor accident; and
  - (b) the second insurer disputes its liability for the application.
- (2) The first insurer—
  - (a) must not give the applicant a transfer notice; and
  - (b) must give the MAI commission written notice of the dispute.
- (3) If the first insurer gives the MAI commission a notice under subsection (2) (b)—
  - (a) section 67 (Relevant insurer must decide liability for defined benefits) does not apply in relation to the application until the dispute is resolved; and
  - (b) the first insurer must notify the applicant—
    - (i) about the dispute; and

- (ii) that the first insurer continues to be liable for the applicant's allowable expenses; and
  - (iii) that the first insurer is liable for the applicant's treatment and care benefits, income replacement benefits and funeral benefits in accordance with this chapter until the dispute is resolved.
- (4) The dispute must be dealt with in accordance with the insurance industry deed.
- (5) If the second insurer is found to be liable for the application, the first insurer may recover the following amounts as a debt from the second insurer:
  - (a) any amounts of the applicant's allowable expenses already paid; and
  - (b) any amounts of the applicant's treatment and care benefits, income replacement benefits and funeral benefits already paid; and
  - (c) the cost of managing and disputing the application.
- (6) If the second insurer is found to be liable for the application, the second insurer must not dispute a decision the first insurer made in relation to any amounts paid to the applicant by the first insurer.

### **Division 2.3.6      Miscellaneous—pt 2.3**

#### **73      Fraudulent applications or requests**

- (1) This section applies if the relevant insurer for a motor accident receives—
  - (a) an application for defined benefits from a person injured in the motor accident; or

- (b) a request for reimbursement of expenses for treatment and care for an applicant that are incurred before the application is made or while the application is being considered; or
  - (c) a request from a provider of treatment and care for payment of treatment and care provided to an applicant.
- (2) If the relevant insurer suspects that information in the application or request is false or misleading, the relevant insurer may refuse to—
  - (a) accept liability for the application; or
  - (b) reimburse the applicant; or
  - (c) pay the provider.
- Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).
- (3) However, if the relevant insurer later establishes that the information in the application or request is not false or misleading, the relevant insurer must—
  - (a) reimburse the applicant for the expenses incurred; or
  - (b) pay the provider for the treatment and care.
- (4) Despite subsection (2), if the relevant insurer has not made a decision to accept or reject liability for the application, the relevant insurer must pay the applicant's allowable expenses.

## **74 Recovery of amounts paid for defined benefits**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident pays an amount under this part to an applicant for defined benefits; and
  - (b) the insurer was not liable for the amount.

- (2) The relevant insurer may recover as a debt from the applicant any amount for which the relevant insurer was not liable under this part.
- (3) If the relevant insurer rejects an application for defined benefits because the applicant's injury was not a result of the motor accident, the relevant insurer is not entitled to recover as a debt any amount paid to the applicant before the application was rejected unless the application was fraudulent or included information that was false or misleading.

## **Part 2.4                      Defined benefits—income replacement benefits**

### **Division 2.4.1            Income replacement benefits—important concepts**

#### **75                      Definitions—pt 2.4**

In this part:

*fitness for work certificate*—see section 104.

*self-employed*—a person is *self-employed* if the person derives income from providing labour, skills or knowledge to a business carried on by the person.

*unpaid leave*, from paid work, includes—

- (a) unpaid parental leave; and
- (b) unpaid leave for more than 52 weeks.

#### **76                      Meaning of *income replacement benefit payment*—pt 2.4**

In this part:

*income replacement benefit payment*, for an injured person, means income replacement benefits payable under the following:

- (a) section 97 (Amount of income replacement benefits—first payment period);
- (b) section 98 (Amount of income replacement benefits—second payment period).

**77 Meaning of *gross income*—pt 2.4**

For this part, *gross income* of an injured person who is an employee—

- (a) includes the following:
  - (i) any amount paid to the injured person as wages, bonuses, commissions or allowances;
  - (ii) any amount paid to the injured person as overtime, if—
    - (A) the injured person worked overtime in accordance with a regular and established pattern; and
    - (B) the pattern of the number of hours of overtime worked was substantially uniform; and
    - (C) the injured person would have continued to work overtime in accordance with the established pattern if the motor accident had not happened;
  - (iii) any amount paid to the injured person as penalty payments for shift work;
  - (iv) any amount paid to the injured person if the person was on paid leave;
  - (v) any amount otherwise payable to the injured person under a voluntary salary sacrifice arrangement;
  - (vi) any amount paid under the *Workers Compensation Act 1951* (or a corresponding law of a State or another Territory); but
- (b) does not include the following:
  - (i) any contribution paid or payable on behalf of the person by the person's employer to a superannuation scheme for the benefit of the person;



- (ii) any redundancy or voluntary early retirement payment received by the person from the person's employer;
- (iii) any amount paid for unused leave or termination of employment;
- (iv) any other amount paid as a lump sum as a consequence of termination of employment;
- (v) any allowance or benefit prescribed by regulation received by the person from the person's employer.

## **78      Meaning of *net income*—pt 2.4**

In this part:

***net income***, of an injured person who is self-employed, means the net income the person derives, or will derive, from carrying on a business, to the extent that the income is attributable to labour, skills or knowledge the person provides, or will provide, to the business.

## **79      Meaning of *paid work*—pt 2.4**

- (1) For this part, a person is in ***paid work*** if the person is engaged in any work for remuneration or other financial benefit—
  - (a) whether as an employee, a self-employed individual or otherwise; and
  - (b) whether the person was in full-time or part-time work; and
  - (c) whether or not the person was on paid leave.

*Note*      The injured person's pre-injury weekly income is worked out under s 81, s 82, s 83 or s 84.

- (2) The MAI guidelines may make provision for what is, or is not, taken to be paid work.

**80 Meaning of *capable* of being in paid work—pt 2.4**

- (1) For this part, a person injured in a motor accident is *capable* of being in paid work if, on the date of the motor accident—

- (a) the person—

- (i) is not in paid work; but
- (ii) had been in paid work for at least 260 hours in the 52 weeks before the date of the motor accident; or

*Note* The injured person's pre-injury weekly income is worked out under s 83.

- (b) the person has entered into an arrangement with an employer or other person to undertake employment or to start business as a self-employed person on the date of the motor accident or a stated date after the date of the motor accident; or

*Note* The person's pre-injury earning capacity is worked out under s 88.

- (c) the person—

- (i) was on unpaid leave from paid work immediately before the date of the motor accident; and
- (ii) anticipated returning to paid work on a date after the motor accident; or

*Note* The person's pre-injury earning capacity is worked out under s 86.

- (d) the person—

- (i) is receiving a weekly payment or other payment in relation to loss of income under this Act or the *Workers Compensation Act 1951* (or a corresponding law of a State or another Territory); and

- (ii) has a medical certificate or treatment plan stating that the person expected to return to work on a stated date after the motor accident; or

*Note* The person's pre-injury earning capacity is worked out under s 87.

- (e) the person—

- (i) is at least 15 years old; and
  - (ii) is enrolled in a course of studies as a full-time student; and
  - (iii) expects to be in paid work after completing—
    - (A) the course; or
    - (B) if the person was in secondary school—the final year of secondary school.

*Note* The person's pre-injury earning capacity is worked out under s 89.

- (2) The MAI guidelines may make provision in relation to the matters to be taken into account for the purposes of determining whether an injured person is capable, or not capable, of being in paid work.

## **81 Pre-injury weekly income—ongoing employment and fixed term contracts**

- (1) This section applies if a person injured in a motor accident was, on the date of the motor accident, engaged in ongoing employment or under a fixed term contract.
- (2) The injured person's ***pre-injury weekly income*** is the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks before the date of the motor accident:
  - (a) the person's gross income as an employee;
  - (b) the person's net income as a self-employed person.

**82 Pre-injury weekly income—significant change to employment**

- (1) This section applies if a person injured in a motor accident—
- (a) was, on the date of the motor accident, engaged in ongoing employment or under a fixed term contract; and
  - (b) during the 52 weeks before the date of the motor accident, had a significant change in the person's circumstances in relation to the person's employment that resulted in the person regularly earning, or becoming entitled to earn, more on a weekly basis than the person was earning before the change occurred; and

**Examples—significant change**

- 1 the person started work with a new employer
  - 2 the person returned to work following unpaid leave of at least 8 weeks
  - 3 the person increased their normal number of hours of work
  - 4 the person received an increase in income based on the person's work performance
- (c) for a person engaged under a fixed term contract—had, at the time of the motor accident, at least 26 weeks remaining on the person's contract.
- (2) The injured person's *pre-injury weekly income* is the average weekly amount of the person's gross income for the period—
- (a) starting on the date the significant change happened; and
  - (b) ending on the day before the date of the motor accident.

**83 Pre-injury weekly income—injured person in casual work**

- (1) This section applies if a person injured in a motor accident—
- (a) was not, on the date of the motor accident—
    - (i) engaged in ongoing employment; or

- (ii) engaged under a fixed term contract; or
    - (iii) self-employed; but
  - (b) was in paid work for at least 260 hours in the 52 weeks before the date of the motor accident.
- (2) The injured person's *pre-injury weekly income* is the higher of the following:
- (a) the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks:
    - (i) the person's gross income as an employee;
    - (ii) the person's net income as a self-employed person;
  - (b) if the person worked the 260 hours in the 13 weeks immediately before the date of the motor accident or is unable to give evidence of the person's income in the 52 weeks—the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 13 weeks:
    - (i) the person's gross income as an employee;
    - (ii) the person's net income as a self-employed person.

#### **84 Pre-injury weekly income—self-employed injured person**

- (1) This section applies if a person injured in a motor accident was, on the date of the motor accident, self-employed.
- (2) The injured person's *pre-injury weekly income* is the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks:
  - (a) the person's gross income as an employee;
  - (b) the person's net income as a self-employed person.

- (3) If, as a result of the injured person's injury, the injured person engages someone (a *hiree*) to perform the injured person's work, the amount paid to the hiree may be taken into account for the purposes of working out the person's pre-injury weekly income.

**85 Payment of increments—apprentices, trainees and young people**

- (1) This section applies if a person injured in a motor accident is, on the date of the motor accident—
  - (a) at least 15 years old but less than 21 years old; and
  - (b) one of the following circumstances applies to the person:
    - (i) the person is an apprentice;
    - (ii) the person is employed under a contract of service for which the person is required to undergo training, instruction or examination for the purpose of becoming qualified in the occupation to which the contract relates;
    - (iii) under the person's conditions of employment, the person's pre-injury weekly income would have increased if the person had continued in that employment because the person—
      - (A) attained a particular age; or
      - (B) completed a particular period of service or course of training.
- (2) For any week after the date of the motor accident in relation to which the person is entitled to an income replacement benefit payment, the payment must be calculated on the basis that the person's pre-injury weekly income is the weekly income the person is likely to have been entitled to for that week.

- (3) The MAI guidelines may make provision in relation to the matters to be taken into account for the purposes of determining the weekly income the person is likely to have been entitled to had the motor accident not happened and had the person continued in the employment.
- (4) In this section:
- conditions of employment*, for an injured person, includes conditions applying to the person's employment under an award or industrial agreement.

**86 Pre-injury earning capacity—injured person on unpaid leave**

- (1) This section applies if a person injured in a motor accident—
- (a) was on unpaid leave from paid work immediately before the date of the motor accident; and
  - (b) anticipated returning to paid work on a date after the motor accident.
- (2) The injured person's *pre-injury earning capacity* is the average weekly amount of the person's gross income from paid work—
- (a) in the 52 weeks before the person started the unpaid leave; or
  - (b) if the person had a significant change in circumstances in relation to their paid work in the 52 weeks immediately before the person started the unpaid leave—for the period—
    - (i) starting on the date the significant change happened; and
    - (ii) ending on the day before the person started the unpaid leave.

**Examples—significant change**

- 1 the person started work with a new employer
- 2 the person returned to work following unpaid leave of at least 8 weeks

- 3 the person increased their normal number of hours of work
- 4 the person received an increase in income based on the person's work performance

## **87 Pre-injury earning capacity—injured person on workers compensation**

- (1) This section applies if a person injured in a motor accident was receiving a weekly payment or other payment in relation to loss of income under the *Workers Compensation Act 1951* (or a corresponding law of a State or another Territory) on the date of the motor accident.
- (2) The injured person's *pre-injury earning capacity* is the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks before the date of the motor accident:
  - (a) the person's gross income as an employee;
  - (b) the person's net income as a self-employed person.

*Note* The MAI guidelines may make provision in relation to the matters to be taken into account to determine an injured person's pre-injury weekly income or pre-injury earning capacity (see s 90).

## **88 Pre-injury earning capacity—new work arrangement**

- (1) This section applies if a person injured in a motor accident has an arrangement with an employer or other person to undertake employment or start business as a self-employed person on the date of the motor accident or on a stated date after the date of the motor accident.
- (2) The injured person's *pre-injury earning capacity* is the weekly amount of the following agreed to be paid to the injured person under the arrangement:



- (a) if the person will be an employee under the arrangement—the person’s gross income as an employee;
- (b) if the person will be self-employed under the arrangement—the person’s net income as a self-employed person.

**89 Pre-injury earning capacity—full-time student**

- (1) This section applies if a person injured in a motor accident, on the date of the motor accident—
  - (a) is at least 15 years old; and
  - (b) is enrolled in a course of studies as a full-time student; and
  - (c) expects to be in paid work after completing—
    - (i) the course; or
    - (ii) if the person was in secondary school—the final year of secondary school.
- (2) The injured person’s *pre-injury earning capacity* is the weekly amount the person would have received if—
  - (a) the person had been employed in the occupation for which the person would be qualified on completion of the course of studies in which the person is a full-time student; or
  - (b) if the person is a full-time student at a secondary school—the person had been employed on successfully completing the final year of secondary school.

**90 Pre-injury weekly income and pre-injury earning capacity—MAI guidelines**

The MAI guidelines may make provision in relation to the matters to be taken into account to determine an injured person’s pre-injury weekly income or pre-injury earning capacity.

## **Division 2.4.2 Income replacement benefits—entitlement**

### **91 Income replacement benefits—entitlement**

- (1) A person injured in a motor accident is entitled to income replacement benefits if, on the date of the motor accident—

- (a) the person was at least 15 years old; and
- (b) the person was—
  - (i) in paid work; or
  - (ii) capable of being in paid work; and

*Note 1* **Paid work** includes paid leave from paid work—see s 79.

*Note 2* An injured person who is self-employed when the motor accident happened is in paid work—see s 79.

- (2) The MAI guidelines may make provision in relation to entitlement to income replacement benefits.
- (3) This section is subject to the following sections:
- (a) section 43 (Entitlement limited—uninsured motor vehicle);
  - (b) section 44 (Entitlement limited—foreign nationals);
  - (c) section 45 (Entitlement limited—single driving offence);
  - (d) section 46 (No entitlement—multiple driving offences);
  - (e) section 51 (No entitlement—serious offences);
  - (f) section 52 (No entitlement—act of terrorism);
  - (g) section 92 (No entitlement to income replacement benefits—death of injured person);

- (h) section 93 (No entitlement to income replacement benefits—retirement-aged injured person).

**92 No entitlement to income replacement benefits—death of injured person**

- (1) A person injured in a motor accident is not entitled to income replacement benefits if the person is dead.
- (2) However, subsection (1) does not affect an entitlement to income replacement benefits that accrued before the injured person's death.

**93 No entitlement to income replacement benefits—retirement-aged injured person**

A person injured in a motor accident is not entitled to income replacement benefits if, when the accident happens, the person is the following age:

(RA + 26 weeks)

**Commonwealth pension age**—see the [Social Security Act 1991](#) (Cwlth), section 23, definition of **pension age**.

**RA** means retirement age.

**retirement age** means the earlier of the following:

- (a) if the person was in paid work when the accident happened and there is a normal retirement age for people in work of the kind in which the person was engaged—that age;
- (b) the Commonwealth pension age.

## **Division 2.4.3      Income replacement benefits— payments**

### **94      Definitions—Division 2.4.3**

In this division:

*first payment period* means the period—

- (a) beginning on the date of the motor accident; and
- (b) ending 13 weeks after the date of the motor accident.

*post-injury earning capacity*, of an injured person, means the weekly amount the person has the capacity to earn in paid work for which the person is reasonably suited because of the person's education, training and experience, based on the person's fitness for work in that paid work as decided by the relevant insurer under section 100 (1) (Injured person's post-injury earning capacity).

*pre-injury income*, for an injured person, means the person's pre-injury weekly income or pre-injury earning capacity.

*second payment period* means the period—

- (a) beginning on the day after the end of the first payment period;  
and
- (b) ending 5 years after the date of the motor accident.

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**95      Meaning of *AWE adjusted*—Division 2.4.3**

- (1) In this division:

*AWE adjusted*, for an injured person's pre-injury income, means the person's income as adjusted in line with any adjustment in the AWE—

- (a) after the date of the motor accident in which the person sustained the injury; and
  - (b) on a day (an *adjustment day*) prescribed by regulation for the pre-injury income; and
  - (c) rounded up to the nearest dollar.
- (2) However, if an amount to be AWE adjusted would, if adjusted in line with the adjustment (the *negative adjustment*) to the AWE, become smaller, the amount is not reduced in line with the negative adjustment.
- (3) An amount that, in accordance with subsection (2), is not reduced may be increased in line with an adjustment in the AWE that would increase the amount only to the extent that the increase, or part of the increase, is not one that would cancel out the effect of the negative adjustment.
- (4) Subsection (3) does not apply to a negative adjustment once the effect of the negative adjustment has been offset against an increase in line with an adjustment in the AWE.

**Example—adjustments**

On 30 September 2020, Penny is receiving an income replacement benefit payment of \$1 500 a week. Penny's entitlement to income replacement benefits started on 15 June 2020.

The adjustment days prescribed for pre-injury income are 1 April and 1 October.

The AWE last published before 1 October 2020 (for May 2020) is \$1 812.80.

The AWE published for November 2019 (being 6 months before May 2020) is \$1 781.10.

The amount of Penny's income replacement benefit payment on the 1 October 2020 adjustment date is calculated as follows:

$$\$1\,500 \times (1812.80 \div 1718.1) = \$1\,5126.70$$

Penny's benefit payment from the adjustment date of 1 October 2020 is \$1 526.70 rounded to \$1 527.

## **96 Adjustment of pre-injury income**

- (1) The MAI commission must, on or before each adjustment day for pre-injury income, declare—
  - (a) the AWE adjustment factor for the pre-injury income; and
  - (b) that the AWE adjustment factor applies on the adjustment day.

- (2) A declaration under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (3) In this section:

*adjustment day*—see section 95 (1).

*AWE adjustment factor*, for an amount, means the factor prescribed by regulation for the amount.

## **97 Amount of income replacement benefits—first payment period**

A person injured in a motor accident is entitled to the amount each week worked out as follows for the first payment period:

$$(P - A) \times N$$

*A* means the amount of the injured person's post-injury earning capacity.

*N* means—

- (a) if *P* is less than \$800 AWE indexed—1.0; or
- (b) if *P* is \$800 AWE indexed or more—0.95.

*Note*      **AWE indexed**—see s 16.

*P* means—

- (a) if the injured person's pre-injury income AWE adjusted is \$2 250 AWE indexed or less—the amount of the injured person's pre-injury income AWE adjusted; or
- (b) if the injured person's pre-injury income AWE adjusted is more than \$2 250 AWE indexed—\$2 250 AWE indexed.

**98      Amount of income replacement benefits—second payment period**

A person injured in a motor accident is entitled to the amount each week worked out as follows for the second payment period:

$$(P - A) \times N$$

*A* means the amount of the injured person's post-injury earning capacity.

*N* means—

- (a) if *P* is less than \$800 AWE indexed—1.0; or
- (b) if *P* is equal to or more than \$800 AWE indexed and not more than \$1 000 AWE indexed—0.95; or
- (c) if *P* is more than \$1 000 AWE indexed—0.8.

*Note*      **AWE indexed**—see s 16.

**P** means—

- (a) if the injured person's pre-injury income AWE adjusted is \$2 250 AWE indexed or less—the amount of the injured person's pre-injury income AWE adjusted; or
- (b) if the injured person's pre-injury income AWE adjusted is more than \$2 250 AWE indexed—\$2 250 AWE indexed.

**99 Amount of income replacement benefits—injured person on workers compensation**

- (1) This section applies if an injured person receives a weekly payment or other payment in relation to loss of income under the *Workers Compensation Act 1951* (or a corresponding law of a State or another Territory) (a *workers compensation payment*) for any period to which the person is entitled to income replacement benefits.
- (2) For each week that the injured person receives the workers compensation payment, the amount of the income replacement benefit payment to which the person is entitled for that week is reduced by the amount of the workers compensation payment.

**100 Injured person's post-injury earning capacity**

- (1) The relevant insurer for a motor accident may make a decision about an injured person's post-injury earning capacity, including for the purpose of assessing the person's fitness for work as a result of the person's injury.
- (2) An injured person's fitness for work must be determined having regard to the following:
  - (a) the nature of the person's injury and the likely process of recovery;



- (b) treatment and care needs, including the likelihood that treatment and care will enhance earning capacity and any temporary incapacity that may result from treatment and care;
  - (c) any income the person receives from engaging in employment after the motor accident;
  - (d) any fitness for work certificates the person provides.
- (3) The MAI guidelines may make provision for the matters to be taken into account by a relevant insurer and the procedures for determining an injured person's post-injury earning capacity.

**101 Income replacement benefits—period payable**

- (1) This section applies if a relevant insurer accepts liability under section 67 (Relevant insurer must decide liability for defined benefits) for an application for defined benefits for an applicant.
- (2) The period for which income replacement benefits are payable—
- (a) starts on the day stated in column 3 of an item in table 101 in the circumstances stated in column 2 of the item; and
  - (b) ends 5 years after the date of the motor accident.

**Table 101 Start date for payment of income replacement benefits**

<b>column 1 item</b>	<b>column 2 circumstances applying to applicant</b>	<b>column 3 start day for payment of defined benefits</b>
1	<ul style="list-style-type: none"><li>(a) the insurer accepts liability for an application made during the application period; and</li><li>(b) the applicant is a person to whom s 81, s 82, s 83 or s 84 applies</li></ul>	the date of the motor accident

**Chapter 2** Motor accident injuries—defined benefits  
**Part 2.4** Defined benefits—income replacement benefits  
**Division 2.4.3** Income replacement benefits—payments

Section 101

<b>column 1 item</b>	<b>column 2 circumstances applying to applicant</b>	<b>column 3 start day for payment of defined benefits</b>
2	<ul style="list-style-type: none"> <li>(a) the insurer accepts liability for a late application; and</li> <li>(b) the applicant is a person to whom s 81, s 82, s 83 or s 84 applies</li> </ul>	28 days before the date of the late application
3	<ul style="list-style-type: none"> <li>(a) the insurer accepts liability for a late application; and</li> <li>(b) the applicant is a person to whom s 81, s 82, s 83 or s 84 applies; and</li> <li>(c) the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment of income replacement benefits</li> </ul>	the date of the motor accident
4	<ul style="list-style-type: none"> <li>(a) the insurer accepts liability for an application made during the application period; and</li> <li>(b) the applicant is a person to whom s 86 or s 87 applies</li> </ul>	the date the person anticipated returning to paid work
5	<ul style="list-style-type: none"> <li>(a) the insurer accepts liability for a late application; and</li> <li>(b) the applicant is a person to whom s 86 or s 87 applies</li> </ul>	the later of— <ul style="list-style-type: none"> <li>(a) the person anticipated returning to paid work; and</li> <li>(b) 28 days before the date of the late application</li> </ul>

<b>column 1 item</b>	<b>column 2 circumstances applying to applicant</b>	<b>column 3 start day for payment of defined benefits</b>
6	(a) the insurer accepts liability for a late application; and (b) the applicant is a person to whom s 86 or s 87 applies; and (c) the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment of income replacement benefits	the date the person anticipated returning to paid work
7	(a) the insurer accepts liability for an application made during the application period; and (b) the applicant is a person to whom s 88 or s 89 applies	the date the person anticipated starting work or a new business
8	(a) the insurer accepts liability for a late application; and (b) the applicant is a person to whom s 88 or s 89 applies	the later of— (a) the date the person anticipated starting work or a new business; and (b) 28 days before the date of the late application

column 1 item	column 2 circumstances applying to applicant	column 3 start day for payment of defined benefits
9	<p>(a) the insurer accepts liability for a late application; and</p> <p>(b) the applicant is a person to whom s 88 or s 89 applies; and</p> <p>(c) the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment of income replacement benefits</p>	the date the person anticipated starting work or a new business

- (3) The MAI guidelines may make provision for the kinds of circumstances that may be exceptional circumstances for subsection (2).

**102 Income replacement benefits—payable fortnightly**

Income replacement benefit payments are payable to an injured person every 14 days after the day the person becomes entitled to the benefits.

**103 Income replacement benefits—interim weekly payments**

- (1) This section applies if—
- (a) a person injured in a motor accident is entitled to income replacement benefits; and
- (b) the relevant insurer for the motor accident has asked the injured person for additional information to decide the amount of the income replacement benefit payment to which the person is entitled.

- 
- (2) The relevant insurer may pay the injured person an amount (an *interim weekly payment*) until whichever of the following happens first:
- (a) the person gives the insurer the additional information;
  - (b) 28 days after the day the insurer asks for the additional information;
  - (c) 13 weeks after the date of the motor accident.
- (3) The amount of the interim weekly payment is the percentage of \$2 250 AWE indexed prescribed by regulation.
- Note*     *AWE indexed*—see s 16.
- (4) On request by the injured person, the relevant insurer may, but need not, pay the person a lower interim weekly payment.
- (5) An interim weekly payment is payable every 14 days after the day the injured person becomes entitled to income replacement benefits.
- (6) The MAI guidelines may make provision in relation to interim weekly payments.

#### **Division 2.4.4            Income replacement benefits—injured person's obligations**

##### **104            Requirement for evidence in relation to fitness for work etc**

- (1) An injured person receiving income replacement benefit payments must give the relevant insurer for the motor accident the following information in relation to the period for which the person is receiving the payments:
- (a) a certificate in relation the person's fitness for work (a *fitness for work certificate*) for the stated period;

- (b) if the person has previously given the insurer a fitness for work certificate—a declaration signed by or on behalf of the person about whether the person has undertaken any paid work since giving the insurer the previous fitness for work certificate (a *work declaration*).

*Note 1* For how documents may be given, see the [Legislation Act](#), pt 19.5.

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (2) A fitness for work certificate has no effect to the extent that it applies to a period more than 13 weeks before the date of the certificate.
- (3) The MAI guidelines may make provision in relation to the following:
  - (a) the form and contents of fitness for work certificates and work declarations;
  - (b) who is to give a fitness for work certificate;
  - (c) the period to which a fitness for work certificate may apply;
  - (d) when a fitness for work certificate or work declaration must be given;
  - (e) the consequences of failing to give an insurer a fitness for work certificate or work declaration.

## **105 Suspension of benefit payments—failure to comply with request for assessment**

- (1) This section applies if the relevant insurer for a motor accident makes a reasonable request that the injured person undergo a medical or other examination to assess the person's fitness for work.

- (2) If the injured person fails without reasonable excuse to comply with the request, the relevant insurer may suspend the person's benefit payments for the period that the failure to comply continues.

*Note* An injured person's entitlement to income replacement benefits may also be suspended if the person fails to undergo treatment and care stated in the person's recovery plan (see s 124).

- (3) If the relevant insurer decides to suspend the injured person's benefit payments, the insurer must give the person written notice (a *suspension notice*) stating—
- (a) the reasons for the suspension; and
  - (b) the actions the person may take to avoid the benefit payments being suspended; and
  - (c) the date the suspension takes effect; and
  - (d) that the person may seek a review of the suspension under Part 2.10 (Dispute resolution).
- (4) A suspension notice must be given not later than 2 weeks before the date the suspension takes effect.

## **106 Offence—failure to notify changed circumstances**

- (1) A person commits an offence if—
- (a) the person receives income replacement benefits from an insurer; and
  - (b) the insurer tells the person they must notify the insurer about any change in circumstances as soon as possible after the change happens; and
  - (c) the person has a change in circumstances; and

- (d) the person fails to notify the insurer about the change in circumstances as soon as possible after the change happens.

Maximum penalty: 20 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) A regulation may prescribe how notice under subsection (1) (b) must be given.
- (3) In this section:

***change in circumstances***—a person receiving income replacement benefits has a ***change in circumstances*** if—

- (a) the person returns to or starts paid work; or
- (b) if the person is in paid work—the amount of income the person receives for the work changes.

## **107 Notice required to reduce or stop income replacement benefit payments**

- (1) This section applies if—
  - (a) a person injured in a motor accident has been receiving income replacement benefit payments from an insurer for at least 4 weeks; and
  - (b) the insurer decides to reduce or stop paying the payments because the person is no longer entitled to the payments or the amount of the payments.
- (2) This section does not apply in the following circumstances:
  - (a) the insurer reduces or stops the income replacement benefit payments because the injured person returns to work or has a change in the amount of income the person receives from paid work;



- (b) the income replacement benefit payments have been suspended under section 105 (Suspension of benefit payments—failure to comply with request for assessment);
  - (c) the injured person’s most recent fitness for work certificate expires.
- (3) The insurer must give the injured person written notice, stating—
  - (a) the reasons for the decision; and
  - (b) the date the decision takes effect (being at least 2 weeks after the notice is given to the person); and
  - (c) that the injured person may seek internal review of the decision under Part 2.10 (Dispute resolution).
- (4) A notice under subsection (3) must be given at least 2 weeks before the insurer reduces or stops the injured person’s benefit payments.
- (5) If the insurer fails to give the injured person written notice of a decision to which this section applies in the way required by this section, the person may recover from the insurer the amount of any benefit payments not received as a result of the insurer’s decision.

### **Division 2.4.5      Income replacement benefits— miscellaneous**

#### **108      Income replacement benefits not commutable to lump sum**

- (1) The relevant insurer for a motor accident must not commute income replacement benefits to which an injured person is, or may be, entitled to a lump sum payment.
- (2) This section is subject to section 169 (Lump sum payment of defined benefits—foreign nationals).

**109 Employer reimbursement for paid leave**

- (1) An injured person entitled to income replacement benefits may ask the relevant insurer for the motor accident to reimburse the person's employer for the cost of leave payments made to the person for leave taken as a result of the person's injury.
- (2) The amount reimbursed under subsection (1) must not be more than the amount of the income replacement benefit payment to which the injured person is entitled under this part.

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## **Part 2.5**                      **Defined benefits—treatment and care benefits**

### **Division 2.5.1**            **Preliminary—pt 2.5**

#### **110**            **Meaning of *treatment and care***

(1) In this Act:

*treatment and care*, of a person injured in a motor accident—

(a) means any of the following:

- (i) medical treatment (including pharmaceutical treatment);
- (ii) dental treatment;
- (iii) rehabilitation;
- (iv) ambulance transportation;
- (v) respite care;
- (vi) attendant care services;
- (vii) aids and appliances;
- (viii) prostheses;
- (ix) education and vocational training;
- (x) home and transport modification;
- (xi) workplace and educational facility modifications;
- (xii) any other kinds of treatment, care, support or services prescribed by regulation; but

(b) does not include excluded treatment and care.

(2) In this section:

***attendant care services***, for a person injured in a motor accident, means services that aim to give the person assistance with everyday tasks.

**Examples**

- personal assistance
- nursing
- home maintenance
- domestic services

***excluded treatment and care*** means treatment, care, support or services of a kind prescribed by regulation.

## **111 Meaning of *rehabilitation***

In this Act:

***rehabilitation***, of a person injured in a motor accident, means the process of enabling or attempting to enable the person to attain and maintain—

- (a) the maximum level of independent living; and
- (b) full physical, mental, social and vocational ability; and
- (c) full inclusion and participation in all aspects of life.

## **Division 2.5.2 Treatment and care benefits—entitlement**

### **112 Treatment and care benefits—entitlement**

- (1) A person injured in a motor accident is entitled to treatment and care benefits for the following:
  - (a) treatment and care expenses;

- (b) domestic services expenses;
  - (c) travel expenses.
- (2) This section is subject to the following sections:
- (a) section 43 (Entitlement limited—uninsured motor vehicle);
  - (b) section 44 (Entitlement limited—foreign nationals);
  - (c) section 46 (No entitlement—multiple driving offences);
  - (d) section 51 (No entitlement—serious offences);
  - (e) section 52 (No entitlement—act of terrorism);
  - (f) section 116 (No entitlement to treatment and care benefits—allowable expenses already paid);
  - (g) section 117 (No entitlement to treatment and care benefits—damages already paid);
  - (h) section 118 (No entitlement to treatment and care benefits—LTCS scheme participant);
  - (i) section 119 (Treatment and care benefits not payable in certain circumstances).

### **113      *Meaning of treatment and care expenses***

In this Act:

*treatment and care expenses*, for an injured person—

- (a) means expenses incurred by the injured person in providing for the injured person's treatment and care; but
- (b) does not include expenses incurred for treatment and care—
  - (i) that was not reasonable and necessary; or

*Note*      Section 120 deals with deciding whether treatment and care is reasonable and necessary.

- (ii) that did not relate to an injury sustained in the motor accident; or
- (iii) for which the injured person has not paid and is not liable to pay.

**Example—subpar (iii)**

nursing care or domestic services provided by a domestic partner or parent on a gratuitous basis

## **114 Meaning of *domestic services expenses***

- (1) In this Act:

*domestic services expenses* means expenses incurred by an injured person in employing another person to provide domestic services to the injured person's dependants if—

- (a) the injured person provided those domestic services to the dependants before the motor accident happened; and
- (b) the dependants are not able to undertake the domestic services because of their age, or physical or mental incapacity.

*Note 1* The defined benefits to which an injured person is entitled under this section are payable from the date of the motor accident or when the relevant insurer for the motor accident accepts liability for the injured person's application for defined benefits (see pt 2.3).

*Note 2* Defined benefits are not payable in relation to domestic services provided to a dependant of the injured person for which the injured person has not paid and is not liable to pay (see s 113 (b) (iii)).

- (2) In this section:

*dependant*, of a person injured in a motor accident, means any of the following who were wholly or partly dependent on the injured person when the motor accident happened:

- (a) a domestic partner of the injured person;

- (b) a parent, step-parent or grandparent of the injured person;
- (c) a child or grandchild of the injured person;
- (d) a sibling, half-sibling or step-sibling of the injured person;
- (e) an uncle, aunt, niece or nephew of the injured person;
- (f) any other person who was a member of the injured person's household when the motor accident happened;
- (g) an unborn child of the injured person at the time of the motor accident who is born after the accident.

**115      *Meaning of travel expenses***

In this Act:

*travel expenses*, for an injured person, means the reasonable and necessary travel and accommodation expenses incurred by the injured person and a parent or other carer accompanying the injured person in relation to travel undertaken to undergo treatment and care.

**116      *No entitlement to treatment and care benefits—allowable expenses already paid***

A person injured in a motor accident is not entitled to treatment and care benefits for allowable expenses if an insurer has already paid for the allowable expenses.

**117      *No entitlement to treatment and care benefits—damages already paid***

A person injured in a motor accident is not entitled to treatment and care benefits for the following expenses if an insurer has already paid for the expenses under a motor accident claim for the motor accident:

- (a) treatment and care expenses;
- (b) domestic services expenses;

- (c) travel expenses.

**118 No entitlement to treatment and care benefits—  
LTCS scheme participant**

A person injured in a motor accident is not entitled to treatment and care benefits if the person is a participant in the LTCS scheme in relation to the injury.

*Note* Also, common law damages for treatment and care are not available for LTCS scheme participants (see s 205).

**119 Treatment and care benefits not payable in certain  
circumstances**

Treatment and care benefits are not payable to a person injured in a motor accident in relation to the following:

- (a) treatment and care that an insurer has paid for under an arrangement for direct payment with the provider of the treatment and care;
- (b) ambulance transportation, if the injured person is not liable for the cost of the transportation.

**120 Deciding whether treatment and care is reasonable and  
necessary**

In deciding whether treatment and care for an injured person is reasonable and necessary, the relevant insurer for the motor accident must consider the following:

- (a) whether the treatment and care is reasonable and necessary in the circumstances;
- (b) whether the treatment and care—
  - (i) is directly related to the person's injury; and



- (ii) is appropriate for the injury; and
- (iii) will benefit the person;
- (c) the appropriateness of a provider of the treatment and care;
- (d) whether the treatment and care is cost effective;
- (e) the MAI guidelines.

### **Division 2.5.3      Treatment and care benefits— assessment**

#### **121      Assessment of injured person's injuries**

- (1) The relevant insurer for a motor accident may require a person injured in the motor accident to attend a health practitioner for an assessment of the injured person's needs for treatment and care, including a medical or other examination.

*Note 1*    An injured person must include an authority to disclose personal health information with the person's application—see s 59.

*Note 2*    **Authority to disclose personal health information**—see s 56.

*Note 3*    **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.

- (2) The injured person must comply with any reasonable request made by the relevant insurer in relation to the assessment.
- (3) If the injured person fails without reasonable excuse to comply with the relevant insurer's reasonable request, the insurer may suspend the injured person's treatment and care benefits and income replacement benefits until the person complies with the request.
- (4) The MAI guidelines may make provision in relation to—
  - (a) the conduct of assessments under this section; and
  - (b) the suspension of treatment and care benefits and income replacement benefits under this section.

## **Division 2.5.4 Treatment and care benefits— recovery plans**

### **122 Meaning of *recovery plan*—pt 2.5**

In this part:

*recovery plan*, for an injured person, means a plan that—

- (a) is prepared by the relevant insurer for the motor accident; and
- (b) provides for the management and coordination of the injured person's treatment and care.

### **123 Treatment and care benefits—recovery plan**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident is satisfied a person injured in the motor accident is entitled to treatment and care benefits; and
  - (b) because of an injury the injured person sustained as a result of the motor accident, the injured person is unable to undertake the duties and activities the injured person participated in before the motor accident.
- (2) However, this section does not apply if the injured person is able to resume the duties and activities the injured person participated in before the motor accident within 28 days after receiving a receipt notice or a late receipt notice.
- (3) The relevant insurer must give the injured person and the injured person's doctor a recovery plan for the injured person.

- (4) The relevant insurer must give the recovery plan to the injured person and the injured person's doctor within 28 days (or any longer time stated in the MAI guidelines) after the day—
  - (a) the relevant insurer gives the injured person a receipt notice or late receipt notice for the person's application for defined benefits; or
  - (b) if the injured person is admitted to hospital within 2 days after the motor accident happened and remains in hospital for a continuous period of at least 3 weeks—the person is discharged from hospital.

#### **124 Recovery plan—content**

A recovery plan must—

- (a) state the treatment and care approved by the relevant insurer as reasonable and necessary treatment and care for the injured person; and
- (b) include a statement to the effect that the injured person's entitlement to the following may be suspended if the injured person unreasonably fails to undergo the treatment and care stated in the injured person's recovery plan:
  - (i) treatment and care benefits;
  - (ii) income replacement benefits.

#### **125 Recovery plan—MAI guidelines**

The MAI guidelines may make provision in relation to recovery plans, including provision for the following:

- (a) the time within which a recovery plan must be given to an injured person and the injured person's doctor;

- (b) approval of treatment and care, and treatment and care expenses, under a recovery plan;
- (c) information to be considered by the relevant insurer for a motor accident when developing a recovery plan for an injured person;
- (d) the minimum requirements for a recovery plan;
- (e) the obligations an injured person has under a recovery plan;
- (f) the obligations the relevant insurer for a motor accident has under a recovery plan.

**126 Recovery plan—treatment and care not in recovery plan**

- (1) If the relevant insurer for a motor accident gives a person injured in the motor accident a recovery plan—
  - (a) the injured person must apply to the relevant insurer for approval to undergo treatment and care that is not mentioned in the recovery plan; and
  - (b) the relevant insurer is not liable for treatment and care expenses incurred in relation to treatment and care the injured person undergoes without the relevant insurer's approval.
- (2) The relevant insurer may approve treatment and care that is not mentioned in the recovery plan if the relevant insurer is satisfied on reasonable grounds that the treatment and care—
  - (a) is reasonable and necessary in the circumstances; and
  - (b) will assist with the injured person's recovery or management of the person's injury.

**127 Recovery plan—review**

- (1) If the relevant insurer for a motor accident gives a person injured in the motor accident a recovery plan, the relevant insurer must review the recovery plan—
  - (a) at least once every 13 weeks after the plan is given to the injured person; and
  - (b) if there is a material change in the person's condition, circumstances or treatment outcomes.
- (2) The injured person—
  - (a) must tell the relevant insurer as soon as practicable if the person is unable to comply with the person's recovery plan; and
  - (b) may ask the relevant insurer for a new recovery plan.

**Division 2.5.5 Treatment and care benefits—  
payment**

**128 Treatment and care benefits—period payable**

- (1) This section applies if a relevant insurer accepts liability under section 67 for an application for defined benefits for an applicant.
- (2) The period for which treatment and care benefits are payable—
  - (a) starts on—
    - (i) the date of the motor accident, if—
      - (A) the insurer accepts liability for an application made during the application period; or
      - (B) the insurer accepts liability for a late application and is satisfied on reasonable grounds that there are exceptional circumstances justifying the earlier payment of treatment and care benefits; or

- (ii) if the insurer accepts liability for a late application and is not satisfied under paragraph (a) (i) (B)—the date that is 13 weeks before the date of the application; and
- (b) ends 5 years after the date of the motor accident.
- (3) The MAI guidelines may make provision for the kinds of circumstances that may be exceptional circumstances for subsection (2).

## **129 Payment of treatment and care benefits**

- (1) The relevant insurer for a motor accident must pay the treatment and care expenses of an injured person entitled to treatment and care benefits.
- (2) The MAI guidelines may make provision in relation to verifying the injured person's treatment and care expenses, including verifying that—
  - (a) the expenses were incurred; and
  - (b) the treatment and care for which the expenses were incurred was given; and
  - (c) the injury for which the treatment and care was given resulted from the motor accident.
- (3) The MAI guidelines may make provision in relation to the circumstances when the relevant insurer may make a payment under this section for reasonable and necessary treatment and care before the treatment and care expense is incurred.

- (4) In this section:

*treatment and care expenses*, of person injured in a motor accident, means the expenses incurred by the person that are—

- (a) approved by the relevant insurer for the motor accident; or
- (b) set out in the person's recovery plan.

### **130 Treatment and care benefits—MAI guidelines**

The MAI guidelines may make provision in relation to the following:

- (a) treatment and care that is considered reasonable and necessary for a person injured in a motor accident;
- (b) the maximum amount of defined benefits payable for stated treatment and care;
- (c) verifying that the treatment and care a person injured in a motor accident receives is reasonable and necessary;
- (d) verifying that the costs of treatment and care a person injured in a motor accident receives is reasonable and necessary;
- (e) the information a person injured in a motor accident may ask a health practitioner for in relation to an assessment of the person by the health practitioner under section 121 (Assessment of injured person's injuries);
- (f) the information the relevant insurer for a motor accident may ask a health practitioner for in relation to an assessment of a person injured in a motor accident by the health practitioner under section 121;
- (g) the circumstances in which the relevant insurer for a motor accident may ask for additional medical assessments of a person injured in a motor accident assessed under section 121;

- (h) payment of expenses in relation to reasonable and necessary treatment and care provided by any of the following:
  - (i) a public hospital;
  - (ii) an ambulance service;
  - (iii) a provider of a service relating to treatment and care that bulk bills for the service;
- (i) the principles to be followed by health practitioners in relation to the provision of treatment and care for injured people.



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## **Part 2.6**                      **Defined benefits—quality of life benefits**

### **Division 2.6.1**            **Quality of life benefits—entitlement**

#### **131**            **Quality of life benefits—entitlement**

- (1) A person injured in a motor accident is entitled to quality of life benefits if the personal injury sustained in the motor accident results in at least 5% WPI.
- (2) This section is subject to the following sections:
  - (a) section 43 (Entitlement limited—uninsured motor vehicle);
  - (b) section 44 (Entitlement limited—foreign nationals);
  - (c) section 45 (Entitlement limited—single driving offence);
  - (d) section 46 (No entitlement—multiple driving offences);
  - (e) section 47 (No entitlement—injuries self-inflicted);
  - (f) section 49 (Entitlement reduced—certain infringement notices);
  - (g) section 50 (Entitlement reduced—certain offences);
  - (h) section 51 (No entitlement—serious offences);
  - (i) section 52 (No entitlement—act of terrorism);
  - (j) section 132 (No entitlement to QOL benefits—benefits already paid);
  - (k) section 133 (No entitlement to QOL benefits—damages already paid).

**132 No entitlement to QOL benefits—benefits already paid**

A person injured in a motor accident is not entitled to quality of life benefits if the injured person has already received quality of life benefits in relation to the motor accident.

**133 No entitlement to QOL benefits—damages already paid**

A person injured in a motor accident is not entitled to quality of life benefits if the injured person has been awarded damages for loss of quality of life in a proceeding for a motor accident claim for the motor accident.

**Division 2.6.2 Quality of life benefits—application**

**134 QOL benefits application**

- (1) A person who has received a receipt notice, or late receipt notice, under section 62 (Application for defined benefits—action following receipt) may apply to the relevant insurer for the motor accident for quality of life benefits (a ***QOL benefits application***).
- (2) The QOL benefits application must be made—
  - (a) not earlier than 26 weeks after the date of the motor accident; and
  - (b) not later than 4 years and 6 months after the date of the motor accident.
- (3) A QOL benefits application must—
  - (a) request an assessment of the injured person’s whole person impairment; and
  - (b) include the details required by the MAI guidelines; and
  - (c) be accompanied by the documents required by the MAI guidelines.

**135 Insurer believes injuries stable and permanent impairment**

- (1) This section applies if the relevant insurer for a motor accident—
  - (a) receives a QOL benefits application from a person injured in the accident; and
  - (b) reasonably believes that—
    - (i) the person's injuries have stabilised; and
    - (ii) the person is likely to have a permanent impairment as a result of the injuries.
- (2) The relevant insurer must refer the injured person to an authorised IME provider for a WPI assessment.

**136 Insurer believes injuries stable but no permanent impairment**

- (1) This section applies if the relevant insurer for a motor accident—
  - (a) receives a QOL benefits application from a person injured in the accident; and
  - (b) reasonably believes that—
    - (i) the person's injuries have stabilised; but
    - (ii) the person is not likely to have a permanent impairment as a result of the injuries.
- (2) The relevant insurer must give the injured person a written notice telling the person—
  - (a) that the insurer believes—
    - (i) the person's injuries have stabilised; but
    - (ii) the person is not likely to have a permanent impairment as a result of the injuries; and

- (b) the reasons for the belief; and
  - (c) that the insurer will not refer the person for a WPI assessment unless the person—
    - (i) confirms the request for the assessment; and
    - (ii) pays an excess payment to the insurer for the assessment.
- (3) If the injured person confirms the request for a WPI assessment, in writing, and pays the excess payment, the relevant insurer must refer the person to an authorised IME provider for a WPI assessment.
- (4) If the injured person's WPI is greater than 0%, the relevant insurer must reimburse the person for the amount of the excess payment.
- (5) The excess payment is the higher of:
  - (a) \$500 AWE indexed; and
  - (b)  $\frac{1}{4}$  of the fee payable for the WPI assessment.

**137 Insurer believes injuries not stabilised—up to 4 years  
6 months after motor accident**

- (1) This section applies if the relevant insurer for a motor accident—
  - (a) receives a QOL benefits application from a person injured in the motor accident; and
  - (b) reasonably believes that the person's injuries have not stabilised; and
  - (c) it is less than 4 years and 6 months after the date of the motor accident.
- (2) The relevant insurer must give the injured person a written notice telling the person—
  - (a) that the insurer believes the person's injuries have not stabilised; and

- (b) the reasons for the belief; and
  - (c) that the insurer recommends that the WPI assessment be delayed until the injuries have stabilised; and
  - (d) that the injured person may request a WPI assessment be carried out immediately but the insurer will not pay for a further assessment if the assessment confirms that person's injuries have not stabilised.
- (3) If the injured person requests a WPI assessment be carried out immediately the relevant insurer must refer the injured person to an authorised IME provider for a WPI assessment.

**138 WPI assessment 4 years 6 months after motor accident**

- (1) This section applies if the relevant insurer for a motor accident—
- (a) either—
    - (i) receives a QOL benefits application from a person injured in the motor accident; or
    - (ii) reasonably believes that the injured person's injuries have not stabilised; and
  - (b) either—
    - (i) the person has not had a WPI assessment in relation to the injuries; or
    - (ii) a WPI assessment has confirmed that the person's injuries had not stabilised; and
  - (c) it is 4 years and 6 months after the date of the motor accident.
- (2) The relevant insurer must refer the injured person to an authorised IME provider for a WPI assessment.

- (3) If the WPI assessment states that the injured person's injuries have not stabilised—
  - (a) the assessment must estimate the person's WPI; and
  - (b) the estimated WPI is taken to be the person's WPI.

### **Division 2.6.3            Quality of life benefits—    WPI assessment**

#### **139            Meaning of *WPI assessment***

In this Act:

***WPI assessment***, of a person injured in a motor accident, means an assessment to evaluate and report on the person's injuries to determine the person's WPI as a result of the injuries.

#### **140            Meaning of *WPI report***

In this Act:

***WPI report*** means a written report, by an independent medical examiner or private medical examiner, of an injured person's WPI assessment that—

- (a) states the examiner's assessment of the injured person's WPI; and
- (b) complies with the WPI assessment guidelines.

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**141 WPI assessment guidelines**

- (1) The MAI commission must make guidelines (***WPI assessment guidelines***) for a WPI assessment of an person injured in a motor accident.
- (2) The WPI assessment guidelines—
  - (a) must explain how—
    - (i) a person’s whole person impairment is identified; and
    - (ii) the percentage of the person’s whole person impairment is worked out; and
  - (b) may state procedures and principles to be followed in making a WPI assessment including assessing whether—
    - (i) a person’s injuries have stabilised; and
    - (ii) the person is likely to have a permanent impairment as a result of the injuries; and
  - (c) may apply, adopt or incorporate a law of another jurisdiction or instrument as in force from time to time.

*Note* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (3) The [Legislation Act](#), section 47 (6) does not apply in relation to a law or instrument applied, adopted or incorporated under subsection (2) (c).

*Note* A law or instrument does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (4) The WPI assessment guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**142 Arrangement of WPI assessment**

- (1) This section applies if an injured person is referred to an authorised IME provider for a WPI assessment under—
  - (a) section 135 (Insurer believes injuries stable and permanent impairment); or
  - (b) section 136 (Insurer believes injuries stable but no permanent impairment); or
  - (c) section 137 (Insurer believes injuries not stabilised—up to 4 years 6 months after motor accident); or
  - (d) section 138 (WPI assessment 4 years 6 months after motor accident).
- (2) The IME provider must arrange for 1 or more independent medical examiners to carry out a WPI assessment of the injured person.
- (3) The MAI guidelines may make provision in relation to the procedure for arranging a WPI assessment of an injured person, including—
  - (a) selecting an IME provider; and
  - (b) the time within which the assessment must be arranged; and
  - (c) arrangements for payment of the assessment.

**143 WPI assessment—provision of information**

- (1) This section applies if an authorised IME provider arranges for an independent medical examiner to carry out a WPI assessment of an injured person.
- (2) The injured person must give the independent medical examiner—
  - (a) all information in the injured person's possession that is relevant to the WPI assessment; and



- (b) any other information the independent medical examiner reasonably requires for the WPI assessment.
- (3) The relevant insurer for the motor accident must give the independent medical examiner—
  - (a) all information in the insurer's possession that is relevant to the WPI assessment; and
  - (b) any other information the independent medical examiner reasonably requires for the WPI assessment.
- (4) The information must be given to the independent medical examiner at least 10 days before the day the independent medical examiner is to carry out the WPI assessment.
- (5) The independent medical examiner may decline to carry out the WPI assessment if the injured person or the insurer fails to give any information reasonably required by the independent medical examiner.

**144 WPI assessment—WPI assessment guidelines**

A WPI assessment of an injured person must be carried out—

- (a) in accordance with the WPI assessment guidelines; and
- (b) by—
  - (i) an independent medical examiner who is—
    - (A) trained as required by the WPI assessment guidelines; and
    - (B) selected by an authorised IME provider to conduct the assessment; or
  - (ii) if the injured person may arrange for a private medical examiner to carry out a WPI assessment—a private medical examiner selected by the injured person.

**145 WPI assessment—both physical and psychological injuries**

- (1) If an injured person sustains both a physical injury and a psychological injury resulting from a motor accident, the person is entitled to quality of life benefits for whole person impairment resulting from either the physical injury or the psychological injury, but not both injuries.
- (2) Before the relevant insurer for the motor accident refers the injured person for a WPI assessment, the person must tell the insurer, in writing, which kind of injury is to be assessed.
- (3) The injured person may arrange for a private medical examiner to carry out a WPI assessment for the other kind of injury.
- (4) However, the relevant insurer for the motor accident is only liable for the costs of 1 WPI assessment for 1 kind of injury.
- (5) In this section:

*psychological injury* means an injury that is—

- (a) a psychological or psychiatric disorder, including the physiological effect of a psychological or psychiatric disorder on the nervous system; and
- (b) diagnosed by a psychiatrist or clinical psychologist.

**146 WPI assessment—multiple body systems affected**

- (1) If an injured person has injuries to more than 1 body system—
  - (a) a WPI assessment of each affected body system may be made; and
  - (b) each WPI assessment may be carried out by a different independent medical examiner; and

- (c) the WPI assessments may be combined in accordance with the WPI assessment guidelines to decide the injured person's WPI.
- (2) However, in carrying out a WPI assessment of an injured person, the independent medical examiner must only assess—
  - (a) if the injured person nominates physical injuries under section 145 (2)—physical injuries; or
  - (b) if the injured person nominates psychological injuries under section 145 (2)—psychological injuries.

**147 WPI report to be prepared**

- (1) An independent medical examiner who carries out a WPI assessment of an injured person must give a WPI report about the assessment to the IME provider who arranged the assessment.
- (2) The IME provider must give the WPI report to the relevant insurer for the motor accident.
- (3) The WPI assessment guidelines may make provision for the requirements for a WPI report, including the time within which a WPI report must be given.

**148 WPI less than 5%**

- (1) If a WPI report from an independent medical examiner assesses an injured person's WPI as less than 5%, the relevant insurer for the motor accident must, within 14 days after receiving the report, give the injured person a written notice—
  - (a) including a copy of the report; and
  - (b) telling the person that the person must, within 26 weeks after receiving the notice—
    - (i) notify the insurer, in writing, whether they accept or disagree with the report; and

- (ii) if the person disagrees with the report and wishes to have a second WPI assessment carried out—
    - (A) arrange a second WPI assessment at their own expense; and
    - (B) give the insurer the second WPI report.
- (2) If the injured person does not notify the insurer, and give the insurer the second WPI report, within the 26 weeks, the person is taken to have accepted the report.
- (3) If the injured person accepts (or is taken to accept) the report, the person's application for quality of life benefits is taken to have been finally dealt with.

**149 WPI 5% to 9%**

- (1) If a WPI report from an independent medical examiner assesses an injured person's WPI as at least 5% but not more than 9%, the relevant insurer for the motor accident must, within 14 days after receiving the report, give the injured person a written notice—
  - (a) including a copy of the report; and
  - (b) offering the person the amount of quality of life benefits payable for their WPI under Division 2.6.4 (Quality of life benefits—amount payable); and
  - (c) telling the person that the person must, within 26 weeks after receiving the notice—
    - (i) notify the insurer, in writing, whether they accept or disagree with the report; and

- (ii) if the person disagrees with the report and wishes to have a second WPI assessment carried out—
    - (A) arrange a second WPI assessment at their own expense; and
    - (B) give the insurer the second WPI report.
- (2) If the injured person does not notify the insurer, and give the insurer the second WPI report, within the 26 weeks, the person is taken to have accepted the offer.
- (3) If the injured person accepts (or is taken to accept) the offer—
  - (a) the person's application for quality of life benefits is taken to have been finally dealt with; and
  - (b) the amount of quality of life benefits payable for their WPI under Division 2.6.4 must be paid by the relevant insurer to the person.

**150 WPI 10% or more—injured person not entitled to make motor accident claim**

- (1) This section applies if—
  - (a) a WPI report from an independent medical examiner assesses an injured person's WPI as at least 10%; but
  - (b) the injured person is not entitled to make a motor accident claim under Chapter 3 (Motor accident injuries—common law damages) in relation to the motor accident.
- (2) The relevant insurer for the motor accident must, within 14 days after receiving the report, give the injured person a written notice—
  - (a) including a copy of the report; and

- (b) offering the person the amount of quality of life benefits payable for their WPI under Division 2.6.4 (Quality of life benefits—amount payable); and
- (c) telling the person that the person must, within 26 weeks after receiving the notice—
  - (i) notify the insurer, in writing, whether they accept or disagree with the report; and
  - (ii) if the person disagrees with the report and wishes to have a second WPI assessment carried out—
    - (A) arrange a second WPI assessment at their own expense; and
    - (B) give the insurer the second WPI report.
- (3) If the injured person does not notify the insurer, and give the insurer the second WPI report, within the 26 weeks, the person is taken to have accepted the offer.
- (4) If the injured person accepts (or is taken to accept) the offer—
  - (a) the person’s application for quality of life benefits is taken to have been finally dealt with; and
  - (b) the amount of quality of life benefits payable for their WPI under Division 2.6.4 must be paid by the relevant insurer to the person.

**151 WPI 10% or more—injured person entitled to make motor accident claim**

- (1) This section applies if—
  - (a) a WPI report from an independent medical examiner assesses an injured person’s WPI as at least 10%; and

- (b) the injured person is entitled to make a motor accident claim under Chapter 3 (Motor accident injuries—common law damages) in relation to the motor accident.
- (2) The relevant insurer for the motor accident must, within 14 days after receiving the report, give the injured person a written notice—
  - (a) including a copy of the report; and
  - (b) offering the person the amount of quality of life benefits payable for their WPI under Division 2.6.4 (Quality of life benefits—amount payable); and
  - (c) explaining the consequences of accepting the offer, including—
    - (i) that the person is entitled to make a motor accident claim in relation to the motor accident under Chapter 3 (Motor accident injuries—common law damages); and
    - (ii) that if the person accepts the offer and makes a claim under Chapter 3, the person is not entitled to damages for loss of quality of life under Chapter 3; and
  - (d) telling the person that the person must, by the due date—
    - (i) notify the insurer, in writing, whether they accept or disagree with the report; and—
    - (ii) if the person disagrees with the report and wishes to have a second WPI assessment carried out—
      - (A) arrange a second WPI assessment at their own expense; and
      - (B) give the insurer the second WPI report.
- (3) If the injured person accepts the offer—
  - (a) the injured person’s application for quality of life benefits is taken to have been finally dealt with; and

- (b) the relevant insurer must pay to the injured person the amount of quality of life benefits payable for their WPI under Division 2.6.4.
- (4) If the injured person does not notify the insurer, and give the insurer the second WPI report, by the due date, the injured person's—
  - (a) application for quality of life benefits is taken to have been finally dealt with; and
  - (b) entitlement to quality of life benefits in relation to the motor accident ends.
- (5) In this section:  
*due date* means the later of—
  - (a) 5 years after the date of the motor accident; and
  - (b) 26 weeks after the person receives the notice.

## **152 Second WPI report**

- (1) This section applies if an injured person notifies the relevant insurer for the motor accident under section 148, section 149, section 150 or section 151 that they disagree with the WPI report (the *first WPI report*) and wish to have a second WPI assessment carried out.
- (2) The injured person may arrange for a private medical examiner to carry out a second WPI assessment.
- (3) The private medical examiner must carry out the second WPI assessment in accordance with the WPI assessment guidelines.
- (4) The private medical examiner must prepare a WPI report about the second WPI assessment (the *second WPI report*) and give it to the injured person.
- (5) The injured person may give a copy of the second WPI report to the relevant insurer.



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- (6) The MAI guidelines may make provision in relation to the following:
- (a) the relevant insurer's responsibilities in relation to the second WPI report;
  - (b) the time limits that apply to an offer of quality of life benefits made in response to the second WPI report.

**153      Second WPI report—original WPI may be affirmed or increased**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident receives a second WPI report about an injured person; and
  - (b) the assessment of WPI in the second WPI report is higher than in the first WPI report.
- (2) The relevant insurer may—
  - (a) give a copy of the second WPI report to the IME provider that arranged the first WPI report; and
  - (b) request the IME provider to arrange a review of the first WPI report.
- (3) The MAI guidelines may make provision in relation to the time limit within which the second WPI report may be given to the first medical examiner.
- (4) An independent medical examiner may, in response to the second WPI report—
  - (a) affirm the original assessment of the injured person's WPI; or
  - (b) increase the assessment of the injured person's WPI.
- (5) The IME provider must give the relevant insurer written notice of the affirmation or increase (a *notice of affirmation or increase*).

- (6) If the independent medical examiner increases the assessment of the injured person's WPI, the relevant insurer is bound by the increased assessment.

#### **154 Final offer WPI**

- (1) This section applies if the relevant insurer for a motor accident receives a second WPI report about an injured person.
- (2) The relevant insurer must decide a WPI to determine the final offer to make to the injured person (the *final offer WPI*).
- (3) The final offer WPI must be—
  - (a) not less than—
    - (i) if the insurer has not requested the IME provider to arrange a review of the first WPI report under section 153—the WPI assessed in the first WPI report ; or
    - (ii) if the insurer has requested the IME provider to arrange a review of the first WPI report under section 153—the affirmed or increased assessment of WPI stated in the notice of affirmation or increase; and
  - (b) not more than the WPI assessed in the second WPI report.

#### **155 Final offer WPI less than 5%**

- (1) If the relevant insurer for a motor accident decides an injured person's final offer WPI is less than 5%, the relevant insurer must, within the stated time, give the person a written notice—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—including a copy of the IME provider's notice of affirmation or increase; and

- (b) telling the person—
  - (i) their final offer WPI; and
  - (ii) they are not entitled to quality of life benefits; and
  - (iii) how they may apply for external review of the final offer WPI decision.
- (2) In this section:  
*stated time* means—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—14 days after receiving the IME provider’s notice of affirmation or increase; or
  - (b) if the insurer did not request the IME provider to arrange a review of the first WPI report under section 153—28 days after the insurer received the second WPI report.

**156 Final offer WPI 5% to 9%**

- (1) If the relevant insurer for a motor accident decides an injured person’s final offer WPI is at least 5% but not more than 9%, the relevant insurer must, within the stated time, give the person a written notice—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—including a copy of the IME provider’s notice of affirmation or increase; and
  - (b) telling the person—
    - (i) their final offer WPI; and
    - (ii) how they may apply for external review of the final offer WPI decision; and
  - (c) offering the person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4 (Quality of life benefits—amount payable); and

- (d) telling the person that the person must, within 28 days after receiving the notice, notify the insurer, in writing whether they—
  - (i) accept the offer; or
  - (ii) have applied for external review of the final offer WPI decision.
- (2) If the injured person does not notify the relevant insurer within the 28 days, the person is taken to have accepted the offer.
- (3) If the injured person accepts (or is taken to accept) the offer—
  - (a) the person’s application for quality of life benefits is taken to have been finally dealt with; and
  - (b) the relevant insurer must pay to the injured person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4.
- (4) In this section:  
*stated time* means—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—14 days after receiving the IME provider’s notice of affirmation or increase; or
  - (b) if the insurer did not request the IME provider to arrange a review of the first WPI report under section 153—28 days after the insurer received the second WPI report.

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**157 Final offer WPI 10% or more—injured person not entitled to make motor accident claim**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident decides an injured person's final offer WPI is at least 10%; but
  - (b) the injured person is not entitled to make a motor accident claim under Chapter 3 (Motor accident injuries—common law damages) in relation to the motor accident.
- (2) The relevant insurer must, within the stated time, give the person a written notice—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—including a copy of the IME provider's notice of affirmation or increase; and
  - (b) telling the injured person—
    - (i) their final offer WPI; and
    - (ii) how they may apply for external review of the final offer WPI decision; and
  - (c) offering the person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4 (Quality of life benefits—amount payable); and
  - (d) telling the person that the person must, within 28 days after receiving the notice, notify the insurer, in writing whether they—
    - (i) accept the offer; or
    - (ii) have applied for external review of the final offer WPI decision.
- (3) If the injured person does not notify the relevant insurer within the 28 days, the person is taken to have accepted the offer.

- (4) If the injured person accepts (or is taken to accept) the offer—
  - (a) the person’s application for quality of life benefits is taken to have been finally dealt with; and
  - (b) the relevant insurer must pay to the injured person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4.
- (5) In this section:  
*stated time* means—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—14 days after receiving the IME provider’s notice of affirmation or increase; or
  - (b) if the insurer did not request the IME provider to arrange a review of the first WPI report under section 153—28 days after the insurer received the second WPI report.

**158 Final offer WPI 10% or more—injured person entitled to make motor accident claim**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident decides an injured person’s final offer WPI is at least 10%; but
  - (b) the injured person is entitled to make a motor accident claim under Chapter 3 (Motor accident injuries—common law damages) in relation to the motor accident.
- (2) The relevant insurer must, within the stated time, give the person a written notice—
  - (a) if the insurer requested the IME provider to arrange a review of the first WPI report under section 153—including a copy of the IME provider’s notice of affirmation or increase; and

- (b) telling the injured person—
    - (i) their final offer WPI; and
    - (ii) how they may apply for external review of the final offer WPI decision; and
  - (c) offering the person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4 (Quality of life benefits—amount payable); and
  - (d) explaining the consequences of accepting the offer, including—
    - (i) that the person is entitled to make a motor accident claim in relation to the motor accident under Chapter 3 (Motor accident injuries—common law damages); and
    - (ii) that if the person accepts the offer and makes a claim under Chapter 3, the person is not entitled to damages for loss of quality of life under Chapter 3; and
  - (e) telling the person that the person must notify the insurer, in writing, by the due date, whether they—
    - (i) accept the offer; or
    - (ii) have applied for external review of the final offer WPI decision.
- (3) If the injured person accepts the offer—
- (a) the person's application for quality of life benefits is taken to have been finally dealt with; and
  - (b) the relevant insurer must pay to the injured person the amount of quality of life benefits payable for their final offer WPI under Division 2.6.4.

- (4) If the injured person does not notify the insurer by the due date, the injured person's—
  - (a) application for quality of life benefits is taken to have been finally dealt with; and
  - (b) entitlement to quality of life benefits in relation to the motor accident ends.
- (5) In this section:  
*due date* means the later of—
  - (a) 5 years after the date of the motor accident; and
  - (b) 26 weeks after the person receives the notice.

**159 WPI assessment—relevant insurer to pay**

- (1) The relevant insurer for a motor accident is liable for the costs of a WPI assessment, unless otherwise provided in this part.
- (2) However, the relevant insurer is liable for the costs of only 1 WPI assessment for an injured person unless the person has injuries to more than 1 body system.
- (3) If the injured person has injuries to more than 1 body system, the relevant insurer is liable for the costs of only 1 WPI assessment for each affected body system for the injured person.



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**Division 2.6.4      Quality of life benefits—amount payable**

**160      Quality of life benefits—amount payable**

- (1) The amount of quality of life benefits payable to a person injured in a motor accident is the following, as at the date of the WPI report:
- (a) for a WPI percentage of less than 5%—nil;
  - (b) for a WPI percentage of 5%—\$7 000 AWE indexed;
  - (c) for a WPI percentage of 6% to 10%—  
\$7 000 AWE indexed + [(WPI–5) x \$2 100 AWE indexed];
  - (d) for a WPI percentage of 11% to 20%—  
\$17 500 AWE indexed + [(WPI–10) x \$2 450 AWE indexed];
  - (e) for a WPI percentage of 21% to 50%—  
\$42 000 AWE indexed + [(WPI–20) x \$2 800 AWE indexed];
  - (f) for a WPI percentage of 51% to 99%—  
\$126 000 AWE indexed + [(WPI–50) x \$4 480 AWE indexed];
  - (g) for a WPI percentage of 100%—\$350 000 AWE indexed.

*Note*      **AWE indexed**—see s 16.

- (2) The MAI commission must, in a declaration, publish the amount worked out under subsection (1) for each whole number WPI—
- (a) on the commencement of this section; and
  - (b) each year on the indexation day.

*Note*      **Indexation day**, for a year—see the dictionary.

- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

- (4) In this section:

**WPI** means the number derived by expressing the percentage of whole person impairment as a number.

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## **Part 2.7                      Defined benefits—death benefits**

### **Division 2.7.1              Death benefits—entitlement**

#### **161              Death benefits—entitlement**

- (1) The estate of a person who died as a result of a motor accident is entitled to death benefits for the death if the person dies within 2 years after the date of the motor accident.
- (2) This section is subject to the following sections:
  - (a) section 44 (Entitlement limited—foreign nationals);
  - (b) section 47 (No entitlement—injuries self-inflicted);
  - (c) section 52 (No entitlement—act of terrorism);
  - (d) section 162 (No entitlement to death benefits—conduct making up offence);
  - (e) section 163 (No entitlement to death benefits—quality of life benefits already paid).

#### **162              No entitlement to death benefits—conduct making up offence**

- (1) This section applies if—
  - (a) a person dies as a result of a motor accident; and
  - (b) a coroner establishes that conduct the person engaged in, in relation to the motor accident, made up the physical elements consisting of conduct of—
    - (i) 2 or more driving offences; or
    - (ii) a serious offence.
- (2) The estate of the dead person is not entitled to death benefits in relation to the person's death.

- (3) In this section:

*serious offence*—see section 51 (5).

**163 No entitlement to death benefits—quality of life benefits already paid**

The estate of a person who died as a result of a motor accident is not entitled to death benefits for the death if the dead person has already received—

- (a) quality of life benefits in relation to the motor accident; or
- (b) quality of life damages in relation to the motor accident.

**Division 2.7.2 Death benefits—amount payable**

**164 Death benefits—amount payable**

- (1) The following amounts of death benefits are payable to the estate of a person who died as a result of a motor accident:
  - (a) if, at the date of the motor accident, the dead person had a domestic partner or dependent former domestic partner—\$190 000 AWE indexed;
  - (b) if, at the date of the motor accident, the dead person had—
    - (i) only 1 dependent child—\$40 000 AWE indexed; or
    - (ii) only 2 dependent children—\$80 000 AWE indexed; or
    - (iii) only 3 dependent children—\$120 000 AWE indexed; or
    - (iv) 4 or more dependent children—\$160 000 AWE indexed.

*Note* *AWE indexed*—see s 16.

(2) In this section:

***dependent child***, of a person, means someone who—

- (a) is 1 or more of the following:
  - (i) a child (including an unborn child born after the person's death), grandchild or stepchild of the person;
  - (ii) living with the person as a member of the person's family; and
- (b) is 1 or more of the following:
  - (i) under 18 years old;
  - (ii) a full-time student and under 25 years old;
  - (iii) a person with a disability and wholly or partly financially dependent on the person.

***dependent former domestic partner***, of a person, means a former domestic partner of the person who is wholly or partly financially dependent on the person.

***disability***—see the [\*Disability Services Act 1991\*](#), dictionary.

**165      Death benefits—income replacement benefits and treatment and care benefits still payable**

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident accepts liability for an application for death benefits in relation to a dead person for the motor accident; and
  - (b) before the person died, the person was entitled to—
    - (i) income replacement benefits; or
    - (ii) treatment and care benefits.

- (2) The relevant insurer—
  - (a) is not entitled to recover any amount of income replacement benefits or treatment and care benefits already paid to the person; and
  - (b) must pay to the person's estate any amount of income replacement benefits or treatment and care benefits to which the person was entitled and had not received when the person died.

- (1) The person who has paid, or is liable to pay, the funeral expenses of a person who died as a result of a motor accident is entitled to funeral benefits for funeral expenses for the dead person.

(2) This section is subject to section 52 (No entitlement—act of terrorism).

***funeral expenses***, for a dead person, includes the cost of transporting the dead person's body to a place in Australia outside the ACT, or outside Australia.

The maximum amount of funeral benefits payable is \$15 000 AWE indexed.

*Note* *AWE indexed*—see s 16.

## Part 2.9                      Defined benefits—Australians living overseas and foreign nationals

### 168              Periodic payment of defined benefits—Australians living overseas

- (1) This section applies if—
  - (a) an insurer must pay defined benefits to a person under this Act;  
and
  - (b) the person is an Australian living overseas.
- (2) The insurer must pay the amount of defined benefits to which the Australian living overseas is entitled under this chapter in the form of regular instalments (*periodic payments*).
- (3) The periodic payments must be deposited into an account the Australian living overseas has with an authorised deposit-taking institution.

*Note*      *Authorised deposit-taking institution*—see the [Legislation Act](#), dict,  
pt 1.

- (4) The insurer must not commute defined benefits to which the Australian living overseas is, or may be, entitled to a lump sum payment.
- (5) The MAI guidelines may make provision for determining the following:
  - (a) the period for which an Australian living overseas must live outside Australia to be eligible for periodic payments (the *eligibility period*);
  - (b) the amount and frequency of periodic payments payable to an Australian living overseas.



- (6) In this section:

*Australian living overseas* means a person injured in a motor accident who—

- (a) is an Australian citizen or permanent resident of Australia; and
- (b) lives outside Australia; and
- (c) has lived outside Australia for longer than the eligibility period (if any); and
- (d) intends to live outside Australia permanently or for an extended time.

## **169 Lump sum payment of defined benefits—foreign nationals**

- (1) This section applies if—

- (a) an insurer must pay defined benefits to a person under this Act; and
- (b) the person is a foreign national.

*Note* If a foreign national is injured in, or dies as a result of, a motor accident, a person entitled to defined benefits in relation to the injuries or death is not entitled to the extent that the foreign national's injuries or death are covered by an insurance policy held by the foreign national in relation to their stay in Australia—see s 44.

- (2) The insurer and the foreign national may agree that the insurer pay the defined benefits expected to be payable to the foreign national under this chapter by giving the foreign national a lump sum payment to cover the amount of the defined benefits (a ***lump sum agreement***).
- (3) The insurer must continue to pay the defined benefits payable to the foreign national under this chapter until the foreign national enters into the lump sum agreement.

- (4) However, the insurer and the foreign national may agree on the frequency of the payment of the defined benefits (not more than fortnightly) until the foreign national enters into the lump sum agreement.
- (5) The MAI guidelines may make provision for determining the following:
  - (a) the extent to which a foreign national's injury is covered by an insurance policy held by the foreign national in relation to their stay in Australia;
  - (b) the eligibility of a foreign national to enter into a lump sum agreement;
  - (c) the amount of a lump sum payable to a foreign national under a lump sum agreement and how the amount is to be calculated;
  - (d) the defined benefits that are to be taken into account when calculating the amount of a lump sum payable to a foreign national under a lump sum agreement;
  - (e) procedures for the payment of defined benefits to a foreign national until the foreign national enters a lump sum agreement.
- (6) If a foreign national receives a lump sum under a lump sum agreement with an insurer, the foreign national—
  - (a) ceases to be entitled to defined benefits under this chapter in relation to the motor accident; and
  - (b) is not eligible for compensation in relation to the foreign national's treatment and care needs under the LTCS Act or the *Workers Compensation Act 1951*.

- (7) If the foreign national makes a motor accident claim in relation to the motor accident under Chapter 3 (Motor accident injuries—common law damages), the amount of the lump sum under the lump sum agreement must be taken into account when assessing damages for the motor accident claim.

## Part 2.10 Dispute resolution

### Division 2.10.1 Internal review of insurer's decision

#### 170 Definitions—Division 2.10.1

In this division:

***internally reviewable decision*** means a decision of an insurer about an internally reviewable matter.

***internally reviewable matter*** means a matter prescribed by regulation to be an internally reviewable matter.

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

***internal review***, of an insurer's reviewable decision, means a review of the decision, carried out by the insurer under this part.

#### 171 Internal review—application

- (1) An applicant for defined benefits may apply to an insurer for internal review of an internally reviewable decision the insurer has made about the application.
- (2) An application for internal review must be made within 28 days after the date of the internally reviewable decision.
- (3) However, an application for internal review may be made after the 28 days (a ***late application***) if—
  - (a) the applicant satisfies the insurer that they have a full and satisfactory explanation for the delay; and

- (b) the MAI guidelines provide for a late application to be made within a longer period.
- (4) For subsection (3) (a), a *full and satisfactory explanation* by an applicant for a delay is a full account of the conduct, including the actions, knowledge and belief of the applicant, from the date of the internally reviewable decision until the date of providing the explanation.
- (5) The explanation is not a satisfactory explanation unless a reasonable person in the position of the applicant would have been justified in experiencing the same delay.
- (6) The MAI guidelines may make provision for internal review applications.
- (7) An application for internal review must be made in accordance with the MAI guidelines.

## **172 Internal review—carrying out internal review**

- (1) The MAI guidelines may make provision for—
  - (a) who may or may not carry out an internal review; and
  - (b) how an internal review is to be carried out, including provision requiring an insurer to give—
    - (i) reasons for the insurer's decision on an internal review; and
    - (ii) supporting documentation for the insurer's decision on an internal review.
- (2) An insurer carrying out an internal review must carry out the internal review in accordance with the MAI guidelines.

**173 Internal review—application does not stay decision**

A request for internal review of an internally reviewable decision does not operate to stay the decision or otherwise prevent action being taken based on the decision.

**174 Internal review—information to be considered**

- (1) The applicant must give the insurer the information the insurer requests and reasonably requires for the internal review.
- (2) An internal review may consider information that was not provided before the decision being reviewed was made.

**175 Internal review—decision**

In deciding an application for internal review of an internally reviewable decision, the insurer may—

- (a) affirm the decision; or
- (b) amend the decision; or
- (c) set aside the decision and make a substitute decision.

**176 Internal review—10 business days for decision**

- (1) An insurer must, within 10 business days after receiving an application for internal review—
  - (a) decide the application; and
  - (b) notify the applicant of the decision.
- (2) However, the MAI guidelines may provide for particular circumstances in which the 10 business days may be extended.

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## Division 2.10.2 External review of insurer's decision

### 177 Definitions—Division 2.10.2

In this division:

***externally reviewable decision*** means a decision of an insurer about an externally reviewable matter.

***externally reviewable matter*** means a matter prescribed by regulation to be an externally reviewable matter.

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

***external reviewer***, for an externally reviewable decision, means the entity responsible for carrying out external review of the decision under an external reviewer declaration.

### 178 External reviewer declaration

- (1) The Attorney-General may declare the entity responsible for carrying out external review of an externally reviewable decision.

*Note* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**179 External review—application**

- (1) An applicant for defined benefits may apply to an external reviewer for external review of an externally reviewable decision.
- (2) However, an application for external review may be made only if—
  - (a) an internal review of the decision has been carried out; or
  - (b) the applicant has requested internal review of the decision but the insurer has failed to complete the internal review and notify the applicant as required under section 176 (Internal review—10 business days for completion); or
  - (c) the decision is about an externally reviewable matter of a kind prescribed by regulation for this section.
- (3) The MAI guidelines may make provision for limiting the time within which an application for external review may be made.
- (4) An application for external review must be made in accordance with the MAI guidelines.

**180 External review—applicant must notify insurer**

As soon as practicable after making an application for external review of an externally reviewable decision, the applicant must give written notice of the application to the insurer who made the decision.

**181 External review—application does not stay decision**

An application for external review of an externally reviewable decision does not operate to stay the decision or otherwise prevent action being taken based on the decision.



**182 External review—information to be provided**

The applicant and the insurer must give the external reviewer the information the external reviewer requests and reasonably requires for the external review.

**183 External review—decision**

In deciding an application for external review of an externally reviewable decision, the external reviewer may—

- (a) affirm the decision; or
- (b) amend the decision; or
- (c) set aside the decision and make a substitute decision; or
- (d) set aside the decision and remit the matter for reconsideration by the insurer in accordance with any directions of the external reviewer.

**184 External review—time for decision**

- (1) An external reviewer must decide an application for external review within the period provided in the MAI guidelines (the ***decision period***).
- (2) However, an external reviewer's decision is not invalid only because it is made after the end of the decision period.

**185 External review—effect of decision**

- (1) An external reviewer's decision on an application for external review takes effect on—
  - (a) the day of the decision; or
  - (b) if a later day is stated in the decision—the later day.

- (2) If the external reviewer's decision amends or substitutes an insurer's decision, the external reviewer's decision is taken—
  - (a) to be the original decision of the insurer (other than for internal review or external review under this part); and
  - (b) unless the external reviewer directs otherwise—to have had effect as the original decision of the insurer on and after the day of the insurer's actual original decision.
- (3) An external reviewer's decision on an application for external review is binding on the parties to the review.

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## **Part 2.11                      Defined benefits—miscellaneous**

### **186                      Legal costs and fees payable by applicants and insurers**

- (1) A regulation may prescribe the legal costs and fees payable by applicants and insurers in relation to applications for defined benefits (including in relation to dispute resolution).
- (2) A lawyer is not entitled to be paid or to recover any legal costs or fees for services provided to an applicant or an insurer in relation to an application for defined benefits other than the prescribed costs and fees.

### **187                      Defined benefits information service**

- (1) The MAI commission may approve a person to provide a defined benefits information service for this Act.
- (2) However, the MAI commission must not approve a lawyer to provide defined benefits information service.
- (3) The MAI guidelines may make provision in relation to defined benefits information services, including—
  - (a) the form and content of applications for approval to provide a defined benefits information service; and
  - (b) the application process; and
  - (c) the qualifications required of providers; and
  - (d) the duration and conditions of approvals; and
  - (e) the information services to be provided.

## **Chapter 3                      Motor accident injuries— common law damages**

### **Part 3.1                      Preliminary**

#### **188                      Meaning of *motor accident claim***

In this Act:

*motor accident claim*—

- (a) means a claim for damages for personal injury caused by a motor accident; and
- (b) includes, for a fatal injury, a claim by the dead person's dependants or estate.

#### **189                      Meaning of *claimant* for a motor accident claim**

In this Act:

*claimant*, for a motor accident claim, means—

- (a) a person who makes, or is entitled to make, the motor accident claim; or
- (b) in relation to rehabilitation, medical treatment or loss suffered—the injured person to whom the motor accident claim relates.

**190 Meaning of *respondent* for a motor accident claim—ch 3**

In this chapter:

*respondent*, for a motor accident claim—

- (a) means a person against whom a claimant makes the motor accident claim; and
- (b) includes—
  - (i) if the person mentioned in paragraph (a) is not the insurer for the motor accident claim—the insurer for the motor accident claim; and
  - (ii) a person added as a later respondent under the *Civil Law (Wrongs) Act 2002*, section 55 (Claimant may add later respondents).

**191 Meaning of *insured person* for a motor accident claim**

In this Act:

*insured person*, for a motor accident claim, means—

- (a) an MAI insured person; or
- (b) a person for whose acts and omissions the nominal defendant is liable under section 277 (Nominal defendant liable—uninsured motor vehicle).

**192 Meaning of *insurer* for a motor accident claim**

In this Act:

*insurer*, of a person, for a motor accident claim means—

- (a) for an MAI insured person—the MAI insurer for the person; or
- (b) in any other case—the nominal defendant.

***insurer***, of a motor vehicle, for a motor accident claim means—

- (a) for an insured motor vehicle—the MAI insurer for the motor vehicle; or
- (b) for an uninsured motor vehicle—the nominal defendant; or
- (c) for an unidentified motor vehicle—the nominal defendant.

**193      Defined benefit payment etc—no effect on liability under motor accident claim**

The acceptance, or deemed acceptance, of liability for an application for defined benefits, or payment of defined benefits, by an insurer in relation to a motor accident—

- (a) is not an admission of liability in relation to the motor accident; and
- (b) does not in any way prejudice or affect a claim or proceeding arising out of the motor accident.

**194      Insured person not to admit liability, settle or make payments**

- (1) An insured person must not, without the written agreement of the person’s insurer—
  - (a) admit liability in relation to a motor accident claim; or
  - (b) settle, or offer to settle, a motor accident claim; or
  - (c) make a payment, or offer or promise to make a payment, in relation to a motor accident claim.
- (2) A contract, offer or promise made in contravention of this section does not bind the insurer.

- (3) This section does not prevent an insured person from providing a police officer with information reasonably required to prepare a report about a motor accident.
- (4) An insured person who contravenes this section does not incur civil liability to an insurer.

**195 Power of insurer to act for insured**

- (1) If a motor accident claim is made against an insured person, the person's insurer—
  - (a) must carry out the negotiations and legal proceedings related to the motor accident claim; and
  - (b) may compromise or settle the motor accident claim and legal proceedings related to the motor accident claim; and
  - (c) may act for the insured person in any other way for the motor accident claim.
- (2) The insured person must sign any documents necessary to give effect to this section and, if the insured person does not sign or is dead, absent or cannot be found, the insurer may sign for the insured person.
- (3) Nothing said or done by an insurer in relation to a motor accident claim, or legal proceedings related to a motor accident claim, is an admission of liability in, or otherwise prejudices or affects, another claim or proceedings arising out of the same circumstances.

**196 Nominal defendant may deal with motor accident claims**

- (1) If a motor accident claim is made against the nominal defendant, the nominal defendant may deal with the motor accident claim, and any proceeding relating to the motor accident claim, in the way the nominal defendant considers appropriate including—
  - (a) settling or compromising the motor accident claim; and

- (b) bringing and prosecuting a proceeding under this Act for the motor accident claim and settling or compromising the proceeding.
- (2) The nominal defendant must give the MAI commission the reports that the MAI commission reasonably requires about anything done by the nominal defendant under this section.

**197 Insurer may intervene in proceeding**

An insurer may apply to the court to be joined as a party to a proceeding brought against a defendant who is insured under an MAI policy with the insurer in order to argue that in the circumstances of the case it has no obligations under the policy to indemnify the defendant.



## **Part 3.2                      Threshold for damages**

### **198                      No damages unless WPI at least 10%**

- (1) An award of damages in a motor accident claim may be made only if the injured person to whom the motor accident claim relates has—
  - (a) made an application for quality of life benefits under Chapter 2 (Motor accident injuries—defined benefits) and been assessed as having a WPI of at least 10% as a result of the motor accident;  
or
  - (b) died as a result of the motor accident.
- (2) Subsection (1) does not prevent a motor accident claim from being settled at any time.

## Part 3.3 Damages for claims—exclusions and limitations

*Note* The *Civil Law (Wrongs) Act 2002*, part 7.1 (Damages for personal injuries—exclusions and limitations) also applies to motor accident claims. It includes, for example—

- provisions excluding liability if conduct was an indictable offence; and
- presumptions about contributory negligence if the injured person was intoxicated, relied on an intoxicated person or was not wearing a seatbelt; and
- limitations on damages for loss of earnings.

### 199 No coverage for driver

The driver of a motor vehicle involved in a motor accident is not entitled to recover damages in relation to personal injuries sustained by the driver in the motor accident if the motor accident was—

- (a) a no-fault motor accident; or

*Note* *No-fault motor accident*—see s 13.

- (b) caused by an act or omission of the driver.

*Note* However, the driver may be entitled to defined benefits under ch 2.

### 200 Quality of life damages—general

- (1) A claimant for a motor accident claim may be awarded damages for loss of quality of life (*quality of life damages*) under section 201 but may not be awarded any other damages for non-economic loss.

- (2) In this section:

*non-economic loss* includes the following:

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement.

## **201 Quality of life damages—amount payable**

- (1) The amount of quality of life damages that may be awarded to a claimant is the following, as at the date of the WPI report:
- (a) for a WPI percentage of 10%—\$25 000 AWE indexed;
  - (b) for a WPI percentage of 11% to 20%—  
\$25 000 AWE indexed + [(WPI–10) x \$3 500 AWE indexed];
  - (c) for a WPI percentage of 21% to 50%—  
\$60 000 AWE indexed + [(WPI–20) x \$4 000 AWE indexed];
  - (d) for a WPI percentage of 51% to 99%—  
\$180 000 AWE indexed + [(WPI–50) x \$6 400 AWE indexed];
  - (e) for a WPI percentage of 100%—\$500 000 AWE indexed.

*Note* *AWE indexed*—see s 16.

- (2) The MAI commission must, in a declaration, publish the amount worked out under subsection (1) for each whole number WPI—
- (a) on the commencement of this section; and
  - (b) each year on the indexation day.

*Note* *Indexation day*, for a year—see the dictionary.

- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**202 Quality of life damages—none if quality of life benefits received**

Quality of life damages may not be awarded to a person injured in a motor accident if the person has received quality of life benefits in relation to the motor accident.

**203 Damages for loss of earnings—none in first year**

Damages may not be awarded in a motor accident claim for any loss of earnings of the claimant in the first year after the motor accident.

*Note* Damages for loss of earnings are also limited under the [Civil Law \(Wrongs\) Act 2002](#), s 98.

**204 Gratuitous care—no damages**

Damages may not be awarded in a motor accident claim for treatment, care, support or services provided to a claimant for which the claimant has not paid and is not liable to pay.

**Example**

nursing care provided by a domestic partner or parent on a gratuitous basis

**205 Treatment and care—damages not available for LTCS participants**

- (1) This section applies to a person who is a participant in the LTCS scheme in relation to a motor accident injury.

*Note* **LTCS scheme**—see the dictionary.

**Participant**, in the LTCS scheme—see the dictionary.

- (2) An award of damages or an offer of settlement (including a mandatory final offer) made to the person in relation to the motor accident injury must not include an amount for the person's treatment and care needs, or any excluded treatment and care, that—
- (a) relate to the motor accident injury; and
  - (b) arise while the person is a participant in the LTCS scheme.

*Note*     **Treatment and care needs**, of a participant in the LTCS scheme—see the dictionary.

- (3) This section applies—
- (a) whether or not the treatment and care needs are assessed treatment and care needs under the [LTCS Act](#); and
  - (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and
  - (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge on a gratuitous basis.

*Note*     **LTCS Act**—see the dictionary.

**LTCS commissioner**—see the dictionary.

- (4) In this section:

**excluded treatment and care**—see the [LTCS Act](#), section 9.

## **206     Treatment and care—damages not available for LTCS scheme foreign national participants**

- (1) This section applies if a person—
- (a) is a foreign national participant in the LTCS scheme in relation to a motor accident injury; and

- (b) receives a lump sum under a lump sum agreement with the LTCS commissioner in relation to the motor accident injury.

*Note* **LTCS scheme**—see the dictionary.

**Participant**, in the LTCS scheme—see the dictionary.

- (2) An award of damages or an offer of settlement (including a mandatory final offer) made to the person in relation to the motor accident injury must not include an amount for the person's treatment and care needs, or any excluded treatment and care, that—

- (a) relate to the motor accident injury; and

- (b) either—

- (i) arose while the person was a participant in the LTCS scheme; or

- (ii) arise after the person receives the lump sum under the lump sum agreement.

*Note* **Treatment and care needs**, of a participant in the LTCS scheme—see the dictionary.

- (3) This section applies—

- (a) whether or not the treatment and care needs are assessed treatment and care needs under the [LTCS Act](#); and

- (b) whether or not the LTCS commissioner is required to make a payment in relation to the treatment and care needs; and

- (c) whether or not the treatment, care, support or services provided in connection with the treatment and care needs is provided without charge on a gratuitous basis.

*Note* **LTCS Act**—see the dictionary.

**LTCS commissioner**—see the dictionary.

- (4) In this section:

*excluded treatment and care*—see the [LTCS Act](#), section 9.

*foreign national participant*, in the LTCS scheme—see the [LTCS Act](#), section 30B.

*lump sum agreement*—see the [LTCS Act](#), section 30B.

## **207 Wrongful death claims**

Damages awarded in a motor accident claim to relatives or the estate of a person who died as a result of a motor accident must be reduced by the amount of any death benefits or quality of life benefits paid under chapter 2 in relation to the dead person.

## **Part 3.4                      No-fault motor accidents**

### **208                      Presumption of no-fault accident**

In a proceeding based on a motor accident claim, an averment by the claimant that the motor accident was a no-fault motor accident is evidence of that fact unless there is evidence to the contrary.

*Note*        *No-fault motor accident*—see s 13.

### **209                      Working out driver at fault in no-fault motor accident**

- (1) This section applies if a person is injured in a no-fault motor accident.
- (2) For the purposes of making a motor accident claim—
  - (a) if the motor accident was a single vehicle accident—the driver of the motor vehicle is taken to be the driver at fault; and
  - (b) if the motor accident was a multiple vehicle accident—the driver of each motor vehicle involved in the motor accident is taken to be equally at fault.



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## Part 3.5 Court proceedings on motor accident claims

*Note* The pre-court procedures set out in the *Civil Law (Wrongs) Act 2002*, ch 5 apply to a motor accident claim under this chapter.

### Division 3.5.1 Definitions—Part 3.5

#### 210 Definitions—Part 3.5

In this part:

*complying notice of claim* means a notice of claim given under the *Civil Law (Wrongs) Act 2002*, section 51 or section 55.

*contributor*, to a motor accident claim, means a person the respondent added as a contributor under the *Civil Law (Wrongs) Act 2002*, section 57.

*party*, to a motor accident claim, means a claimant, respondent or contributor.

### Division 3.5.2 Compulsory conferences before court proceedings

#### 211 Compulsory conference

- (1) Before a claimant for a motor accident claim brings a court proceeding based on the claim, the parties to the claim must have a conference (the *compulsory conference*).
- (2) Any party may call the compulsory conference—
  - (a) at a time and place agreed by each party; or

- (b) if more than 6 months has passed since the respondent received, or is taken to have received, the claimant's complying notice of claim—at a reasonable time and place nominated by the party calling the conference.
- (3) On application by a party, the court may decide the time and place for the compulsory conference and make any other orders the court considers appropriate.
- (4) The parties may, by agreement, change the time or place for holding the compulsory conference or adjourn the conference from time to time and from place to place.
- (5) The compulsory conference may be conducted, if the parties agree, by telephone or another form of communication allowing contemporaneous and continuous communication between the parties.

**212 Compulsory conference may be dispensed with**

- (1) On application by 1 or more of the parties for the motor accident claim, the court may dispense with the compulsory conference for good reason and make any other orders the court considers appropriate.
- (2) In considering whether to dispense with the compulsory conference, the court must take into account the extent of compliance by the parties with their obligations for the motor accident claim.

**213 Compulsory conference with mediator**

- (1) A compulsory conference may be held with a mediator if—
  - (a) each party for the motor accident claim agrees; and
  - (b) each party for the motor accident claim agrees, in writing, about how costs of the mediation are to be apportioned between the parties.

- (2) The mediator must be a person who is independent of the parties.
- (3) The mediator must be decided by agreement by each party.
- (4) However, if the parties are unable to agree on a mediator not later than 30 days after the date for the compulsory conference is decided, any party may apply to the registrar of the court for the registrar to decide the mediator.

## **214 Procedures before compulsory conference**

- (1) At least 7 days before the compulsory conference is to be held, each party for the motor accident claim must give each other party—
  - (a) a copy of each document that is relevant to the claim that has not yet been given to the other party; and
  - (b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required; and
  - (c) details of the party's legal representation; and
  - (d) if the party has legal representation—a certificate of readiness signed by the party's lawyer.
- (2) However, on application by a party, the court may exempt the party from an obligation to give material to another party before trial if satisfied that—
  - (a) giving the material would alert a person reasonably suspected of fraud to the suspicion; or
  - (b) there is some other good reason why the material should not be given.

(3) In this section:

***certificate of readiness***, by a party to a motor accident claim, means a certificate under this Act stating that—

- (a) the party is in all respects ready for the compulsory conference; and
- (b) the party has obtained all investigative material required for the trial, including witness statements from each person (other than expert witnesses) the party intends to call as a witness at the trial; and
- (c) the party has obtained medical or other expert reports from each person the party proposes to call as an expert witness at the trial; and
- (d) the party has fully complied with the party's obligations to give the other parties material relevant to the claim; and
- (e) the party's lawyer has given the party a costs statement.

***costs statement***, by a party's lawyer, means a statement containing—

- (a) details of the legal costs (clearly identifying costs that are legal fees and costs that are disbursements) payable by the party to the party's lawyer up to the completion of the conference; and
- (b) an estimate of the party's likely legal costs (clearly identifying costs that are legal fees and costs that are disbursements) if the claim proceeds to trial and is decided by the court; and
- (c) a statement of the consequences to the party, in terms of costs, in each of the following cases:
  - (i) if the amount of the damages awarded by the court is equal to, or more than, the claimant's mandatory final offer;

- (ii) if the amount of the damages awarded by the court is less than the claimant's mandatory final offer but equal to, or more than, the respondent's mandatory final offer;
- (iii) if the amount of the damages awarded by the court is equal to, or less than, the respondent's mandatory final offer.

## **215 Attendance and participation at compulsory conference**

- (1) Each conference participant must, unless the participant has a reasonable excuse—
  - (a) attend the compulsory conference; and
  - (b) actively take part in an attempt to settle the motor accident claim.
- (2) In this section:  
*conference participant* means—
  - (a) the claimant or the claimant's guardian; and
  - (b) a person authorised by a respondent or contributor to settle the motor accident claim on the respondent's or contributor's behalf.

## **Division 3.5.3 Mandatory final offers**

### **216 Mandatory final offers**

- (1) This section applies if, for a motor accident claim—
  - (a) the compulsory conference has been dispensed with under section 212; or
  - (b) the claim is not settled at the compulsory conference.

- (2) The claimant and the respondent for the motor accident claim must exchange written final offers (each of which is a *mandatory final offer*).
- (3) However, if a respondent denies liability altogether, the respondent must give the claimant a written notice of denial (a *mandatory final notice*).
- (4) If the respondent gives the claimant a mandatory final notice, for this Act, the respondent is taken to have given the claimant a mandatory final offer of \$0.
- (5) A mandatory final offer must identify how much of the offer is for quality of life damages.

**217 Mandatory final offers may be dispensed with**

The court may, on application by the claimant or respondent for the motor accident claim, dispense with the obligation to exchange mandatory final offers.

**218 Timing of mandatory final offers**

- (1) If the court has not dispensed with the obligation to exchange mandatory final offers, mandatory final offers for a motor accident claim must be exchanged—
  - (a) if the compulsory conference has been dispensed with—not later than 14 days after the day the conference was dispensed with; or
  - (b) if the claim is not settled at the compulsory conference—at the end of the conference.
- (2) A mandatory final offer remains open for 14 days.

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**219 Working out costs for mandatory final offers**

- (1) A mandatory final offer for \$50 000 or less must be exclusive of any amount for costs.
- (2) If a mandatory final offer is for \$50 000 or less but for more than \$30 000, and is accepted, costs must be worked out and paid in the way prescribed by regulation.
- (3) If a mandatory final offer is for \$30 000 or less, and is accepted—
  - (a) for a claimant who was a child at the time of the motor accident or holds a Commonwealth concession card when the offer is accepted—costs (including disbursements) must not exceed \$5 000; or
  - (b) in any other case—costs must be \$0.
- (4) In this section, a reference to an amount in relation to a mandatory final offer does not include any amount for quality of life damages.
- (5) In this section:

***Commonwealth concession card*** means any of the following cards:

- (a) a current health care card issued under the *Social Security Act 1991* (Cwlth);
- (b) a current pensioner concession card issued under the *Social Security Act 1991* (Cwlth);
- (c) a current pensioner concession card issued in relation to a pension under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth);
- (d) a current gold card;
- (e) a card prescribed by regulation.

*gold card* means a card known as the Repatriation Health Card—For All Conditions that evidences a person's eligibility, under the *Veterans' Entitlements Act 1986* (Cwlth) or the *Military Rehabilitation and Compensation Act 2004* (Cwlth), to be provided with treatment for all injuries or diseases.

**220 Court proceedings not to begin if mandatory final offer open**

- (1) A claimant for a motor accident claim must not begin a court proceeding based on the claim if a mandatory final offer for the claim remains open.
- (2) If a claimant brings a court proceeding based on a motor accident claim, the claimant must, at the beginning of the proceeding, file in the court a sealed envelope containing a copy of the claimant's mandatory final offer.
- (3) The respondent must, before or at the time of filing a defence, file in the court a sealed envelope containing a copy of the respondent's mandatory final offer.
- (4) The court must not read the mandatory final offers until the court has decided the claim.
- (5) However, the court must have regard to the mandatory final offers if making a decision about interest or costs.

**Division 3.5.4 Court proceedings**

**221 Time limit for beginning proceeding—general**

- (1) This section applies if a claimant for a motor accident claim does not begin a court proceeding based on the claim in accordance with the time limits in—
  - (a) section 222 (Time limit—compulsory conference); or



- (b) section 223 (Time limit—no compulsory conference); or
  - (c) section 224 (Time limit—no mandatory final offers).
- (2) The claimant may still begin the proceeding but the court may order the claimant to pay the respondent's costs caused by the delay.
  - (3) The respondent may apply to the court for an order deciding a time by which the claimant must begin the proceeding.
  - (4) If the claimant does not begin a proceeding in accordance with an order made under subsection (3), the motor accident claim is barred.

## **222 Time limit—compulsory conference**

- (1) This section applies if—
  - (a) the parties to a motor accident claim have had a compulsory conference; and
  - (b) the obligation to exchange mandatory final offers has not been dispensed with.
- (2) The claimant may begin a court proceeding based on the motor accident claim not later than—
  - (a) 60 days after the end of the compulsory conference; or
  - (b) a later day—
    - (i) agreed by the parties not later than 60 days after the end of the compulsory conference; or
    - (ii) decided by the court on application by the claimant not later than 60 days after the end of the compulsory conference.

**223 Time limit—no compulsory conference**

- (1) This section applies if—
  - (a) the compulsory conference for the parties to a motor accident claim has been dispensed with; but
  - (b) the obligation to exchange mandatory final offers has not been dispensed with.
- (2) The claimant may begin a court proceeding based on the motor accident claim—
  - (a) by the due date; or
  - (b) before a later day—
    - (i) agreed by the parties not later than the due date; or
    - (ii) decided by the court on application by the claimant not later than the due date.
- (3) In this section:  
*due date* means the day that is 60 days after the later of the following:
  - (a) 6 months after the respondent received, or is taken to have received, the claimant's complying notice of claim;
  - (b) the day the compulsory conference was dispensed with.

**224 Time limit—no mandatory final offers**

- (1) This section applies if a court dispenses with the obligation to exchange mandatory final offers.
- (2) A claimant may begin a court proceeding based on the motor accident claim not later than the day decided by the court when, or after, the court dispenses with the obligation.

**225 Insurer to be joint or sole defendant**

- (1) This section applies if—
  - (a) a claimant brings a court proceeding based on a motor accident claim; and
  - (b) the respondent is an insured person or an insurer for the claim.
- (2) The claimant must bring the proceeding against the insured person and the insurer as joint defendants.
- (3) However, the claimant may bring a proceeding against the insurer alone if—
  - (a) the insured person cannot be identified; or
  - (b) the insured person is dead; or
  - (c) it is impracticable to give the insured person a legal document.
- (4) If judgment is given in favour of the claimant on the motor accident claim for the personal injury, the judgment must be given against the insurer and not the insured person, and, if the proceeding involves other claims (unrelated to the personal injury), a separate judgment must be given on the other claims.
- (5) It is not a defence to a proceeding under this section if the insurer proves that—
  - (a) an MAI policy was obtained by fraud, or a material misstatement or nondisclosure; or
  - (b) the insured person is in breach of a contractual or statutory obligation.

**226 Procedure if respondent is insurer**

- (1) This section applies if—
  - (a) a claimant brings a court proceeding based on a motor accident claim; and
  - (b) the respondent is an insured person or an insurer.
- (2) If the motor accident claim lies against 2 or more insurers, all insurers become defendants to the proceeding, but the respondents' claim manager continues to represent all insurers in the proceeding unless the court gives leave allowing 1 or more of the insurers to be separately represented.
- (3) If a motor accident claim lies against 2 or more insurers, and a legal document related to a proceeding based on the motor accident claim is given to the respondents' claim manager, all insurers are taken to have been given the legal document.
- (4) If a legal document related to a proceeding based on a motor accident claim is given to the insurer, the insured person is also taken to have been given the legal document.
- (5) In this section:  
*respondents' claim manager*—see the [Civil Law \(Wrongs\) Act 2002](#), section 56.

**227 Exclusion of summary judgment on the basis of admissions**

- (1) In a court proceeding based on a motor accident claim, summary judgment is not to be given on the basis of the defendant's admissions.
- (2) However, this section does not prevent a court from giving a judgment by consent.

**228 Insurer's right to call and cross-examine insured person**

- (1) This section applies if—
  - (a) a claimant brings a court proceeding based on a motor accident claim; and
  - (b) the respondent is, or includes, an insurer.
- (2) The insurer may—
  - (a) call the insured person as a witness; and
  - (b) with the court's leave, cross-examine the insured person.

**229 Costs—awards of damages over \$50 000**

- (1) This section applies if a court awards more than \$50 000 AWE indexed in damages in a proceeding (other than an appellate proceeding) based on a motor accident claim.

*Note* AWE indexed—see s 16.

- (2) If the amount of damages is equal to or more than a mandatory final offer made by the claimant, the claimant may apply to the court for an order that the respondent pay the claimant's costs on a party and party basis up to the day the offer was made, and on an indemnity basis from that day.
- (3) If the amount of damages is less than a mandatory final offer made by the respondent, the respondent may apply to the court for an order that—
  - (a) the respondent pay the claimant's costs on a party and party basis up to the day the offer was made; and
  - (b) the claimant pay the respondent's costs on an indemnity basis from that day.

- (4) Also, the court may make an award of costs on an indemnity basis to compensate a party for costs resulting from a failure by another party to comply with a procedural obligation under this part.

- (5) In this section:

*damages* does not include an amount for quality of life damages.

### **Division 3.5.5 Judgment for noncompliance with time limits**

#### **230 Definitions—div 3.5.5**

In this division:

*compliance notice*—see section 231.

*enforcing party*—see section 231.

*late party*—see section 231.

*relevant notice claim*—see section 232.

*required thing*, under a compliance notice, means the thing required to be done under the notice.

#### **231 Notice time limit not complied with**

- (1) This section applies if—
- (a) for a motor accident claim—
    - (i) the respondent has given the claimant a mandatory final notice under section 216; or
    - (ii) the court has dispensed with the obligation to exchange mandatory final offers under section 217; or
    - (iii) the time for exchanging mandatory final offers under section 218 has closed; and

- (b) a party (the *late party*) to the motor accident claim fails to do something required to be done within a time limit for doing the thing under this chapter.
- (2) However, this section does not apply if—
  - (a) the late party is the claimant; and
  - (b) the claimant is not legally represented in relation to the claim.
- (3) Another party to the motor accident claim (the *enforcing party*) may give the late party a notice (the *compliance notice*) requiring the late party to do the required thing not later than 7 days after the day the late party receives the compliance notice.

**232      Thing not done within 7-day period—claimant as enforcing party**

- (1) This section applies if—
  - (a) an enforcing party has given a late party a compliance notice; and
  - (b) the late party does not do the required thing within the 7-day period in the notice; and
  - (c) the enforcing party is the claimant to the motor accident claim (the *relevant notice claim*) to which the notice relates.
- (2) The enforcing party may, not later than 14 days after the day the 7-day period ends, apply to the court for an order—
  - (a) if the claimant has not started a proceeding based on the relevant notice claim—giving the claimant leave to begin the proceeding; and
  - (b) giving judgment in the proceeding in favour of the claimant against the respondent.

**233      Thing not done within 7-day period—respondent as enforcing party**

- (1) This section applies if—
  - (a) an enforcing party has given a late party a compliance notice; and
  - (b) the late party does not do the required thing within the 7-day period in the notice; and
  - (c) the enforcing party is the respondent to the relevant notice claim.
- (2) The enforcing party may, not later than 14 days after the day the 7-day period ends, apply to the court for an order—
  - (a) if the claimant has not started a proceeding based on the relevant notice claim—that the claimant is barred from beginning the proceeding; or
  - (b) giving judgment in the proceeding in favour of the respondent against the claimant.

**234      Thing not done within 7-day period—court may make orders**

- (1) On application for judgment under section 232 or section 233, the court may make the orders sought.
- (2) In considering the application, the court must not make an order against the late party if the party establishes that the party had a reasonable excuse for failing to do the required thing within the 7-day period.



**235 Court orders in favour of claimant**

- (1) This section applies if the court makes an order giving judgment in favour of the claimant against the respondent under section 232.
- (2) The court must order—
  - (a) if the claimant and respondent have each made a written offer to the other party—damages worked out by adding the claimant's last written offer to the respondent's last written offer and dividing the total by 2; or
  - (b) if 1 of the parties has not made a written offer—damages to be assessed by the court.
- (3) The court must order the respondent to pay the claimant's costs on an indemnity basis from the day the complying claim was received by the respondent's insurer.

**236 Court orders in favour of respondent**

- (1) This section applies if the court makes an order in favour of the respondent against the claimant under section 233.
- (2) Unless the court otherwise orders, the claimant must pay the respondent's costs of the proceeding including the costs of the application.

## Part 3.6 Other matters

### 237 Effect of payments under LTCS Act on limitation period

- (1) To remove any doubt, a payment made by the LTCS commissioner under the [LTCS Act](#) does not, for the [Limitation Act 1985](#), section 32 (Confirmation), confirm a cause of action under this Act.

*Note* **LTCS Act**—see the dictionary.

**LTCS commissioner**—see the dictionary.

- (2) In this section:

**payment**, by the LTCS commissioner, means a payment that is made voluntarily or in accordance with a requirement under the [LTCS Act](#).

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## Chapter 4                      Motor accident injuries insurance

### Part 4.1                      Important concepts

#### 238                      Definitions—Act

In this Act:

*insurance industry deed*—see section 310.

*insured motor vehicle* means a motor vehicle, or other thing, insured under an MAI policy.

*Note*                      The motor vehicles and other things insured under an MAI policy are mentioned in s 241.

*MAI insured person*, for an MAI policy, means a person who is insured under the MAI policy.

*Note*                      The people insured under an MAI policy are mentioned in s 242.

*MAI insurer*—see section 239.

*motor accident injuries policy* (or *MAI policy*) means an insurance policy that complies with Part 4.3.

#### 239                      Meaning of *MAI insurer*

In this Act:

*MAI insurer* means—

- (a) for an insured motor vehicle that—
  - (i) is a registered motor vehicle—the insurer selected as the MAI insurer for the motor vehicle under—
    - (A) section 249 (Selecting for registered vehicle—first registration); or

- (B) section 250 (Selecting for registered vehicle—renewal of registration); or
- (ii) has a valid trader's plate attached—the insurer selected under section 251 (Selecting for motor vehicle with trader's plate) as the MAI insurer for a motor vehicle to which the trader's plate may be attached; or
- (iii) is a light rail vehicle—the insurer selected as the MAI insurer for the light rail vehicle under section 252 (Selecting for light rail vehicle); or
- (b) for a trailer or other thing that is—
  - (i) mentioned in section 241 (d) (Vehicles and other things insured under MAI policy)—the insurer for the motor vehicle to which the trailer or thing is attached or becomes detached; or
  - (ii) prescribed by regulation under section 241 (e)—the entity prescribed by regulation; or
- (c) for an MAI insured person—the MAI insurer for the MAI policy under which the person is insured; or
- (d) for an MAI policy—the MAI insurer that issued the policy.

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## Part 4.2                      Compulsory motor accident    injuries insurance

### 240            Offence—use uninsured motor vehicle on road or road    related area

- (1) A person commits an offence if—
- (a) the person uses a motor vehicle on a road or road related area;  
and
  - (b) the vehicle is not an insured motor vehicle.

Maximum penalty: 50 penalty units.

*Note*        *Use*, a vehicle, is defined in s 11 and includes provisions about trailers.  
*Road* and *road related area* are defined in the dictionary.

*Note*        Penalties imposed under this Act must be paid into the nominal defendant  
fund (see s 281).

- (2) This section does not apply to a person who uses a motor vehicle on a road or road related area if—
- (a) there is an unregistered vehicle permit in force for the vehicle;  
or
  - (b) the registration provisions do not apply to the vehicle because of the *Road Transport (Vehicle Registration) Regulation 2000*, part 2.2 (Vehicles not subject to registration provisions); or
  - (c) the vehicle is exempted from this section by regulation; or
  - (d) the motor vehicle is owned by—
    - (i) the Territory or a territory authority; or
    - (ii) the Commonwealth or a Commonwealth authority.

- (3) It is a defence to a prosecution for an offence against this section if the defendant establishes that, at the time the motor vehicle was used on the road or road related area, the defendant believed on reasonable grounds that the vehicle was an insured motor vehicle.

*Note* A trailer does not need to be separately insured (see s 241 and ss 276 to 279).

## **Part 4.3                      Motor accident insurance policies**

### **241                      Vehicles and other things insured under MAI policy**

An MAI policy insures—

- (a) a registered motor vehicle; and
- (b) a motor vehicle with a valid trader's plate attached; and
- (c) a light rail vehicle; and
- (d) a trailer or other thing that—
  - (i) is attached to a vehicle mentioned in paragraphs (a) to (c);  
or
  - (ii) becomes detached from a motor vehicle mentioned in paragraphs (a) to (c) and runs out of control; and
- (e) anything else prescribed by regulation.

### **242                      People insured under MAI policy**

An MAI policy insures—

- (a) a person who uses an insured motor vehicle; and
- (b) anyone else who is vicariously liable for the person's use of the insured motor vehicle; and
- (c) anyone else prescribed by regulation; and
- (d) if a person mentioned in paragraphs (a) to (c) is dead—the person's estate.

**243 Risks covered by MAI policy**

- (1) An MAI policy—
- (a) insures against liability for personal injury resulting from a motor accident; and
  - (b) provides benefits, on a no-fault basis, to people who sustain personal injury resulting from a motor accident.

*Note* If an MAI insurer is a relevant insurer for a motor accident under Chapter 2, defined benefits to which a person is entitled under that chapter in relation to the motor accident are payable by the MAI insurer (see s 40).

- (2) Subsection (1) (b) is subject to part 2.2 (Entitlement to defined benefits).

**244 Risks not covered by MAI policy**

- (1) An MAI policy does not insure against the risk of any of the following:
- (a) liability to pay compensation under the *Workers Compensation Act 1951* (or a corresponding law of a State or another territory);
  - (b) liability that may be incurred under an agreement unless the liability would have arisen without the agreement;
  - (c) liability that is attributable to an act that, having regard to the nature of the act and the context in which the act was done, it is reasonable to characterise as an act of terrorism;

*Note* See s (3) for when it is reasonable to characterise an act as an act of terrorism.

- (d) liability for personal injury, damage or loss—
- (i) that arises independently of a wrongful act or omission; or



- (ii) in relation to a motor accident claim—to the extent that the personal injury, loss or damage is attributable to the injured person's own wrongful act or omission;
  - (e) liability to pay exemplary, punitive or aggravated damages;
  - (f) liability to pay damages for a personal injury that arises gradually from a series of incidents;
  - (g) liability to pay the treatment, care and support costs of a participant in the LTCS scheme;
- Note* **LTCS scheme**—see the dictionary.
- (h) any other liability prescribed by regulation.
- (2) To remove any doubt, an MAI policy does not insure the responsible person for a motor vehicle, or the driver of a motor vehicle, if—
- (a) the motor vehicle is in an area that is subject to a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) that has the effect of disapplying this Act; or
  - (b) the motor vehicle is subject to a declaration under the *Road Transport (General) Act 1999*, section 13 (Power to exclude vehicles, persons or animals from road transport legislation) that has the effect of disapplying this Act; or
  - (c) the responsible person or driver is subject to a declaration under the *Road Transport (General) Act 1999*, section 13 that has the effect of disapplying this Act.
- (3) For subsection (1) (c)—
- (a) an act cannot be characterised as an act of terrorism unless the act—
    - (i) causes or threatens to cause death, personal injury or damage to property; and

- (ii) is designed to influence a government or intimidate the public or a section of the public; and
  - (iii) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause; and
- (b) a lawful activity or industrial action cannot be characterised as an act of terrorism.

**245 Licensed insurer not to decline etc to issue MAI policy**

A licensed insurer cannot repudiate, or decline to issue or renew, an MAI policy.

**246 MAI insurer to indemnify MAI insured people**

- (1) An MAI policy under this Act is binding on the MAI insurer for the MAI policy.
- (2) The MAI insurer for an MAI policy is, despite any other law, liable to indemnify each MAI insured person for the MAI policy for the liability that the policy purports to insure against.
- (3) To remove any doubt, the reference to any other law in subsection (2) does not include a reference to—
  - (a) section 244 (Risks not covered by MAI policy); or
  - (b) a declaration made under either of the following provisions of the *Road Transport (General) Act 1999*:
    - (i) section 12 (Power to include or exclude areas in road transport legislation);
    - (ii) section 13 (Power to exclude vehicles, persons or animals from road transport legislation).

**247 MAI policy not affected by transfer etc of vehicle or trader's plate**

- (1) An MAI policy for an insured motor vehicle is not affected by a change in who is the responsible person for the vehicle.
- (2) An MAI policy for a registered motor vehicle is not affected by a transfer of the registration of the vehicle.

*Note* Registration of a vehicle may be transferred under the [Road Transport \(Vehicle Registration\) Regulation 2000](#), pt 4.2.

- (3) An MAI policy for a motor vehicle with a trader's plate attached is not affected by a transfer of the trader's plate.

*Note* A trader's plate may be transferred under the [Road Transport \(Vehicle Registration\) Regulation 2000](#), s 100.

- (4) If the road transport authority becomes aware of any of the following changes in relation to an insured motor vehicle, the road transport authority must tell the MAI insurer for the motor vehicle about the change:
  - (a) a change in who is the responsible person for the vehicle;
  - (b) a change in registration details of the vehicle;
  - (c) a change of person to whom a trader's plate is issued.

**248 MAI policy not affected by errors etc**

- (1) The validity of an MAI policy is not affected by an error of the road transport authority, or an error of a licensed insurer, in relation to the policy.
- (2) The validity of an MAI policy is not affected by payment of an incorrect MAI premium for the policy.

- (3) A licensed insurer who has been paid an incorrect MAI premium may recover any outstanding amount as a debt owing to the insurer.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction of the ACAT (see [Legislation Act](#), s 177).

## **Part 4.4                      Selecting an MAI insurer**

### **249                      Selecting for registered vehicle—first registration**

If a person applies to the road transport authority for registration of a motor vehicle, the person must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the MAI insurer for an MAI policy for the motor vehicle for the period of registration; and
- (b) pay to the road transport authority the MAI premium for the MAI policy for the period of registration.

*Note*            MAI premiums are decided under pt 4.7.

### **250                      Selecting for registered vehicle—renewal of registration**

If a registered operator of a registered motor vehicle applies for renewal of registration of the motor vehicle, the registered operator must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the MAI insurer for an MAI policy for the motor vehicle for the period of renewed registration; and
- (b) pay to the road transport authority the MAI premium for the MAI policy for the period of renewed registration.

*Note*            MAI premiums are decided under pt 4.7.

### **251                      Selecting for motor vehicle with trader's plate**

If a person applies to the road transport authority for a trader's plate, the person must also—

- (a) select, in a way approved by the road transport authority, a licensed insurer to be the MAI insurer for an MAI policy for a motor vehicle to which the trader's plate may be attached for the period for which the trader's plate is issued; and

- (b) pay to the road transport authority the MAI premium for the MAI policy for the period for which the trader's plate is issued.

*Note 1* Trader's plates are issued under the [Road Transport \(Vehicle Registration\) Regulation 2000](#), s 88.

*Note 2* MAI premiums are decided under pt 4.7.

## **252 Selecting for light rail vehicle**

- (1) Before each insurance period for which a rail transport operator for a light rail vehicle intends to use the vehicle on a road or road related area, the operator must—

- (a) tell the road transport authority about—
  - (i) the intention; and
  - (ii) if there is no MAI policy in force for the light rail vehicle—the unique identification number displayed on the light rail vehicle by the rail transport operator; and
- (b) select, in a way approved by the road transport authority, a licensed insurer to be the MAI insurer for an MAI policy for the light rail vehicle for the insurance period; and
- (c) pay to the road transport authority the MAI premium for the MAI policy for the insurance period.

*Note* MAI premiums are decided under pt 4.7.

- (2) In this section:

***insurance period***, for a light rail vehicle, means—

- (a) a period of 12 months beginning on 1 November; or
- (b) if the light rail vehicle is to start operating on a road or road related area on a day earlier than 1 November in a calendar year—a period of less than 12 months beginning on the day after the MAI premium is paid and ending on 31 October.

## **Part 4.5                      Length of MAI policy**

### **253                      When MAI policy takes effect—registered motor vehicles**

If the road transport authority registers or renews the registration of a motor vehicle, an MAI policy comes into force for the motor vehicle when the registration or renewal of registration takes effect.

### **254                      MAI policy in effect while insurer on risk—registered motor vehicles**

An MAI policy for a registered motor vehicle is in force for the period for which the MAI insurer is on risk under—

- (a) section 255 (Insurer on risk—period of registration); or
- (b) section 256 (Insurer on risk—period of grace).

### **255                      Insurer on risk—period of registration**

- (1) The MAI insurer of a registered motor vehicle is on risk for the period of registration of the motor vehicle.
- (2) However, if the registration is renewed before the previous period of registration ends—
  - (a) the old insurer is on risk until the previous period of registration ends; and
  - (b) the new insurer comes on risk immediately after the previous period of registration ends.
- (3) The MAI insurer ceases to be on risk if the MAI policy is cancelled.

*Note*                      Cancellation of MAI policies for a registered motor vehicle is dealt with in s 262.

**256 Insurer on risk—period of grace**

- (1) If the registration of a motor vehicle is renewed during the period of grace—
  - (a) the old insurer is on risk until midnight on the day the registration is renewed; and
  - (b) the new insurer comes on risk immediately after midnight on the day the registration is renewed and is on risk for the period of renewed registration.
- (2) If the registration is renewed after the period of grace ends—
  - (a) the new insurer comes on risk at the time the renewal of registration is effected; and
  - (b) the motor vehicle is not an insured motor vehicle from the end of the previous period of registration until the renewal of registration takes effect.
- (3) An MAI insurer ceases to be on risk if the MAI policy is cancelled.

*Note* Cancellation of MAI policies for a registered motor vehicle is dealt with in s 262.

- (4) In this section:

***period of grace*** means the 14 days after the registration, or renewal of registration, of a motor vehicle ends.

*Note* There is no period of grace following the cancellation or surrender of registration or a renewal of registration of a motor vehicle.

**257 When MAI policy takes effect—trader's plates**

If the road transport authority issues a trader's plate to a person, an MAI policy comes into force for a motor vehicle to which the trader's plate is attached—

- (a) when the trader's plate is attached to the motor vehicle; and



- (b) only if the trader's plate is a valid trader's plate.

**258 MAI policy in effect while insurer on risk—trader's plates**

- (1) An MAI policy for a motor vehicle with a valid trader's plate attached is in force for the period for which the MAI insurer is on risk under this section.
- (2) The MAI insurer of the motor vehicle is on risk for the period for which the valid trader's plate is attached to the motor vehicle.
- (3) The MAI insurer ceases to be on risk if the trader's plate is detached from the vehicle.
- (4) The MAI insurer ceases to be on risk if the MAI policy is cancelled.

*Note* Cancellation of MAI policies for a motor vehicle with a traders plate attached is dealt with in s 263.

**259 When MAI policy takes effect—light rail vehicles**

If a rail transport operator for a light rail vehicle pays the road transport authority an MAI premium for an MAI policy for the light rail vehicle, the MAI policy comes into force—

- (a) on the next 1 November; or
- (b) if there is no MAI policy in force for the light rail vehicle when the MAI premium is paid—on the day after the day payment is made.

**260 MAI policy in effect while insurer on risk—light rail vehicles**

- (1) An MAI policy for a light rail vehicle is in force for the period for which the MAI insurer is on risk under this section.
- (2) The MAI insurer of the light rail vehicle is on risk for the insurance period for the light rail vehicle.

- (3) The MAI insurer ceases to be on risk if the MAI policy is cancelled.

*Note* Cancellation of MAI policies for a light rail vehicle is dealt with in s 264.

- (4) In this section:

*insurance period*—see section 252 (2).

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## Part 4.6 Cancellation of MAI policies

### 261 MAI insurer cannot cancel MAI policy

An MAI insurer has no power to cancel an MAI policy.

### 262 MAI policy cancellation—registered vehicles

An MAI policy for a registered motor vehicle is cancelled if the registration of the motor vehicle is cancelled.

*Note* If the registration is surrendered, the registration is then cancelled—see the *Road Transport (Vehicle Registration) Regulation 2000*, s 83.

### 263 MAI policy cancellation—trader's plates

- (1) An MAI policy for a motor vehicle with a trader's plate attached is cancelled if—
  - (a) the road transport authority requires the person to whom the trader's plate was issued to return the plate to the authority under either of the following provisions of the *Road Transport (Vehicle Registration) Regulation 2000*:
    - (i) section 89 (Recall of trader's plates);
    - (ii) section 101 (Return of trader's plate); or
  - (b) the trader's plate is surrendered to the road transport authority under the *Road Transport (Vehicle Registration) Regulation 2000*, section 102.
- (2) However, the MAI policy is not cancelled if the person returns the trader's plate and the road transport authority issues a replacement trader's plate to the person under the *Road Transport (Vehicle Registration) Regulation 2000*, section 89 (3).

**264 MAI policy cancellation—light rail vehicles**

- (1) An MAI policy for a light rail vehicle is cancelled if the accreditation of the rail transport operator for the light rail vehicle is cancelled or surrendered.

*Note* A rail transport operator's accreditation may be cancelled or surrendered under the [Rail Safety National Law \(ACT\)](#), s 73 or s 75.

- (2) In this section:

**accreditation**, of a rail transport operator, means accreditation by the Office of the National Rail Safety Regulator under the [Rail Safety National Law \(ACT\)](#).

## **Part 4.7 MAI premiums**

### **265 Meaning of *MAI premium***

In this Act:

*MAI premium*, for an MAI policy, means the insurance premium approved for the policy under—

- (a) section 269 (Criteria to approve or reject premium); or
- (b) section 271 (MAI commission may reconsider rejected premiums); or
- (c) section 272 (Mediation of rejected premiums); or
- (d) section 273 (Arbitration of unresolved premiums).

### **266 Premium that can be charged by licensed insurer**

A licensed insurer may charge a premium for an MAI policy only if the premium is the MAI premium.

### **267 Premiums—MAI guidelines**

The MAI guidelines may make provision for premiums for MAI policies, including provision for—

- (a) how MAI premiums are to be worked out and the factors to be taken into account in working out MAI premiums; and
- (b) requiring licensed insurers to state how they have worked out MAI premiums; and
- (c) any additional information the MAI commission may require licensed insurers to give to the MAI commission—
  - (i) with an application for approval of a premium; or

- (ii) to justify MAI premiums they have already given to the MAI commission for approval.

**Example—additional information**

for estimated investment income—the verification of assumptions, estimated profit, capital allocation to MAI insurance business

*Note 1* The MAI guidelines are made under s 417.

*Note 2* It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 315).

**268 Licensed insurer to apply for approval of premiums**

- (1) A licensed insurer must apply to the MAI commission for approval of premiums the licensed insurer proposes to charge for MAI policies the licensed insurer intends to issue—
  - (a) after the defined period after the licensed insurer's premiums were last approved by the MAI commission; or
  - (b) if the MAI commission, by written notice (an ***approval notice***), requires the licensed insurer to apply for the approval.
- (2) If a licensed insurer receives an approval notice, the licensed insurer must make the application not later than 28 days after the day the licensed insurer receives the approval notice.

*Note 1* The MAI guidelines may state the additional information the MAI commission may require licensed insurers to give to the MAI commission with the application (see s 267).

*Note 2* It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 315).

- (3) In this section:

*defined period* means—

- (a) 1 year; or
- (b) if the MAI commission allows a longer period of time—the longer period allowed by the MAI commission.

**269 Criteria to approve or reject premium**

- (1) This section applies if the MAI commission is deciding whether to approve or reject a premium under—
  - (a) section 268 (Licensed insurer to apply for approval of premiums); or
  - (b) section 271 (MAI commission may reconsider rejected premiums); or
  - (c) section 272 (Mediation of rejected premiums); or
  - (d) section 273 (Arbitration of unresolved premiums).
- (2) The MAI commission may reject a premium for an MAI policy only if the MAI commission considers that—
  - (a) having regard to actuarial advice and to other relevant financial information available to the MAI commission—
    - (i) the premium will not fully fund the present and likely future liability under this Act of the licensed insurer; or
    - (ii) the premium is excessive; or
  - (b) the premium does not comply with the MAI guidelines.

*Note* The MAI guidelines are made under s 417.

- (3) An MAI premium will fully fund the present and likely future liability under this Act of a licensed insurer if the MAI premium is sufficient—
- (a) to pay all acquisition and policy administration expenses of the licensed insurer; and
  - (b) to provide an amount of money that together with anticipated investment income is equal to the best estimate of the cost of—
    - (i) applications for defined benefits (in inflated dollars) at the assumed date of payment; and
    - (ii) motor accident claims plus motor accident claim settlement expenses (in inflated dollars) at the assumed date of settlement; and
  - (c) to provide a profit margin in excess of all applications for defined benefits and motor accident claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken; and
  - (d) to provide for other matters that a prudent insurer should, in all the circumstances, make provision for.
- (4) For subsection (3) (b) and (c), the cost of motor accident claims does not include the treatment, care and support costs of a participant in the LTCS scheme.

*Note*     **LTCS scheme**—see the dictionary.

## **270     MAI commission to approve or reject premiums**

If a licensed insurer applies to the MAI commission for approval of a premium for an MAI policy, the MAI commission must, within 6 weeks after receiving the application from the licensed insurer—

- (a) approve or reject the premium; and



- (b) tell the licensed insurer—
  - (i) about the decision; and
  - (ii) the reasons for the decision.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

## **271 MAI commission may reconsider rejected premiums**

- (1) If the MAI commission rejects a premium for an MAI policy (the ***original decision***), the licensed insurer may ask the MAI commission to reconsider the rejected premium.
- (2) Until the rejected premium is reconsidered, the MAI commission may ask an actuary to decide a provisional premium for the MAI policy.
- (3) A provisional premium has effect, until the MAI commission makes a decision under subsection (4) in relation to the original decision, as if the provisional premium were an MAI premium.
- (4) The MAI commission must, within 28 days after receiving the request for reconsideration—
  - (a) reconsider the original decision; and
  - (b) approve or reject the premium; and

*Note* Criteria for approving or rejecting the premium are in s 269.

- (c) tell the licensed insurer—
  - (i) about the decision; and
  - (ii) the reasons for the decision.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

## 272 Mediation of rejected premiums

- (1) If the MAI commission rejects a premium for an MAI policy under section 271, the matter must be mediated under this section by an accredited mediator.
- (2) The mediator must be a person who is independent of the MAI commission and the licensed insurer.
- (3) The mediator must be decided by agreement between the MAI commission and the licensed insurer.
- (4) The fees and expenses of the mediator must be paid—
  - (a) as agreed between the MAI commission and the licensed insurer; or
  - (b) if there is no agreement, by each of them in equal proportions.
- (5) If, as a result of the mediation, the MAI commission and the licensed insurer reach an agreement in relation to the premium, the MAI commission must, in writing to the mediator and the insurer, approve or reject the premium in accordance with the agreement.

*Note* Criteria for approving or rejecting the premium are in s 269.

- (6) In this section:

***accredited mediator*** means a person who is entered as a mediator in the register of nationally accredited mediators maintained by the Mediator Standards Board.

***Mediator Standards Board*** means the incorporated body registered under the [Corporations Act](#) as the Mediator Standards Board Limited (ACN 145 829 812).

**273 Arbitration of unresolved premiums**

- (1) If the MAI commission rejects a premium for an MAI policy under section 272, the matter must be arbitrated under this section.
- (2) The *Commercial Arbitration Act 2017* applies to the arbitration, subject to this Act.
- (3) The arbitral tribunal for the matter is—
  - (a) if the MAI commission and the licensed insurer agree on an arbitrator—the agreed arbitrator; or
  - (b) if the MAI commission and the licensed insurer do not agree on an arbitrator—the arbitrator worked out under the *Commercial Arbitration Act 2017*.
- (4) However, if the matter has been arbitrated by an agreed arbitrator for 7 days and the parties cannot reach agreement, an arbitrator appointed under the *Commercial Arbitration Act 2017* must arbitrate the matter.
- (5) The arbitral tribunal may approve a premium for an MAI policy only if the premium is, in the arbitral tribunal's opinion, sufficient to fully fund the present and likely future liability under this Act of the licensed insurer and is not excessive.

*Note 1* Criteria for deciding whether an MAI premium will fully fund the present and likely future liability under this Act of a licensed insurer are in s 269.

*Note 2* A decision under this section by an arbitral tribunal is a reviewable decision (see *Road Transport (General) Act 1999*, pt 7 and *Road Transport (General) Regulation 2000*).

- (6) A regulation may provide for the arbitration of matters.
- (7) In this section:

*arbitral tribunal*—see the *Commercial Arbitration Act 2017*, dictionary.

**274 MAI commission to report on licensed insurer's profit margins**

- (1) A licensed insurer must tell the MAI commission—
  - (a) the profit margin on which each MAI premium charged by the licensed insurer is based; and
  - (b) the actuarial basis for working out the profit margin.
- (2) The MAI commission must assess—
  - (a) the profit margin; and
  - (b) the actuarial basis on which the profit margin is worked out.
- (3) The MAI commission must present a report about the assessments annually to the Legislative Assembly.

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## Part 4.8 Nominal defendant's liabilities

### 275 Nominal defendant liable—unregistered vehicle permits

- (1) This section applies if—
- (a) a personal injury is caused by a motor accident; and
  - (b) at the time of the motor accident, an unregistered vehicle permit is in force for the motor vehicle involved in the motor accident; and
  - (c) the motor accident happened anywhere in Australia.

*Note* **Motor accident** is defined in s 10.  
**Personal injury** is defined in s 9.

- (2) The nominal defendant is liable in relation to the personal injury as if—
- (a) an MAI policy were in force for the motor vehicle; and
  - (b) the nominal defendant were the MAI insurer for the MAI policy.
- (3) However, the nominal defendant is not liable in relation to the personal injury if—
- (a) at the time the motor accident happened—
    - (i) the land on which the motor accident happened was an area that was not a road but was open to or used by the public for driving, riding or parking vehicles; and
    - (ii) the person injured was a trespasser on the land; or

*Note* The area described in subpar (i) is a road related area (see dict, def **road related area**, par (a) (iv)).

- (b) the motor vehicle is owned by—
  - (i) the Commonwealth or an entity representing the Commonwealth; or
  - (ii) the Territory or an entity representing the Territory; or
- (c) at the time the motor accident happened—
  - (i) the motor vehicle was registered under—
    - (A) the law of a State other than the ACT; or
    - (B) a law of the Commonwealth; and
  - (ii) the motor vehicle was—
    - (A) covered under a policy of motor accident injury insurance; or
    - (B) subject to coverage under a compulsory motor vehicle or trailer accident compensation scheme of that State or of the Commonwealth; or
- (d) a regulation prescribes that, in the circumstances, the nominal defendant is not liable in relation to the personal injury.

*Note* The nominal defendant is also not liable for the risks mentioned in s 244.

## **276 Meaning of *uninsured motor vehicle***

- (1) For this Act:
  - uninsured motor vehicle***—
    - (a) means a motor vehicle for which there is no MAI policy in force; and
    - (b) includes a trailer that—
      - (i) is attached to an uninsured motor vehicle; or

- (ii) runs out of control after becoming accidentally detached from an uninsured motor vehicle; and
- (c) includes anything else prescribed by regulation; but
- (d) does not include—
  - (i) a motor vehicle for which an unregistered vehicle permit is in force; or
  - (ii) an unregistered, uninsured motor vehicle that is designed to be driven for recreational purposes on an area that is not a road or road related area.

**Example**

a quad bike

- (2) To remove any doubt, it does not matter whether a trailer mentioned in subsection (1), definition of *uninsured motor vehicle*, paragraph (b) is registered.

**277 Nominal defendant liable—uninsured motor vehicle**

- (1) This section applies if—
  - (a) a personal injury is caused by a motor accident; and
  - (b) at the time of the motor accident, the motor vehicle involved in the motor accident—
    - (i) had a sufficient connection with the ACT; and
    - (ii) was an uninsured motor vehicle; and
  - (c) the motor accident happened anywhere in Australia.

*Note 1* **Motor accident** is defined in s 10.

**Personal injury** is defined in s 9.

*Note 2* The circumstances in which a motor vehicle has a sufficient connection with the ACT may be prescribed by regulation (see s (4)).

- (2) The nominal defendant is liable in relation to the personal injury as if—
- (a) an MAI policy were in force for the motor vehicle; and
  - (b) the nominal defendant were the MAI insurer for the MAI policy.

*Note* **MAI policy** is defined in s 238.

- (3) However, the nominal defendant is not liable in relation to the personal injury if—

- (a) at the time the motor accident happened—
  - (i) the land on which the motor accident happened was an area that was not a road but was open to or used by the public for driving, riding or parking vehicles; and
  - (ii) the person injured was a trespasser on the land; or

*Note* The area described in subpar (i) is a road related area (see dict, def **road related area**, par (a) (iv)).

- (b) the uninsured motor vehicle is owned by—
  - (i) the Commonwealth or an entity representing the Commonwealth; or
  - (ii) the Territory or an entity representing the Territory; or
- (c) at the time the motor accident happened—
  - (i) the uninsured motor vehicle was registered under—
    - (A) the law of a State other than the ACT; or
    - (B) a law of the Commonwealth; and
  - (ii) the uninsured motor vehicle was—
    - (A) covered under a policy of motor accident injury insurance; or



- (B) subject to coverage under a compulsory motor vehicle or trailer accident compensation scheme of that State or of the Commonwealth; or
- (d) a regulation prescribes that, in the circumstances, the nominal defendant is not liable in relation to the personal injury.

*Note* The nominal defendant is also not liable for the risks mentioned in s 244.

- (4) A regulation may prescribe the circumstances in which a motor vehicle has a sufficient connection with the ACT.
- (5) In this section:

***motor vehicle*** means a motor vehicle that—

- (a) is exempt from registration; or
- (b) if not exempt from registration—must be registered to allow its lawful use or operation on a road or road related area in the ACT and—
  - (i) was at the time of manufacture capable of registration; or
  - (ii) was at the time of manufacture, with minor adjustments, capable of registration; or
  - (iii) was previously capable of registration but is no longer capable of registration because the motor vehicle is in disrepair.

**278      Meaning of *unidentified motor vehicle***

(1) In this Act:

***unidentified motor vehicle***—

- (a) means a motor vehicle that cannot be identified after reasonable inquiry and search; and
- (b) includes a trailer that—
  - (i) is attached to an unidentified motor vehicle; or
  - (ii) runs out of control after becoming accidentally detached from an unidentified motor vehicle; and
- (c) includes anything else prescribed by regulation; but
- (d) does not include a motor vehicle that is designed to be driven for recreational purposes on an area that is not a road or road related area.

**Example—par (d)**

a quad bike

- (2) To remove any doubt, it does not matter whether a trailer mentioned in subsection (1), definition of ***unidentified motor vehicle***, paragraph (b) is registered.
- (3) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

**279      Nominal defendant liable—unidentified motor vehicle**

(1) This section applies if—

- (a) a personal injury is caused by a motor accident; and
- (b) the motor vehicle involved in the motor accident is an unidentified motor vehicle; and

- (c) the motor accident happened in the ACT.

*Note* **Motor accident** is defined in s 10.  
**Personal injury** is defined in s 9.

- (2) The nominal defendant is liable in relation to the personal injury as if—

- (a) an MAI policy were in force for the motor vehicle; and  
(b) the nominal defendant were the MAI insurer for the MAI policy.

*Note* **MAI policy** is defined in s 238.

- (3) However, the nominal defendant is not liable in relation to the personal injury if, at the time the motor accident happened—

- (a) the land on which the motor accident happened was an area that was not a road but was open to or used by the public for driving, riding or parking vehicles; and  
(b) the person injured was a trespasser on the land.

*Note 1* The area described in par (a) is a road related area (see dict, def **road related area**, par (a) (iv)).

*Note 2* The nominal defendant is also not liable for the risks mentioned in s 244.

## **Part 4.9                      Nominal defendant fund**

### **280                      Nominal defendant to pay motor accident claims from nominal defendant fund**

- (1) The nominal defendant must pay the following amounts out of the nominal defendant fund:
  - (a) the amount of any defined benefits payable under chapter 2 (Motor accident injuries—defined benefits) by the nominal defendant as the relevant insurer for a motor accident;
  - (b) the amount of any costs or expenses incurred by the nominal defendant in relation to an application for defined benefits under chapter 2;  
**Example—par (b)**  
payment of fees for a consultant or claims manager engaged under this part in relation to an application for defined benefits
  - (c) an amount payable in satisfaction of a motor accident claim made, or judgment obtained, under—
    - (i) section 275 (Nominal defendant liable—unregistered vehicle permits); or
    - (ii) section 277 (Nominal defendant liable—uninsured motor vehicle); or
    - (iii) section 279 (Nominal defendant liable—unidentified motor vehicle);
  - (d) the amount of any costs or expenses incurred by the nominal defendant for the motor accident claim or judgment.
- (2) The nominal defendant is not personally liable to pay an amount mentioned in subsection (1).

**281 Nominal defendant fund**

- (1) The MAI commission must establish a fund (the *nominal defendant fund*).
- (2) The following must be paid into the nominal defendant fund:
  - (a) any penalties or penalty interest imposed under this Act;
  - (b) amounts received or recovered by or on behalf of the nominal defendant under this Act;

*Note* The nominal defendant may recover amounts under—

    - s 299 (Insurer may recover costs if motor vehicle defective)
    - s 300 (Insurer may recover costs if fraud)
    - s 301 (Nominal defendant may recover costs from responsible person or driver at fault)
    - s 369 (Nominal defendant may recover from insolvent insurer).
  - (c) amounts collected under section 282;
  - (d) UVP liability contributions paid under section 284;
  - (e) interest from time to time accruing from the investment of the nominal defendant fund;
  - (f) amounts required to be paid into the nominal defendant fund under this or another Act.
- (3) The following must be paid from the nominal defendant fund:
  - (a) amounts required to be paid from the fund under section 280;
  - (b) any amount requested under section 41 (Payment of defined benefits by interstate relevant insurer);
  - (c) all other amounts required to be paid from the fund under this or another Act.

- (4) The MAI commission may invest money in the nominal defendant fund which is not immediately required for the fund—
  - (a) in any way that the Treasurer is authorised to invest money under the *Financial Management Act 1996*; or
  - (b) in any other way approved by the Minister and the Treasurer.

**282 Collections for nominal defendant fund**

- (1) The MAI commission must, each financial year, collect an amount for the nominal defendant fund—
  - (a) from the people and funds prescribed by regulation; and
  - (b) in accordance with the arrangements prescribed by regulation.
- (2) The MAI commission may decide the amount to be collected for a financial year.
- (3) The MAI commission must not decide an amount for a financial year if the MAI commission considers that satisfactory arrangements have been made for that year (under the insurance industry deed or otherwise) by licensed insurers to meet—
  - (a) motor accident claims made against the nominal defendant; and
  - (b) applications for defined benefits under chapter 2 (Motor accident injuries—defined benefits).

*Note* The insurance industry deed is dealt with in s 310.

**283 MAI commission must decide UVP liability contribution**

- (1) The MAI commission must decide an amount (the *UVP liability contribution*) to be paid to fund the present and likely future liability under this Act of the nominal defendant for—
  - (a) claims in relation to unregistered vehicle permits; and

- (b) applications for defined benefits in relation to unregistered vehicle permits.
- (2) The MAI guidelines may make provision in relation to UVP liability contributions, including provision for the following:
  - (a) how UVP liability contributions are to be worked out;
  - (b) the factors to be taken into account in working out UVP liability contributions.

*Note* The MAI guidelines are made under s 417.

#### **284 UVP liability contribution to be paid with unregistered vehicle permit**

If a person applies to the road transport authority for an unregistered vehicle permit for a motor vehicle, the person must also pay to the road transport authority the UVP liability contribution for the period of the permit.

*Note 1* Unregistered vehicle permits are issued under the [Road Transport \(Vehicle Registration\) Act 1999](#), s 7.

*Note 2* UVP liability contributions paid to the road transport authority under this section must be paid into the nominal defendant fund (see s 281).

#### **285 Accounts for nominal defendant fund**

- (1) The nominal defendant must keep a separate account in the nominal defendant fund for meeting the liabilities of the nominal defendant.

*Note* The nominal defendant is liable for uninsured or unidentified motor vehicles (see Part 4.8) and for insolvent insurers (see Part 5.9).

- (2) The nominal defendant must keep accounts for—
  - (a) amounts paid into the nominal defendant fund under section 281; and
  - (b) amounts withdrawn from the nominal defendant fund.

- (3) Accounts kept of amounts withdrawn from the nominal defendant fund must show the reason why each amount is withdrawn.

**286      Audit of nominal defendant fund**

- (1) The nominal defendant must have the accounts of the nominal defendant fund for a financial year audited by a recognised auditor as soon as practicable after the end of the financial year.
- (2) The nominal defendant must give the auditor's report and audited accounts to the MAI commission as soon as practicable after the end of the financial year to which the report relates.

**287      Assessment of financial position of nominal defendant fund**

- (1) Each year, the nominal defendant must—
  - (a) assess the nominal defendant fund's financial position; and
  - (b) give a written copy of the assessment to the MAI commission.
- (2) In assessing the nominal defendant fund's financial position, the nominal defendant—
  - (a) must take into account—
    - (i) the written advice of an actuary engaged by the nominal defendant about existing and expected liabilities of the fund; and
    - (ii) the fund's assets; and
  - (b) may take into account any other information that, in the nominal defendant's opinion, is relevant to an assessment of the nominal defendant fund's financial position.



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**288 Nominal defendant may engage consultants including claims manager**

- (1) The nominal defendant may engage consultants.
- (2) Without limiting subsection (1), the nominal defendant may engage an entity (a *claims manager*) to manage personal injuries in relation to which—
  - (a) applications may be, or have been, made to the nominal defendant under chapter 2 (Motor accident injuries—defined benefits); or
  - (b) claims may be, or have been, made against the nominal defendant fund under chapter 4 (Motor accident injuries insurance).
- (3) To remove any doubt, the nominal defendant may engage a claims manager who is a claims manager for another fund managed by the ACTIA.

**Example**

an entity engaged as a claims manager for the default insurance fund under the [Workers Compensation Act 1951](#)

*Note* ACTIA—see the dictionary.

- (4) However, the nominal defendant must not engage an entity under subsection (2) unless satisfied that the entity has the experience and expertise necessary to exercise the functions of a claims manager.
- (5) The conditions of a consultant's engagement are the conditions agreed between the nominal defendant and the consultant.
- (6) To remove any doubt, this section does not give the nominal defendant the power to enter into a contract of employment.

**289 Claims manager's functions**

- (1) This section applies if the nominal defendant engages a claims manager to manage—
  - (a) an application for defined benefits under chapter 2 (Motor accident injuries—defined benefits); or
  - (b) a motor accident claim under chapter 3 (Motor accident injuries—common law damages).
- (2) A claims manager may do the following in relation to the application:
  - (a) investigate the application;
  - (b) approve the application;
  - (c) refuse to approve the application;
  - (d) ask for additional information in relation to the application;
  - (e) if the applicant was covered at the time of injury by an MAI policy issued by a licensed insurer—exercise any right of the insurer arising from, or in relation to, the policy;
  - (f) anything prescribed by regulation.
- (3) A claims manager may do the following in relation to the motor accident claim:
  - (a) investigate the claim;
  - (b) negotiate the terms of settlement of the claim, either by payment of a lump sum or by weekly payments in accordance with this Act;
  - (c) if the claimant was covered at the time of injury by an MAI policy issued by a licensed insurer—exercise any right of the insurer arising from, or in relation to, the policy;
  - (d) anything prescribed by regulation.

- (4) Subsection (3) does not authorise a claims manager to—
- (a) pay an amount to satisfy a claim; or
  - (b) recover an amount owed to a licensed insurer against whom a claim is made under this Act.
- (5) A claims manager may also exercise any other function given to the claims manager under this Act or any other territory law.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

*Note 2* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## **290 Delegation by nominal defendant**

The nominal defendant may delegate the nominal defendant's functions under this Act or any other territory law to a public servant or a consultant engaged under this Act (including a claims manager).

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

## **291 Information and assistance by insurer to nominal defendant**

- (1) The nominal defendant may, by written notice given to an insurer, require the insurer to do 1 or more of the following:
- (a) give the nominal defendant stated information and assistance that the nominal defendant reasonably considers necessary for the exercise of the nominal defendant's functions;

### **Example**

information about the health of an applicant or claimant given to the insurer by the applicant or claimant

- (b) give the nominal defendant stated documents in the insurer's possession or control that the nominal defendant reasonably considers necessary for the exercise of the nominal defendant's functions;
  - (c) execute stated documents that the nominal defendant reasonably considers necessary for the insurer to execute for the exercise of the nominal defendant's functions.
- (2) An insurer must take all reasonable steps to comply with a requirement of the nominal defendant under subsection (1).

Maximum penalty: 50 penalty units.

*Note 1* The [Legislation Act](#), s 170 deals with the application of the privilege against self-incrimination.

*Note 2* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

***insurer*** means a licensed insurer and an interstate insurer.

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## **Part 4.10**

# **MAI insurer and nominal defendant may recover costs incurred**

### **Division 4.10.1**

## **Preliminary**

#### **292**

### **Meaning of costs—Part 4.10**

In this part:

*costs*, when used in reference to the costs of an insurer for a motor accident claim, includes—

- (a) the amount paid out by the insurer on the claim to the claimant or for the claimant's benefit, including the cost to the insurer of paying the claimant's reasonable and necessary treatment and care; and
- (b) the amounts paid by the insurer in investigating the claim and of litigation related to the claim, but not the insurer's general administration costs.

*costs*, when used in reference to the costs of an insurer for an application for defined benefits by a person injured in a motor accident, includes—

- (a) the amount paid out by the insurer on the application to the applicant or for the applicant's benefit, including the cost to the insurer of paying the applicant's reasonable and necessary treatment and care; and

*Note* Treatment and care needs are dealt with in Part 2.5.

- (b) the amounts paid by the insurer in deciding the application.

**293 Insurer may only recover costs once**

An insurer is not entitled to recover costs under a provision of this part if the insurer has already recovered the costs under another provision.

**294 Proceeding to recover costs**

A proceeding by an insurer under a provision of this part may be brought separately or by way of a third-party proceeding.

**Division 4.10.2 MAI insurers**

**295 MAI insurer may recover \$2 000 if MAI premium fraud**

- (1) This section applies if—
  - (a) personal injury is caused by a motor accident involving an MAI insured person; and
  - (b) the MAI insured person deliberately avoided paying the correct MAI premium for the MAI policy by making a statement in relation to the issue of the policy that the MAI insured person knew was false or misleading in a material particular.
- (2) The MAI insurer may recover as a debt from the MAI insured person—
  - (a) if the costs reasonably incurred by the MAI insurer for a motor accident claim for the motor accident are not more than \$2 000—the total of the amount paid and costs incurred; or

- (b) if the costs reasonably incurred by the MAI insurer for a motor accident claim for the motor accident are more than \$2 000—\$2 000 or another amount prescribed by regulation.

*Note 1* An MAI policy insures against the risk of liability for personal injury caused by a motor accident (see s 243).

*Note 2* **Costs** include reasonable and necessary treatment and care needs (see s 292).

## **296 MAI insurer may recover costs if no authority to use vehicle**

- (1) This section applies if—
- (a) personal injury is caused by a motor accident involving an MAI insured person; and
  - (b) the MAI insured person was, at the time of the motor accident, using the motor vehicle—
    - (i) without the authority of the responsible person for the vehicle; and
    - (ii) without lawful justification or excuse; and
    - (iii) without reasonable grounds for believing that the MAI insured person had the authority of the responsible person, or lawful justification or excuse, for using the motor vehicle.
- (2) The insurer may recover as a debt from the MAI insured person any costs reasonably incurred by the insurer for a motor accident claim for the personal injury.

*Note* An MAI policy insures against the risk of liability for personal injury caused by a motor accident (see s 243).

**297 MAI insurer may recover costs if injury intentional**

- (1) This section applies if—
  - (a) personal injury is caused by a motor accident involving an MAI insured person; and
  - (b) the MAI insured person intended to injure the claimant or someone else.
- (2) The MAI insurer may recover as a debt from the MAI insured person any costs reasonably incurred by the MAI insurer for a motor accident claim for the personal injury.

*Note* An MAI policy insures against the risk of liability for personal injury caused by a motor accident (see s 243).

**298 MAI insurer may recover costs if driver using alcohol or drugs**

- (1) This section applies if—
  - (a) personal injury is caused by a motor accident involving an MAI insured person; and
  - (b) the MAI insured person was the driver of the motor vehicle at the time of the motor accident; and
  - (c) the MAI insured person was, at the time of the motor accident, unable to exercise effective control of the motor vehicle because of the MAI insured person's ingestion of—
    - (i) alcohol; or
    - (ii) a non-medicinal drug or a combination of non-medicinal drugs; or
    - (iii) a combination of alcohol and 1 or more non-medicinal drugs; and



- (d) a motor accident claim is made in relation to the motor accident.
- (2) The MAI insurer may recover as a debt from the MAI insured person any costs reasonably incurred by the MAI insurer for a motor accident claim for the personal injury if the costs are reasonably attributable to the MAI insured person's inability to exercise effective control of the motor vehicle.
- (3) In this section:

***non-medicinal drug*** means a drug other than a drug genuinely and lawfully ingested for medical or therapeutic purposes.

*Note* An MAI policy insures against the risk of liability for personal injury caused by a motor accident (see s 243).

## **Division 4.10.3 MAI insurer and nominal defendant**

### **299 Insurer may recover costs if motor vehicle defective**

- (1) This section applies if—
  - (a) personal injury is caused by a motor accident involving an insured person; and
  - (b) the motor accident is attributable wholly or partly to a defect in a motor vehicle; and
  - (c) the defect arose from the wrongful act or omission of the manufacturer or a person who carries on a business of repairing motor vehicles.

*Note* ***Insured person*** is defined in s 191.

- (2) The insurer may recover as a debt from the manufacturer or repairer the proportion of the costs reasonably incurred by the insurer for a motor accident claim for the personal injury that reasonably reflects the percentage of the manufacturer's or repairer's responsibility for the motor accident.

- (3) However, it is a defence for the manufacturer or repairer to prove that the insured person for the motor vehicle drove the motor vehicle with knowledge of the defect and its likely effect.

*Note 1* An MAI policy insures against the risk of liability for personal injury caused by a motor accident (see s 243).

*Note 2* An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 281).

### **300 Insurer may recover costs if fraud**

An insurer may recover from a claimant or other person who defrauds, or attempts to defraud, the insurer for a motor accident claim any costs reasonably incurred by the insurer because of the fraud.

*Note* An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 281).

## **Division 4.10.4 Nominal defendant**

### **301 Nominal defendant may recover costs from responsible person or driver at fault**

- (1) This section applies if—
- (a) personal injury is caused by a motor accident; and
  - (b) the motor accident is caused by the act or omission of the responsible person for, or the driver of, of a motor vehicle involved in the accident.
- (2) The nominal defendant may recover as a debt from the responsible person for, or the driver of, the motor vehicle, or both, any costs reasonably incurred by the nominal defendant for a motor accident claim for the personal injury.

- (3) However, the nominal defendant is not entitled to recover an amount under this section from the responsible person for, or the driver of, the motor vehicle, if the motor accident is a no-fault motor accident.

*Note*     *No-fault motor accident*—see s 13.

- (4) Also, the nominal defendant is not entitled to recover an amount under this section from the responsible person for, or the driver of, the motor vehicle, for treatment and care benefits or death benefits that the responsible person or driver is entitled to under chapter 2 (Motor accident injuries—defined benefits).

**302        Nominal defendant may recover costs from responsible person or driver—uninsured or unidentified motor vehicle**

- (1) This section applies if personal injury is caused by a motor accident involving—
- (a) an uninsured motor vehicle that is not a light rail vehicle; or
  - (b) an unidentified motor vehicle.

*Note*     The nominal defendant is liable in relation to uninsured motor vehicles (see s 277) and unidentified motor vehicles (see s 279).

- (2) The nominal defendant may recover as a debt from the responsible person for, or the driver of, the motor vehicle, or both, any costs reasonably incurred by the nominal defendant for a motor accident claim for the personal injury.
- (3) However, the nominal defendant is not entitled to recover an amount under this section from the responsible person for, or the driver of, the motor vehicle, if at the time of the accident, the vehicle—
- (a) was not required to be registered; or
  - (b) was exempt from registration; or
  - (c) if required to be registered—was not required to be insured under this Act.

- (4) Also, the nominal defendant is not entitled to recover an amount under this section from the responsible person for, or the driver of, the motor vehicle, for treatment and care benefits or death benefits that the responsible person or driver is entitled to under chapter 2 (Motor accident injuries—defined benefits).
- (5) It is a defence to a proceeding under this section against the responsible person for the vehicle if the responsible person proves that—
  - (a) the motor vehicle was driven without the authority of the responsible person; or
  - (b) the responsible person believed on reasonable grounds that the motor vehicle was insured.
- (6) It is a defence to a proceeding under this section against the driver for the driver to prove that the driver believed on reasonable grounds that—
  - (a) the driver had the responsible person’s consent to drive the motor vehicle; and
  - (b) the motor vehicle was insured.
- (7) The nominal defendant may bring a proceeding for recovery of costs under this section before the costs have been actually paid in full and, in that case, a judgment for recovery of costs may provide that, as far as the costs have not been actually paid, the right to recover the costs is contingent on payment.
- (8) This section does not affect a right of recovery the nominal defendant may have, apart from this section, against the insured person.

*Note* An amount recovered under this section must be paid into the nominal defendant fund (see s 281).

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**303      Nominal defendant may recover costs from rail transport operator**

- (1) This section applies if personal injury is caused by a motor accident involving an uninsured light rail vehicle.

*Note*      The nominal defendant is liable in relation to uninsured light rail vehicles (see s 277).

- (2) The nominal defendant may recover as a debt from the rail transport operator for the light rail vehicle any costs reasonably incurred by the nominal defendant for a motor accident claim for the personal injury.
- (3) The nominal defendant may bring a proceeding for recovery of costs under this section before the costs have been actually paid in full and, in that case, a judgment for recovery of costs may provide that, as far as the costs have not been actually paid, the right to recover the costs is contingent on payment.
- (4) This section does not affect a right of recovery that the nominal defendant may have, apart from this section, against the rail transport operator.

*Note*      An amount recovered under this section must be paid into the nominal defendant fund (see s 281).

**304      Nominal defendant—access to territory information etc**

The nominal defendant is entitled to have access to information and materials in the possession of the Territory that may be relevant to the recovery of costs that the nominal defendant is entitled to recover under this part.

## **Chapter 5 MAI insurer licences**

### **Part 5.1 MAI insurer licences—preliminary**

#### **305 Definitions—Act**

In this Act:

*licensed insurer* means a corporation that holds an MAI insurer licence.

*MAI insurer licence* means a licence to carry on business as an MAI insurer.

#### **306 Meaning of *former licensed insurer*—ch 5**

In this chapter:

*former licensed insurer* means an entity that was, at any time, a licensed insurer but is no longer a licensed insurer.

#### **307 Offences—unlicensed insurer issue MAI policy**

- (1) A person commits an offence if the person—
  - (a) issues an MAI policy; and
  - (b) is not a licensed insurer.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if the person—
  - (a) purports to issue an MAI policy; and

(b) is not a licensed insurer.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**308 Unlicensed insurer liable for MAI policy**

If a person who is not a licensed insurer issues an MAI policy, the MAI policy is not annulled or affected only because the person is not a licensed insurer.

**309 MAI insurer licence register**

- (1) The MAI commission must keep a register of—
  - (a) the name of each corporation that is—
    - (i) issued with an MAI insurer licence; or
    - (ii) refused an MAI insurer licence; and
  - (b) for each MAI insurer licence issued by the MAI commission, the following details:
    - (i) any condition imposed on the licence;
    - (ii) any suspension of the licence;
    - (iii) any cancellation of the licence;
    - (iv) any transfer of the licence; and
  - (c) anything else prescribed by regulation.
- (2) The MAI commission may keep any other details in the register that the MAI commission considers appropriate.

## **Part 5.2**                      **MAI insurer licences—insurance industry deed**

### **310**            **Meaning of *insurance industry deed***

In this Act:

*insurance industry deed* means a deed that—

- (a) is between—
  - (i) the Territory; and
  - (ii) the nominal defendant; and
  - (iii) licensed insurers; and
- (b) regulates the conduct of MAI insurance business of licensed insurers and matters incidental to—
  - (i) the conduct of MAI insurance business of licensed insurers; and
  - (ii) the motor accident injury insurance scheme under this Act.

### **311**            **What may be included in insurance industry deed**

- (1) The insurance industry deed may include provisions for each of the following:
  - (a) the requirements for licensed insurers to make disclosures and reports to the MAI commission in accordance with stated standards and requirements;
  - (b) the apportionment of liability, and sharing of costs, between licensed insurers;



- (c) the appointment of a person to arbitrate disputes between 2 or more licensed insurers about—
    - (i) a motor accident claim; or
    - (ii) an application for defined benefits, including a dispute about who is the relevant insurer for a motor accident;
  - (d) the sharing of information between MAI insurers for the mutual benefit of insurers;
  - (e) the monitoring and management of applications for defined benefits and motor accident claims under MAI policies;
  - (f) direction and guidance in relation to deciding the relevant insurer for motor accident claims and applications for defined benefits, including entering into arrangements to determine—
    - (i) which insurer will accept an application for defined benefits and be the relevant insurer in relation to the application; and
    - (ii) the most at-fault vehicle in a multiple vehicle accident;
  - (g) direction and guidance for licensed insurers about managing, monitoring and measuring the effectiveness of defined benefits for injured applicants;
  - (h) regulation, in any other way, of the conduct of MAI insurance business of licensed insurers under the motor accident injury insurance scheme under this Act.
- (2) A regulation may prescribe—
- (a) what may or must be included in the insurance industry deed; and
  - (b) anything else about the content of the insurance industry deed.

## **Part 5.3 MAI insurer licences—issue**

### **312 MAI insurer licence—eligibility**

A corporation is eligible for an MAI insurer licence only if the corporation is—

- (a) authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business; and
- (b) a party to the insurance industry deed.

### **313 MAI insurer licence—application**

- (1) A corporation may apply to the MAI commission for an MAI insurer licence.
- (2) The application must comply with the requirements prescribed by regulation.
- (3) The MAI commission may, in writing, ask the applicant to give the MAI commission additional information that the MAI commission reasonably needs to decide the application, including the following:
  - (a) details of the shareholders, directors and other managers of the applicant;
  - (b) any previous returns and accounts under—
    - (i) the *Corporations Act*; and
    - (ii) the *Insurance Act 1973* (Cwlth);
  - (c) details of reinsurance arrangements to which the applicant is a party;

*Note* Reinsurance arrangements are further dealt with in s 345.

- (d) a draft business plan.

*Note* Business plans are dealt with in Part 5.8.

- (4) The MAI commission need not decide whether the corporation is eligible for an MAI insurer licence if—
- (a) the corporation's application does not comply with a requirement prescribed by regulation; or
  - (b) the corporation does not give the MAI commission information requested under subsection (3).

*Note 1* A fee may be determined under s 419 for this section.

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

### **314 MAI insurer licence—decision on application**

- (1) On an application by a corporation for an MAI insurer licence, the MAI commission must—
- (a) issue the licence; or
  - (b) refuse to issue the licence.
- (2) The MAI commission must refuse to issue an MAI insurer licence if—
- (a) the commission is not satisfied that the applicant would, or would be able to, properly exercise the functions of a licensed insurer if issued with a licence; or
  - (b) the applicant does not comply with a requirement prescribed by regulation.

*Note* A decision to refuse to issue an MAI insurer licence is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

- (3) In deciding whether the applicant would not, or would not be able to, properly exercise the functions of a licensed insurer if issued with an MAI insurer licence, the MAI commission must consider the following:

- (a) the paid-up share capital and reserves of the applicant;
  - (b) the constitution of the applicant (if any);
  - (c) the reinsurance arrangements of the applicant;
  - (d) whether issuing the licence will contribute to the efficiency of the motor accidents scheme under this Act generally;
  - (e) anything else prescribed by regulation.
- (4) In deciding the application, the MAI commission may consider anything else the MAI commission considers appropriate.
- (5) If the MAI commission proposes to issue an MAI insurer licence to a corporation, the MAI commission must, at least 14 days before the licence is issued, tell all licensed insurers about the proposal and the name of the corporation.
- (6) Failure by the MAI commission to comply with subsection (5) does not affect the validity of a corporation's MAI insurer licence.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

### **315 MAI insurer licence—conditions**

- (1) It is a condition of an MAI insurer licence that the licensed insurer must comply with the following:
- (a) section 129 (Payment of treatment and care benefits);
  - (b) section 266 (Premium that can be charged by licensed insurer);
  - (c) section 268 (Licensed insurer to apply for approval of premiums);
  - (d) section 341 (Licensed insurer to have business plan);

- (e) section 342 (Licensed insurer to comply with business plan);
- (f) section 343 (Licensed insurer to revise business plan);
- (g) section 345 (Reinsurance arrangements of licensed insurers);
- (h) section 346 (Licensed insurer to provide investment details);
- (i) the MAI guidelines.

*Note* The MAI guidelines are made under s 417.

- (2) It is a condition of an MAI insurer licence that the licensed insurer adopts measures to ensure that a person who is or has been employed by the insurer does not disclose protected information about a person, otherwise than in accordance with this Act or another territory law, or the insurance industry deed.
- (3) It is a condition of an MAI insurer licence that the licensed insurer must give the MAI commission information prescribed by regulation in relation to—
  - (a) applications under chapter 2 for defined benefits; and
  - (b) motor accident claims; and
  - (c) profits.
- (4) An MAI insurer licence is also subject to any condition (an ***additional condition***)—
  - (a) prescribed by regulation (a ***prescribed condition***); or
  - (b) decided by the MAI commission (an ***MAI commission condition***).

*Note 1* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

*Note 2* If the MAI commission is unable, under s 337(3), to cancel a licence because the commission is not satisfied the insurer's liabilities have been appropriately dealt with, the commission may, instead, impose a condition on the licence that prohibits the insurer from issuing any further MAI policies (see s 337(4)).

- (5) An MAI commission condition must not be inconsistent with a prescribed condition on the MAI insurer licence.

*Note* **Prescribed condition** is a condition prescribed by regulation (see s (3)).

- (6) The MAI commission may amend an MAI insurer licence by—
- (a) including an MAI commission condition on the licence; or
  - (b) amending or revoking an MAI commission condition on the licence.
- (7) If the MAI commission amends a licensed insurer's licence under subsection (6), the MAI commission must tell the insurer about the amendment as soon as practicable, but not later than 30 days after the day the MAI commission decides the amendment.

*Note* A decision by the MAI commission under s (4) (b) or (6) is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

- (8) This section is subject to section 317 (MAI insurer licence—prohibited conditions).
- (9) In this section:

**protected information**, about a person—

- (a) means information about a person that is disclosed to, or obtained by, a licensed insurer because of the exercise of a function under this Act by the licensed insurer or a person employed by the licensed insurer; and
- (b) includes personal health information.

**316 MAI insurer licence—additional conditions**

- (1) Without limiting section 315, an additional condition on an MAI insurer licence may include the following:
  - (a) a condition for ensuring compliance with the obligations of the licensed insurer;
  - (b) a condition for ensuring that MAI premiums for MAI policies are sufficient to meet motor accident claims and applications for defined benefits;
  - (c) a condition for requiring the licensed insurer to manage applications under chapter 2 for defined benefits promptly;
  - (d) a condition for requiring the licensed insurer to achieve early resolution of motor accident claims;
  - (e) a condition for requiring the licensed insurer to achieve early payment of reasonable and necessary treatment and care for injured people;
  - (f) a condition for ensuring general efficiency in relation to—
    - (i) applications under chapter 2 for defined benefits; and
    - (ii) motor accident claims and payments;
  - (g) a condition relating to the provision of information about—
    - (i) applications under chapter 2 for defined benefits; and
    - (ii) motor accident claims; and
    - (iii) profits.
- (2) A licensed insurer is taken not to have contravened a condition mentioned in subsection (1) (d) or (e) if the insurer establishes that—
  - (a) the insurer gave a report to the MAI commission within a reasonable period after the condition is contravened; and

(b) the report sets out reasonable grounds for justifying the contravention.

(3) This section is subject to section 317.

**317 MAI insurer licence—prohibited conditions**

(1) An MAI insurer licence must not be subject to any of the following conditions:

- (a) a condition that gives, or is likely to give, a competitive advantage to a licensed insurer over another licensed insurer;
- (b) a condition that requires a licensed insurer to obtain a share of the insurance market.

(2) A condition mentioned in subsection (1) has no effect.

**318 Offence—contravening licence condition**

(1) A person commits an offence if the person—

- (a) is a licensed insurer; and
- (b) contravenes a condition of the person's MAI insurer licence.

Maximum penalty: 100 penalty units.

(2) This section does not apply to a condition mentioned in section 317.

*Note 1* Contravention of a licence condition is also grounds for—

- suspension of the MAI insurer licence (see s 323)
- the MAI commission to apply to the ACAT for an occupational discipline order in relation to the licensed insurer (see pt 5.5).

*Note 2* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).



**319      Contravention of licence condition does not affect  
MAI policy**

If an MAI insurer issues an MAI policy in contravention of a condition on their MAI insurer licence, the MAI policy is not annulled or affected only because the MAI insurer is in contravention of the condition.

**320      Offence—unlicensed insurer contravening licence  
condition**

A person commits an offence if—

- (a) the person is not a licensed insurer; and
- (b) the person engages in conduct that would, if the person was a licensed insurer, contravene a condition of an MAI insurer licence; and
- (c) the condition relates to a motor accident.

Maximum penalty: 100 penalty units.

*Note*      Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**321      MAI insurer licence—term**

An MAI insurer licence—

- (a) takes effect on the day stated in the licence; and
- (b) continues in force until it is cancelled.

## Part 5.4 MAI insurer licences— suspension

### 322 Meaning of *suspended insurer*—pt 5.4

In this part:

*suspended insurer* means an insurer whose MAI insurer licence is suspended under section 325 (Licence suspension).

### 323 Grounds for licence suspension—contraventions

- (1) Each of the following is a ground for suspending a licensed insurer's MAI insurer licence:
  - (a) the insurer has contravened this Act;
  - (b) the insurer has contravened a condition of the MAI insurer licence;
  - (c) the insurer has contravened the insurance industry deed.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) However, if the MAI commission is satisfied that the contravention could be remedied not later than 21 days after the day the contravention happened, the MAI commission must not suspend the

licence under section 325 (Licence suspension) until at least 21 days after the day the contravention happened.

*Note 1* A decision to suspend an MAI insurer licence is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

*Note 2* The grounds in s (1) are also grounds for the MAI commission to apply to the ACAT for an occupational discipline order in relation to the licensed insurer (see Part 5.5).

### **324 Grounds for licence suspension—other grounds**

Each of the following is a ground for suspending a licensed insurer's MAI insurer licence:

- (a) the insurer is not authorised under the [Insurance Act 1973](#) (Cwlth) to carry on insurance business;
- (b) any of the following is appointed over all or part of the assets, or undertaking, of the insurer:
  - (i) a provisional liquidator or liquidator;
  - (ii) a receiver or receiver and manager;
  - (iii) a trustee;
- (c) the insurer is given a direction under the [Insurance Act 1973](#) (Cwlth), part IX (Directions);
- (d) an inspector is appointed to investigate the affairs of the insurer under the [Insurance Act 1973](#) (Cwlth), part V (Investigations of general insurers etc);
- (e) the MAI commission receives a report under section 350 (Audit of accounting records and compliance with MAI guidelines) and believes on reasonable grounds that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under MAI policies issued by the insurer;

- (f) the insurer defaults in the payment of principal or interest of more than \$100 000 under any debenture, or series of debentures, issued by the insurer, unless the default occurs because the insurer genuinely disputes its liability to make the payment;
- (g) the insurer enters into, or resolves to enter into any of the following, other than for a reconstruction or amalgamation on terms that have been approved by the MAI commission:
  - (i) an arrangement, composition or compromise with its creditors;
  - (ii) a transfer for the benefit of its creditors;
- (h) a proceeding is commenced to sanction an arrangement, composition, compromise or transfer mentioned in paragraph (g), other than for a reconstruction or amalgamation on terms that have been approved by the MAI commission;
- (i) an application (other than a frivolous or vexatious application) or order is made for the winding up or dissolution of the insurer, other than for a reconstruction or amalgamation on terms that have been approved by the MAI commission;
- (j) a resolution is passed for the winding up or dissolution of the insurer, other than for a reconstruction or amalgamation on terms that have been approved by the MAI commission;
- (k) there is a change in the effective control of the insurer;
- (l) the insurer becomes a subsidiary of a corporation of which it was not a subsidiary when the licence was issued;
- (m) the MAI commission believes on reasonable grounds that the insurer has failed to comply with a condition imposed on the insurer's authority to carry on insurance business under the *Insurance Act 1973* (Cwlth);

- (n) a person claiming to be a creditor of the insurer gives the insurer a demand requiring the insurer to pay an amount of more than \$100 000, and the insurer fails to pay the amount, or secure or compound for it to the satisfaction of the person, within 3 weeks after the demand is given;
- (o) an execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the insurer is returned unsatisfied, completely or partly, and the amount unsatisfied is more than \$100 000;
- (p) the insurer agrees to the suspension.

*Note 1* A decision to suspend an MAI insurer licence is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

*Note 2* A licensed insurer, or former licensed insurer, commits an offence if any of the events or things mentioned in this section, other than paragraph (e), paragraph (m) or paragraph (p), happens and the person does not tell the MAI commission about it (see s 361).

## 325 Licence suspension

- (1) If the MAI commission believes on reasonable grounds that a ground for suspending a licensed insurer's MAI insurer licence exists, the MAI commission may suspend the licence by giving the licensed insurer written notice of the suspension (a *suspension notice*).
- (2) The suspension notice must state—
  - (a) that the licence is suspended on and from—
    - (i) the day the insurer is given the notice; or
    - (ii) if the suspension notice states a later date—the day stated in the notice; and

- (b) the ground for the suspension.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

### **326 Ending licence suspension**

- (1) The MAI commission may end the suspension of an MAI insurer licence only if the MAI commission believes on reasonable grounds that the licensed insurer is able to comply with the requirements that would be imposed on the insurer if it were issued with a licence for the first time.
- (2) If the MAI commission ends a suspension, the MAI commission must give a written notice to the licensed insurer stating when the suspension ends.

### **327 Offence—issuing MAI policy if licence suspended**

A person commits an offence if—

- (a) the person is a licensed insurer; and
- (b) the person's MAI insurer licence is suspended; and
- (c) the person issues an MAI policy.

Maximum penalty: 100 penalty units

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**328 Effect of suspension on existing liabilities—suspended insurer**

- (1) The suspension of an insurer's MAI insurance licence does not affect—
  - (a) liabilities incurred, or accruing, before the date of suspension; or
  - (b) the suspended insurer's liabilities under MAI policies that came into force before the date of suspension.
- (2) The suspended insurer is subject to this Act and the insurance industry deed in the same way, and to the same extent, as a licensed insurer until all the suspended insurer's liabilities for MAI insurance business have been fully satisfied.

**329 Suspended insurer selected after suspension**

- (1) If a suspended insurer is selected under part 4.4 (Enforcement—search warrants) to be the MAI insurer for an MAI policy, the road transport authority must allocate another insurer under subsection (3) or (4) to be the MAI insurer for the MAI policy.
- (2) The MAI commission—
  - (a) must consult with the remaining licensed insurers about their capacity to underwrite the suspended insurer's MAI policies; and
  - (b) may consult with any insurer the MAI commission considers may be appropriate to become a licensed insurer; and
  - (c) must have regard to the result of any consultation with APRA relevant to the matter.
- (3) The MAI commission must randomly allocate the MAI policies to the remaining licensed insurers in proportion to their shares of the market for MAI insurance.

- (4) However, the MAI commission must allocate MAI policies, if—
  - (a) the MAI commission decides that the remaining licensed insurers do not have capacity to underwrite the MAI policies; or
  - (b) an insurer mentioned in subsection (2) (b) becomes a licensed insurer.



## Part 5.5                      MAI insurer licences— occupational discipline

### 330            **Meaning of *licensed insurer*—pt 5.5**

In this part:

*licensed insurer* includes a former licensed insurer.

### 331            **MAI commission may choose occupational discipline instead of prosecution**

In regulating the operation of licensed insurers, the MAI commission may, but need not, choose to apply to the ACAT for an occupational discipline order in relation to licensed insurers rather than pursuing a prosecution under this Act if the MAI insurer believes on reasonable grounds it would be in the public interest to do so.

*Note*        The MAI commission may apply to the ACAT under s 333.

### 332            **Grounds for occupational discipline**

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensed insurer:
  - (a) the licensed insurer has contravened this Act;
  - (b) the licensed insurer has contravened a condition of the insurer's MAI insurer licence;
  - (c) the licensed insurer has contravened the insurance industry deed;
  - (d) the licensed insurer has contravened, or is contravening, an occupational discipline order;
  - (e) the licensed insurer's MAI insurer licence was obtained by fraud or mistake;

- (f) another ground prescribed by regulation.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) However, subsection (1) (a), (b) and (c) apply to a former licensed insurer only in relation to anything that happened while the person was licensed.

*Note* The grounds in s (1) (a), (b) and (c) are also the grounds for licence suspension under s 323.

### **333 Applications to ACAT for occupational discipline**

If the MAI commission believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensed insurer, the MAI commission may apply to the ACAT for an occupational discipline order in relation to the licensed insurer.

### **334 Occupational discipline orders**

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensed insurer.

*Note* The [ACT Civil and Administrative Tribunal Act 2008](#), s 65 sets out when the ACAT may make an occupational discipline order.

- (2) In addition to any other occupational discipline order that the ACAT may make, the ACAT may require the licensed insurer to pay an amount to the Territory or someone else, of not more than—

- (a) if the licensed insurer is an individual—\$10 000; or  
(b) if the licensed insurer is a corporation—\$50 000.

*Note* The [ACT Civil and Administrative Tribunal Act 2008](#), s 66 sets out other occupational discipline orders the ACAT may make.

- (3) However, if a licensed insurer is convicted of an offence under section 318 (Offence—contravening licence condition) in relation to an act or omission, the ACAT must not make an occupational discipline order requiring the licensed insurer to pay an amount to the Territory or someone else in relation to the same act or omission.
- (4) If the ACAT orders a licensed insurer to pay an amount, the amount must be paid into the nominal defendant fund.

## Part 5.6 MAI insurer licences— cancellation

### 335 Grounds for licence cancellation

Each of the following is a ground for cancelling a licensed insurer's MAI insurer licence:

- (a) the MAI commission considers the cancellation appropriate for any reason, including reasons relating to the motor accident injury insurance scheme under this Act generally, whether or not the reasons relate to the efficiency and conduct of the licensed insurer;
- (b) the insurer surrenders the MAI insurer licence to the MAI commission and the MAI commission approves the surrender.

*Note* An MAI insurer must surrender its licence to the MAI commission if the MAI commission approves the transfer of the MAI insurer licence to someone else (see s 338).

### 336 Proposed licence cancellation

- (1) If the MAI commission proposes to cancel a licensed insurer's MAI insurer licence on a ground mentioned in section 335 (a), the MAI commission must give the licensed insurer a written notice (a *show cause notice*) stating—
  - (a) that the MAI commission proposes to cancel the licence; and
  - (b) the grounds for the proposed cancellation; and
  - (c) that the licensee may, not later than 14 days after the day the licensee is given the notice, give a written submission to the MAI commission about the proposed cancellation.

- (2) In deciding whether to cancel the licence, the MAI commission must consider any submission given to the MAI commission in accordance with the show cause notice.

**337      Licence cancellation**

- (1) If the MAI commission believes on reasonable grounds that a ground for cancelling a licensed insurer's MAI insurer licence exists, the MAI commission may cancel the licence by giving the licensed insurer written notice of the cancellation (a *cancellation notice*).
- (2) The cancellation notice must state—
- (a) that the licence is cancelled on—
    - (i) the day the insurer is given the notice; or
    - (ii) if the cancellation notice states a later date—the day stated in the notice; and
  - (b) the ground for the cancellation.
- (3) However, the MAI commission must not cancel an MAI insurer licence unless satisfied that the licensed insurer has—
- (a) discharged all of its past, present and future liabilities—
    - (i) under any MAI policy for which it is the insurer; and
    - (ii) to the nominal defendant fund; and
    - (iii) to any other licensed insurer; or
  - (b) provided security, or entered into other arrangements satisfactory to the MAI commission, for the liabilities.

- (4) If the MAI commission is unable to cancel a licensed insurer's MAI insurer licence because of subsection (3), the MAI commission may instead impose a condition on the licence that prohibits the insurer from issuing any further MAI policies.

*Note*      A decision to cancel an MAI insurer licence is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

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## Part 5.7 MAI insurer licences—transfer

### 338 MAI insurer licence—transfer

- (1) A licensed insurer (the *old insurer*) may, with the approval of the MAI commission, transfer the insurer's MAI insurer licence to—
  - (a) another licensed insurer (the *new insurer*); or
  - (b) a corporation to whom the MAI commission proposes to issue an MAI insurer licence (the *new insurer*).
- (2) The MAI commission must not approve the transfer of an MAI insurer licence unless satisfied that the new insurer is able to meet the past, present and future liabilities of the old insurer—
  - (a) under any MAI policy for which the old insurer is the insurer; and
  - (b) to the nominal defendant fund; and
  - (c) to any other licensed insurer.
- (3) If the MAI commission approves the transfer of the old insurer's MAI insurer licence to the new insurer—
  - (a) the old insurer must surrender the insurer's MAI insurer licence to the MAI commission; and
  - (b) all rights and liabilities subject to the transfer are transferred to, and become rights and liabilities of, the new insurer; and
  - (c) this Act operates as if the new insurer had been selected as the insurer under the MAI policies subject to the transfer.

*Note* If the MAI commission approves the transfer of the old insurer's licence under this section, the MAI commission must cancel the old insurer's licence on surrender of the licence to the MAI commission (see Part 5.6).

### 339 Transfer of policies to other insurers

- (1) The MAI commission may transfer an insurer's MAI policies to a licensed insurer if—
  - (a) the insurer's MAI insurer licence is cancelled or otherwise ceases to be in force; or
  - (b) the MAI commission is satisfied that it is necessary to do so to ensure compliance with a condition of the licence.
- (2) The MAI commission must give a written notice to both insurers stating—
  - (a) the MAI policies that are to be transferred; and
  - (b) the day when the transfer happens.

*Note* A decision to transfer an insurer's MAI policies is a reviewable decision (see [Road Transport \(General\) Act 1999](#), pt 7).

- (3) In this section:

***insurer*** means a licensed insurer, and includes a person whose MAI insurer licence has been cancelled or has otherwise ceased to be in force.

### 340 Effect of transfer of policies

- (1) If an MAI policy (the ***original policy***) is transferred from an insurer (the ***old insurer***) to a licensed insurer (the ***new insurer***) under section 339—
  - (a) the original policy is cancelled; and
  - (b) the new insurer is taken to have issued an MAI policy—
    - (i) on the day of the transfer; and
    - (ii) on the same terms as the original policy; and



- (iii) for the balance of the period of the original policy; and
- (c) the old insurer must pay to the new insurer—
  - (i) the same proportion of the MAI premium paid, or to be paid, for the original policy as the balance of the indemnity period of the policy bears to the whole indemnity period of the policy; and
  - (ii) an additional amount decided by the MAI commission for the income from investment and the management fee for the MAI premium.
- (2) The new insurer may recover an amount payable under subsection (1) (c) as a debt from the old insurer.
- (3) Cancellation of an MAI policy under this section ends the indemnity period of the policy but, subject to this section, does not affect any right, obligation or liability acquired, accrued or incurred under the policy during the indemnity period.

## Part 5.8 MAI insurer licences— supervision

### 341 Licensed insurer to have business plan

- (1) A licensed insurer must have a plan describing how the licensed insurer's MAI insurance business must be carried out (a *business plan*).

*Note* **MAI insurance business**, for a licensed insurer, means any business associated with MAI policies (see dict, def **MAI insurance business**).

- (2) The business plan must—
- (a) include a description of how the following things must be carried out:
    - (i) motor accident claims handling;
    - (ii) management;
    - (iii) expenses;
    - (iv) systems for processing and transmitting information; and
  - (b) comply with the MAI guidelines.

*Note* The MAI guidelines may make provision in relation to business plans (see s 344).

- (3) If the MAI commission asks a licensed insurer for the business plan, the licensed insurer must give the MAI commission a copy of the business plan as soon as practicable.

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 315).

**342 Licensed insurer to comply with business plan**

- (1) A licensed insurer must carry out the insurer's MAI insurance business in accordance with the insurer's business plan.
- (2) If a licensed insurer carries out the insurer's MAI insurance business in a way that departs significantly from the business plan, the insurer must tell the MAI commission.

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 315).

**343 Licensed insurer to revise business plan**

A licensed insurer must revise the insurer's business plan—

- (a) at least once each year; and
- (b) if the insurer's MAI insurance business departs significantly from the business plan; and
- (c) if the MAI commission directs the insurer to revise the business plan.

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 315).

**344 Business plans—MAI guidelines**

- (1) The MAI guidelines may make provision for—
  - (a) business plans for licensed insurers; and
  - (b) the issue of MAI policies.
- (2) The MAI commission must consult each licensed insurer before making an MAI guideline in relation to the matters mentioned in subsection (1).

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with the MAI guidelines (see s 315).

**345 Reinsurance arrangements of licensed insurers**

A licensed insurer must tell the MAI commission—

- (a) details of arrangements made, or proposed to be made, for reinsurance for liabilities under MAI policies issued by the licensed insurer; and
- (b) the terms of any approval of APRA under the *Insurance Act 1973* (Cwlth) for the reinsurance.

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 315).

**346 Licensed insurer to provide investment details**

- (1) If the MAI commission asks a licensed insurer to give the MAI commission details of how the insurer's third-party funds, and other funds, are invested, the insurer must comply with the request.
- (2) In this section:

*third-party funds*, of a licensed insurer, means the funds of the insurer derived from—

- (a) the payment of MAI premiums for MAI policies; and
- (b) the investment of the funds derived under paragraph (a).

*Note* An MAI insurer licence is subject to the condition that the licensed insurer must comply with this section (see s 315).

**347 Offence—licensed insurer to keep accounts**

- (1) A licensed insurer commits an offence if the insurer does not keep the following accounting records and other records for the business or financial position of the insurer:
  - (a) the records prescribed by regulation;

- (b) if the MAI commission directs the insurer, in writing, to keep a record—the records that the insurer is directed to keep.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) In this section:

***accounting records***, of a licensed insurer, include the following:

- (a) invoices;
- (b) receipts;
- (c) orders for the payment of amounts;
- (d) bills of exchange;
- (e) cheques;
- (f) promissory notes;
- (g) vouchers and other prime entry documents;
- (h) the working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

### **348 Offences—licensed insurer to provide returns**

- (1) A licensed insurer commits an offence if the licensed insurer does not give the MAI commission the following returns for the business or financial position of the insurer:
  - (a) the returns prescribed by regulation;
  - (b) if the MAI commission directs the insurer, in writing, to give a return—the returns that the insurer is directed to give.

Maximum penalty: 100 penalty units.

- (2) A licensed insurer commits an offence if the licensed insurer does not give the returns mentioned in subsection (1) in the way—
- (a) prescribed by regulation; or
  - (b) if the MAI commission directs the insurer, in writing, to give the returns in a stated way—the MAI commission directs.

Maximum penalty: 100 penalty units.

- (3) A licensed insurer commits an offence if the licensed insurer does not include in the returns mentioned in subsection (1) the details—
- (a) prescribed by regulation; and
  - (b) if the MAI commission directs the insurer, in writing, to include stated details—the MAI commission directs.

Maximum penalty: 100 penalty units.

- (4) A licensed insurer commits an offence if the licensed insurer, when giving the returns mentioned in subsection (1), does not also give the MAI commission the documents—
- (a) prescribed by regulation; or
  - (b) if the MAI commission directs the insurer, in writing, to give stated documents—the MAI commission directs.

Maximum penalty: 100 penalty units.

- (5) A licensed insurer commits an offence if the licensed insurer does not give the returns mentioned in subsection (1) to the MAI commission—
- (a) not later than 6 weeks after the end of each quarter; or

- (b) if the MAI commission directs the insurer, in writing, to give the returns at another stated time—not later than the stated time.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**349 MAI commission may publish returns**

The MAI commission may make publicly available a copy of any return, and any document accompanying a return, given to the MAI commission under section 348.

**350 Audit of accounting records and compliance with MAI guidelines**

- (1) The MAI commission may appoint an appropriately qualified person (an *appointed auditor*) to audit or inspect, and report to the MAI commission on—
  - (a) the accounting records of a licensed insurer; or
  - (b) other records relating to the business or financial position of a licensed insurer; or
  - (c) the licensed insurer's compliance with the MAI guidelines.
- (2) An appointed auditor is, in exercising a function under this section, entitled to inspect the accounting records and other records of the licensed insurer.
- (3) An appointed auditor exercising a function under this section has qualified privilege in a proceeding for defamation for any statement that the auditor makes orally or in writing in the course of exercising the function.

- (4) In this section:

*accounting records*, of a licensed insurer—see section 347 (2).

**351 Offence—licensed insurer to assist appointed auditor**

A licensed insurer commits an offence if—

- (a) an appointed auditor is exercising a function under section 350 in relation to the insurer; and
- (b) the insurer does not provide all reasonable assistance requested by the auditor to allow the exercise of the function.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**352 Audit of licensed insurer's profitability**

- (1) The MAI commission may carry out an audit to work out the profitability of a licensed insurer and, in carrying out the audit, may exercise a function of an appointed auditor.
- (2) The MAI commission must report on the audit, on a confidential basis, to APRA.

**353 MAI commission may ask for information etc**

- (1) The MAI commission may ask a licensed insurer to give the commission stated information about the business and financial position of—
  - (a) the licensed insurer; or
  - (b) a corporation that is a related body corporate of the licensed insurer.

*Note* **Licensed insurer** includes a former licensed insurer (see s (6)).



- (2) The MAI commission may ask a licensed insurer to give the commission a stated document kept by—
  - (a) the licensed insurer; or
  - (b) a corporation that is a related body corporate of the licensed insurer.
- (3) The MAI commission may ask a licensed insurer to make available for inspection by the commission a stated document kept by—
  - (a) the licensed insurer; or
  - (b) a corporation that is a related body corporate of the licensed insurer.
- (4) The MAI guidelines may make provision in relation to other information the MAI commission may ask a licensed insurer to give, or make available to, the MAI commission.
- (5) To remove any doubt, this section does not limit—
  - (a) any other provision of this Act about the MAI commission obtaining information; or
  - (b) how the MAI commission may obtain information.
- (6) In this section:  
*document* includes—
  - (a) a return or account given under—
    - (i) the [Corporations Act](#); and
    - (ii) the [Insurance Act 1973](#) (Cwlth); and
  - (b) a copy of, or extract from, a document.

**information**, about the business and financial position of an entity, includes—

- (a) financial information that is, or may be, relevant to the consideration by the MAI commission of MAI premiums charged by the licensed insurer under this Act; and
- (b) information about—
  - (i) the cost of motor accident claims handling incurred by the licensed insurer; and
  - (ii) the settlement of motor accident claims by the licensed insurer; and
  - (iii) the cost incurred by the licensed insurer in relation to the handling of applications for defined benefits; and
- (c) information about any other matter in relation to the licensed insurer.

**licensed insurer** includes a former licensed insurer.

#### **354 How MAI commission is to make request**

- (1) A request by the MAI commission under section 353 must—
  - (a) be made in writing and given to the licensed insurer or former licensed insurer; and
  - (b) state how the request must be complied with; and
  - (c) state when the request must be complied with.
- (2) A statement of how the request must be complied with may include a requirement that the licensed insurer, or former licensed insurer, give the MAI commission a certificate of correctness.

- (3) In this section:

***certificate of correctness***, for stated information or a stated document (or a copy of or extract from a stated document), means a certificate certifying the correctness of the information, document, copy or extract by any of the following:

- (a) a registered tax agent;
- (b) a registered company auditor;
- (c) an actuary approved by the MAI commission.

***registered company auditor***—see the [Corporations Act](#), section 9.

### **355 Offence—insurer to give information and documents**

- (1) A licensed insurer commits an offence if—
- (a) the MAI commission makes a request of a licensed insurer, or a former licensed insurer, under section 353; and
  - (b) the MAI commission makes the request in the way mentioned in section 354; and
  - (c) the insurer does not comply with the request.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that it was not in the defendant's power to comply with the requirement.

**356 MAI commission to report on licensed insurer's net profitability**

- (1) The MAI commission may prepare a report about the following information in relation to a licensed insurer (a *net profit report*):
  - (a) the insurer's net profit;
  - (b) the insurer's expenses, other than expenses relating to the handling of—
    - (i) applications under chapter 2 for defined benefits; and
    - (ii) motor accident claims.
- (2) A net profit report may be based on the following information about the licensed insurer:
  - (a) information the MAI commission receives in relation to the conduct of an audit of the insurer under section 352 (Audit of licensed insurer's profitability);
  - (b) information the MAI commission receives in relation to the insurer under the following sections:
    - (i) section 341 (Licensed insurer to have business plan);
    - (ii) section 345 (Reinsurance arrangements of licensed insurers);
    - (iii) section 346 (Licensed insurer to provide investment details);
    - (iv) section 348 (Offences—licensed insurer to provide returns);
    - (v) section 350 (Audit of accounting records and compliance with MAI guidelines);

- (vi) section 353 (MAI commission may ask for information etc);
- (c) any other information available to the MAI commission under this Act or another Territory law in relation to the insurer's expenses or performance.
- (3) However, the MAI commission must not publish confidential information relating to a licensed insurer if—
  - (a) the insurer tells the commission that publication of the information would disclose a trade secret not known to other insurers; and
  - (b) the commission is satisfied that, having regard to its knowledge of the business practices of insurers, the publication of the information would disclose a trade secret.
- (4) The Minister may present a net profit report, or part of a net profit report, to the Legislative Assembly.
- (5) A regulation may prescribe the following:
  - (a) when the MAI commission may prepare a net profit report;
  - (b) the information that may be included in a net profit report;
  - (c) the circumstances in which a net profit report may identify, or not identify, the licensed insurer to which it relates;
  - (d) the circumstances in which the Minister may present a net profit report to the Legislative Assembly.

### **357 Reports about insurers**

- (1) The MAI commission may give the Minister reports about—
  - (a) the level of compliance by insurers with—
    - (i) the requirements of this Act; and

- (ii) any conditions of MAI insurer licences under this Act (including the MAI guidelines); and
  - (b) complaints made about insurers that relate to any matter to which this Act relates; and
  - (c) anything else about insurers that relates to any matter to which this Act relates.
- (2) A report may relate to—
  - (a) insurers generally; or
  - (b) a class of insurers; or
  - (c) a particular insurer.
- (3) A report may identify a particular insurer.
- (4) A report may include the observations and recommendations the MAI commission considers appropriate.
- (5) The Minister may make a report public.

**358 MAI commission may apply for policy holder protection order**

- (1) The MAI commission may apply to the Supreme Court for an order (a *policy holder protection order*) to protect the interests of the holders of MAI policies issued by a licensed insurer or a former licensed insurer.
- (2) If the MAI commission intends to apply for a policy holder protection order, the MAI commission must give the following entities notice of its intention:
  - (a) APRA;
  - (b) ASIC.

- (3) Each of the following entities has a right to appear, and be heard, in a proceeding for a policy holder protection order:
  - (a) APRA;
  - (b) ASIC.
- (4) Before considering an application for a policy holder protection order, the Supreme Court may, if in its opinion it is desirable to do so, make an interim policy holder protection order that is expressed to have effect until the application is decided.
- (5) If the Supreme Court makes an interim policy holder protection order, the court may not require the MAI commission to give an undertaking as to damages as a condition of making the order.

### **359 Court orders to protect policy holders**

- (1) The Supreme Court may, on the application of the MAI commission, make any order the court considers necessary or desirable to protect the interests of the holders of MAI policies issued by a licensed insurer.

*Note* **Licensed insurer** includes a former licensed insurer (see s (6)).

- (2) However, the court may make an order for a licensed insurer only if—
  - (a) satisfied that the insurer—
    - (i) is not, or may not be, able to meet the insurer's liabilities under the MAI policies; or
    - (ii) has acted, or may act, in a way that is prejudicial to the interests of the holders of the MAI policies; and
  - (b) the insurer is not a corporation that is in the course of being wound up.

- (3) Without limiting subsection (1), the court may make the following orders:
- (a) an order regulating the administration and payment of motor accident claims under the MAI policies;
  - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer;
  - (c) an order requiring the licensed insurer to discharge its liabilities under the MAI policies out of its assets and the assets of any related body corporate;
  - (d) an order appointing a receiver or receiver and manager, having the powers that the court orders, of the property or part of the property of the licensed insurer or of any related body corporate.
- (4) If the Supreme Court makes an order under this section, the court may, on application by the MAI commission or anyone else affected by the order, make another order revoking or amending the order.
- (5) To remove any doubt, the powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.
- (6) In this section:

*licensed insurer* includes a former licensed insurer.

### **360 Offence—contravene court order**

A person commits an offence if—

- (a) a court order under section 359 is in force for the person; and
- (b) the person contravenes the order.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).



**361 Offence—insurer to tell MAI commission about grounds for suspension**

A person commits an offence if—

- (a) the person is a licensed insurer or a former licensed insurer; and
- (b) an event or thing mentioned in section 324 (Grounds for licence suspension—other grounds) happens, other than an event or thing mentioned in section 324 (e), (m) or (p); and
- (c) the person does not tell the MAI commission about the event or thing, in writing, within 21 days after the event or thing happens.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**362 Offence—insurer to tell MAI commission of decrease in issued capital**

A person commits an offence if—

- (a) the person is a licensed insurer; and
- (b) there is, or is to be, a decrease in the issued capital of the insurer; and
- (c) the person does not tell the MAI commission about the decrease or proposed decrease, in writing, within 21 days after the decrease or proposal.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**363 Offence—insurer to tell MAI commission of bidder’s statement or target’s statement**

- (1) A person commits an offence if the person—
- (a) is a licensed insurer; and
  - (b) receives a bidder’s statement or target’s statement; and
  - (c) does not tell the MAI commission about the statement, in writing, within 21 days after the licensed insurer receives the statement.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) In this section:

*bidder’s statement*—see the [Corporations Act](#), section 9.

*target’s statement*—see the [Corporations Act](#), section 9.

**364 Only MAI commission may issue proceeding against licensed insurer**

A proceeding against a licensed insurer for failure to comply with the terms of the insurer’s MAI insurer licence, or this Act, may only be issued by the MAI commission.

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## Part 5.9 MAI insurer licences—insolvent insurers

### 365 Definitions—pt 5.9

In this part:

*MAI policy issued by an insolvent insurer* means—

- (a) an MAI policy issued by an insolvent insurer, whether before or after the insurer became an insolvent insurer; or
- (b) an MAI policy, issued by a person other than an insolvent insurer, for which an insolvent insurer has (whether before or after becoming an insolvent insurer) entered into a contract or an arrangement under which the insolvent insurer is (or would be but for its dissolution) liable to indemnify the person against the person's liability under the policy.

*insolvent insurer* means a licensed insurer, or former licensed insurer, for which an insolvent insurer declaration is in force.

*insolvent insurer declaration*—see section 367.

*liquidator* includes a provisional liquidator.

### 366 Liquidators

- (1) In this part, a reference to a liquidator includes a reference to a liquidator appointed outside the ACT.
- (2) The liquidator of an insolvent insurer may exercise its functions inside and outside the ACT.

**367 Insolvent insurer declarations**

- (1) The Minister may declare a licensed insurer, or former licensed insurer, to be an insolvent insurer (an *insolvent insurer declaration*) if—
  - (a) the Minister is satisfied that—
    - (i) a liquidator has been appointed for the licensed insurer or former licensed insurer; or
    - (ii) the licensed insurer, or former licensed insurer, has been dissolved; and
  - (b) the Minister has consulted—
    - (i) APRA; and
    - (ii) ASIC; and
  - (c) the Treasurer approves the making of the declaration.
- (2) An insolvent insurer declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**368 Nominal defendant is insurer if MAI insurer insolvent**

- (1) If an MAI insurer for an MAI policy becomes an insolvent insurer, the nominal defendant becomes the insurer for the policy.
- (2) However, subsection (1) does not apply to an MAI policy that is transferred to a licensed insurer (other than an insolvent insurer).

*Note* Transfer of MAI policies is dealt with in Part 5.7.

**369 Nominal defendant may recover from insolvent insurer**

- (1) If an MAI insurer becomes an insolvent insurer, any costs reasonably incurred by the nominal defendant for motor accident claims under an MAI policy for which the insolvent insurer was the insurer become debts of the insolvent insurer to the nominal defendant and provable in the insolvency.
- (2) The costs that become the debts of the insolvent insurer under subsection (1) have the same order of priority in the winding-up of the insolvent insurer as they would if the nominal defendant were the MAI insured person under the MAI policy.
- (3) If the motor accident claim for which costs were incurred by the nominal defendant is covered by a contract of reinsurance, the nominal defendant succeeds to the rights of the insolvent insurer under the contract of reinsurance.

**370 Offence—liquidator to give motor accident claims to nominal defendant**

The liquidator of an insolvent insurer commits an offence if the liquidator—

- (a) receives a motor accident claim about an MAI policy issued by the insolvent insurer; and
- (b) does not give the motor accident claim to the nominal defendant.

Maximum penalty: 20 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

**371 Offence—liquidator to give information etc to nominal defendant**

- (1) The liquidator of an insolvent insurer commits an offence if—
- (a) the nominal defendant asks the liquidator in writing to give the nominal defendant all documents, or information, in the liquidator's possession relating to MAI policies issued by the insolvent insurer, or motor accident claims, or judgments, made in relation to the MAI policies; and
  - (b) the liquidator does not give the documents or information to the nominal defendant within 45 days after the day the nominal defendant asks for them.

Maximum penalty: 20 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) Subsection (1) does not apply to a liquidator if—
- (a) before the end of the 45-day period, the liquidator—
    - (i) tells the nominal defendant in writing that it is not reasonably practicable to give the nominal defendant the documents or information within the period; and
    - (ii) explains why it is not reasonably practicable; and
  - (b) the nominal defendant extends the time for providing the documents or information; and
  - (c) the liquidator provides the documents or information to the nominal defendant within the extended time.

**372 Offence—liquidator to allow inspection of documents**

- (1) The liquidator of an insolvent insurer commits an offence if—
- (a) a person authorised by the Minister asks the liquidator to make available for inspection by the person all documents in the liquidator's possession relating to—
    - (i) MAI policies issued by the insolvent insurer; or
    - (ii) motor accident claims or judgments made in relation to the MAI policies; and
  - (b) the liquidator does not make the documents available to the person within 45 days after the day the person asks for them.

Maximum penalty: 20 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (2) Subsection (1) does not apply to a liquidator if—
- (a) before the end of the 45-day period, the liquidator—
    - (i) in writing, tells the person authorised that it is not reasonably practicable to give the person the documents within the period; and
    - (ii) explains why it is not reasonably practicable; and
  - (b) the person extends the time for providing the documents; and
  - (c) the liquidator makes the documents available to the person within the extended time.

**373      Borrowing for nominal defendant fund**

The nominal defendant may borrow the amounts that the nominal defendant considers necessary to satisfy motor accident claims and judgments for MAI policies issued by an insolvent insurer if the nominal defendant would not otherwise be able to satisfy the claims and judgments from the nominal defendant fund.

**374      Nominal defendant may intervene in legal proceeding**

- (1) This section applies if—
  - (a) the liquidator of an insolvent insurer applies to a court for directions for a matter arising under the winding-up; or
  - (b) the exercise, by the liquidator of an insolvent insurer, of any of the liquidator's functions, whether under this part or not, is challenged, reviewed or called into question in a proceeding before a court; or
  - (c) another matter that may affect the operation of this part is raised in a proceeding before a court.
- (2) The nominal defendant may intervene at any stage of the proceeding.
- (3) If the nominal defendant intervenes, the nominal defendant becomes a party to the proceeding and has all the rights of a party to the proceeding including the right to appeal against any order, judgment or direction of the court.
- (4) The nominal defendant is entitled to be paid, out of the nominal defendant fund, all the costs and expenses incurred by the nominal defendant in exercising a function under this section.



**375 Nominal defendant may take legal proceeding**

- (1) This section applies to a proceeding if—
  - (a) the nominal defendant may take the proceeding for a person who is entitled (or who would be entitled but for the dissolution of the insolvent insurer), under an MAI policy issued by an insolvent insurer, to be indemnified against a motor accident claim or judgment arising from or relating to the MAI policy; and
  - (b) the proceeding is for, or for enforcing or securing compliance with, any provision under this part or another Act.
- (2) The nominal defendant is taken to represent sufficiently the interests of the public and may take the proceeding in its own name.
- (3) The nominal defendant is entitled to be paid, out of the nominal defendant fund, all the costs and expenses incurred by the nominal defendant in exercising a function under this section.

## **Part 5.10                      MAI insurer licences—    miscellaneous**

### **376                      Insurer to deter fraudulent applications or claims**

An insurer must take all reasonable steps to deter and prevent the making of fraudulent applications for defined benefits or motor accident claims.

### **377                      Communicating with people in relation to motor accident**

- (1) The relevant insurer for a motor accident may contact the following people directly (whether or not the person has legal representation) in the circumstances stated in the MAI guidelines:
  - (a) a person injured in the motor accident;
  - (b) an applicant for defined benefits;
  - (c) a claimant for damages.
- (2) The MAI guidelines may make provision in relation to the following:
  - (a) the circumstances in which an insurer may communicate with an applicant for defined benefits or a claimant for a motor accident claim;
  - (b) the matters about which an insurer may communicate with an applicant for defined benefits or a claimant for a motor accident claim.

## Chapter 6                      Enforcement

### Part 6.1                      Enforcement—general

#### 378                      Definitions—ch 6

In this chapter:

*at* premises includes in or on the premises.

*authorised officer* means a person appointed as an authorised officer under section 379.

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

*premises* includes land, a vehicle, a vessel and an aircraft.

*warrant* means a warrant issued under part Part 6.4 (Enforcement—search warrants).

## Part 6.2                      Enforcement—authorised officers

### 379                      Appointment of authorised officers

The MAI commission may appoint a public servant as an authorised officer for this Act.

*Note 1*    For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2*    In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

### 380                      Identity cards

- (1) The MAI commission must give each authorised officer an identity card that states the officer's name and appointment as an authorised officer, and shows—
  - (a) a recent photograph of the authorised officer; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry of the card; and
  - (d) anything else prescribed by regulation.
- (2) A person commits an offence if the person—
  - (a) stops being an authorised officer; and
  - (b) does not return the person's identity card to the MAI commission as soon as practicable (but not later than 7 days) after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if the person's identity card has been—

- (a) lost or stolen; or
- (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An offence against this section is a strict liability offence.

### **381 People assisting authorised officers**

A person may assist an authorised officer under this chapter if—

- (a) the assistance is necessary and reasonable; and
- (b) the person follows any direction given to the person by the authorised officer.

### **382 Authorised officer must show identity card on exercising power**

- (1) If an authorised officer exercises a power under this Act that affects an individual, the authorised officer must first show the authorised officer's identity card to the individual.
- (2) If an authorised officer exercises a power under this Act that affects a person, other than an individual, the authorised officer must first show the authorised officer's identity card to an individual the authorised officer believes on reasonable grounds is an employee, officer or agent of the person.

**Example—person other than an individual**

- corporation
- partnership

## **Part 6.3                      Enforcement—powers of authorised officers**

### **383            Power to enter premises**

- (1) For this Act, an authorised officer may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) enter premises in accordance with a warrant.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised officer may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised officer may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An authorised officer may—
  - (a) for subsection (1) (a) or (b)—enter the premises with necessary assistance; and
  - (b) for subsection (1) (c)—enter the premises with necessary assistance and force.

*Note*        A warrant to enter premises, issued under this Act, permits an authorised officer to enter premises with any necessary assistance and force.

- (6) However, only a police officer may use force against a person.

- (7) In this section:

***necessary assistance***, for an authorised officer entering premises, includes the attendance of 1 or more people who, in the opinion of the officer, have knowledge or skills that could assist the officer carry out the officer's function.

#### **384 Production of identity card**

An authorised officer and any other person other than a police officer who is accompanying the authorised officer must not remain at premises entered under this chapter if the authorised officer does not produce the authorised officer's identity card when asked by the occupier.

#### **385 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 383 (1) (b), an authorised officer must—
- (a) produce their identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found and seized under this chapter may be used in evidence in court; and
    - (iv) that consent may be refused.
- (2) If the occupier consents, the authorised officer must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—
- (a) that the occupier was told—

- (i) the purpose of the entry; and
  - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
  - (iii) that anything seized under this chapter may be used in evidence in court; and
  - (iv) that consent may be refused; and
- (b) that the occupier consented to the entry; and
- (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised officer must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised officer under this chapter if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

**386 General powers on entry to premises**

- (1) An authorised officer who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) examine anything;
  - (b) examine and copy, or take extracts from, documents relating to a contravention, or possible contravention, of this Act;
  - (c) take photographs, films, or audio, video or other recordings;



- (d) require the occupier, or anyone at the premises, to give information, answer questions, or produce documents or anything else (whether the information, document or other thing is at the premises or elsewhere) that the occupier or person at the premises has, or has access to, that are reasonably needed to exercise a function under this chapter;
- (e) require the occupier, or anyone at the premises, to give the authorised officer copies of documents produced under paragraph (d) that are reasonably necessary to exercise a function under this chapter;
- (f) require the occupier, or anyone at the premises, to give the authorised officer reasonable help to exercise a power under this chapter.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) Also, an authorised officer who enters premises under a warrant may search the premises or anything at the premises.
- (3) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (d), (e) or (f).

Maximum penalty: 50 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

## **387 Power to seize things**

- (1) An authorised officer who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

- (2) An authorised officer who enters premises under a warrant under this chapter may seize anything at the premises that the officer is authorised to seize under the warrant.
- (3) An authorised officer who enters premises under this chapter (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if the officer believes on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised officer may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if the person—
  - (a) interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) does not have an authorised officer's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (6) An offence against subsection (5) is a strict liability offence.

**388 Power to require name and address**

- (1) An authorised officer may require a person to state the person's name and home address if the officer suspects on reasonable grounds that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The authorised officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised officer to produce the officer's identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised officer—
- (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (5) An offence against this section is a strict liability offence.

## Part 6.4 Enforcement—search warrants

### 389 Warrants generally

- (1) An authorised officer may apply to a magistrate for a warrant to enter and search premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

*Note* Swear an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1, def *swear*).

- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that an authorised officer may, with any reasonable and necessary force and assistance, enter the premises and exercise the officer's powers under this chapter; and

*Note 1* An authorised officer may enter the premises with any reasonable and necessary force and assistance (see s 383 (5)). However, only a police officer may use force against a person (see s 383 (6)).

*Note 2* An authorised officer's powers include the power to search the premises (see s 386 (2)).

- (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date (within 7 days after the day the warrant is issued) that the warrant ends.
- (6) In this section:
- connected***—an activity is ***connected*** with an offence if—
- (a) the offence has been committed by engaging or not engaging in it; or
  - (b) it will provide evidence of the commission of the offence.

**390 Warrants—application made other than in person**

- (1) An authorised officer may apply for a warrant by phone, fax, email, radio or other form of communication if the officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.

**391 Warrants—issue on application made other than in person**

- (1) If the magistrate issues the warrant, the magistrate must immediately do either of the following if it is practicable to do so:
  - (a) fax a copy to the authorised officer;
  - (b) email a scanned copy to the authorised officer.
- (2) If it is not practicable to fax or email a copy to the authorised officer—
  - (a) the magistrate must tell the officer—
    - (i) the date and time the warrant was issued; and
    - (ii) the warrant’s terms; and
  - (b) the authorised officer must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate’s name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant’s terms.
- (3) The faxed or emailed copy of the warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the officer’s powers under the warrant.

*Note* Authorised officers have additional powers under this part (see s 386 and s 387 (3)).
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the officer completed a warrant form—the completed warrant form.

- (5) On receiving the documents, the magistrate must attach them to the warrant.
- (6) A court must find that a power exercised by an authorised officer was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**392 Warrants—announcement before entry**

- (1) An authorised officer must, before anyone enters premises under a warrant—
  - (a) announce that the authorised officer is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The authorised officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone in relation to the subject matter of the warrant; or
  - (b) the safety of the authorised officer or anyone assisting the officer; or
  - (c) that the effective execution of the warrant is not frustrated.

**393 Details of warrant to be given to occupier etc**

- (1) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a warrant is being executed, the authorised officer or anyone assisting must make available to the person—
  - (a) a copy of the warrant or warrant form; and
  - (b) a document setting out the rights and obligations of the person.
- (2) In this section:  
*warrant form*—see section 391 (2) (b) (Warrants—issue on application made other than in person).

**394 Occupier entitled to be observe search etc**

- (1) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.



**395 Moving things to another place for examination or processing under warrant**

- (1) A thing found at premises entered under a warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised officer may apply to a magistrate for an extension of time if the officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised officer must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

*Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- (5) If a thing is moved to another place under this section, the authorised officer must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and

- (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this chapter relating to the issue of warrants apply, with any necessary changes, to the giving of an extension under this section.

## **Part 6.5                      Enforcement—return and forfeiture of things seized**

### **396              Receipt for seized thing**

- (1) As soon as practicable after an authorised officer seizes a thing under this chapter, the officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt, secured conspicuously, at the premises where the thing was seized.
- (3) The receipt must include the following:
  - (a) a description of the thing seized;
  - (b) why the thing was seized;
  - (c) the authorised officer's name, and information about how to contact the officer;
  - (d) if the thing is moved from the premises—the address where the thing is to be taken;
  - (e) if an authorised officer has restricted access to the thing under section 387 (4) (b) (Power to seize things)—that it is an offence under section 387 (5) to interfere with the thing without an authorised officer's approval.

**397 Access to seized thing**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may, at any reasonable time—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**398 Return of seized thing**

- (1) If a thing was seized under this chapter and 1 of the circumstances set out in section 399 applies—

- (a) the thing must be returned to its owner; or
- (b) if the thing cannot be returned to its owner because it is lost, destroyed or damaged—reasonable compensation must be paid by the Territory to the owner.

*Note* The thing must be returned, or compensation paid, as soon as possible (see [Legislation Act](#), s 151B).

- (2) However, a thing is not required to be returned, or reasonable compensation is not required to be paid, if—

- (a) the thing is the subject of an application to a court, or a court order, in relation to the seizure or forfeiture of the thing; and
- (b) the application or order is made in relation to the thing under another law in force in the ACT.

**Example**

An application for the forfeiture of the seized thing is made to a court under the [Confiscation of Criminal Assets Act 2003](#).

**399      Circumstances—s 398**

The circumstances for section 398 are as follows:

- (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day the thing was seized, and a prosecution for an offence relating to the thing—
  - (i) is not started within the 1-year period; or
  - (ii) is started within the 1-year period but the offence is finally dealt with in the owner's favour;

**Examples—offence finally dealt with in owner's favour**

- 1 a court finds the owner not guilty of the offence
  - 2 a court finds the owner guilty of the offence, the owner appeals against the conviction and the appeal court sets the conviction aside
  - 3 a court permanently stays the criminal proceeding against the owner
- (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day the thing was seized, the infringement notice is withdrawn and a prosecution for an offence relating to the thing—
    - (i) is not started within the 1-year period; or
    - (ii) is started within the 1-year period but the offence is finally dealt with in the owner's favour;

- (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day the thing was seized, liability for the offence is disputed in accordance with the *Road Transport (General) Act 1999*, section 51 (Disputing liability for infringement notice offence) and an information—
  - (i) is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that Act, section 51 that liability is disputed; or
  - (ii) is laid in the Magistrates Court against the person for the offence within the 60-day period, but the offence is finally dealt with in the owner's favour;
- (d) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day the thing was seized, and the infringement notice penalty for the offence is paid;
- (e) the MAI commission becomes satisfied that there is no offence against this Act with which the thing was connected;
- (f) the MAI commission decides not to have an infringement notice served for the offence;
- (g) the MAI commission or DPP decides not to prosecute.

*Note*     ***Infringement notice***—see the *Road Transport (General) Act 1999*, s 24 (6).

***Infringement notice penalty***, for a person for an infringement notice offence—see the *Road Transport (General) Act 1999*, dictionary.

**400 Return of seized thing—extension of time**

- (1) A magistrate may, on application by the DPP, extend the relevant period in relation to a seized thing by not longer than 30 days if the magistrate is satisfied there are special reasons for doing so.
- (2) A magistrate to whom an application is made may extend the relevant period only if—
  - (a) the person from whom the thing was seized is told about the application by the DPP; and
  - (b) the person is given an opportunity to be heard about the extension.
- (3) An extension in relation to a seized thing may be given more than once.
- (4) In this section:  
*relevant period*, in relation to a seized thing, means—
  - (a) the 1-year period under section 399 (a) or (b); or
  - (b) the 60-day period under section 399 (c).

**401 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this chapter may apply to the Magistrates Court for an order disallowing the seizure within 10 days after the day the thing was seized.
- (2) The application may be heard only if the applicant has served a copy of the application on the MAI commission.  
*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.
- (3) The MAI commission is entitled to appear as a respondent at the hearing of the application.

**402      Order disallowing seizure**

- (1) This section applies if a person claiming to be entitled to anything seized under this chapter applies to the Magistrates Court under section 401 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may also make 1 or more of the following orders:
  - (a) an order directing the MAI commission to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

**403      Forfeiture of seized thing**

- (1) This section applies if—
  - (a) anything seized under this chapter is not required to, or cannot be, returned under section 398; and



- (b) an application for disallowance of the seizure under section 401—
  - (i) is not made within 10 days after the day the thing was seized; or
  - (ii) is made within the 10-day period, but the application is refused or withdrawn before a decision in relation to the application is made.
- (2) If this section applies to the seized thing, the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the MAI commission directs.

## **Part 6.6                      Enforcement—miscellaneous**

### **404                      Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this chapter, an authorised officer must take reasonable steps to ensure that the officer, and anyone assisting the officer, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised officer, or anyone assisting an authorised officer, damages anything in the exercise or purported exercise of a function under this chapter, the officer must give written notice of the particulars of the damage to the person the officer believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this chapter in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **405                      Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an authorised officer or anyone assisting an authorised officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied that it is just to make the order in the circumstances of the particular case.

- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Chapter 7 Information collection and secrecy

### 406 Licensed insurers must give information to MAI commission

- (1) A licensed insurer must give the MAI commission—
  - (a) periodic returns prescribed by regulation, containing the information prescribed by regulation; and
  - (b) information about claims against the insurer—
    - (i) prescribed by regulation; or
    - (ii) required by the MAI commission by written notice to the insurer; and

#### Example

An insurer may be required to provide—

- (a) details of motor accident claims against the insurer, and the dates when notice of the claims were received by the insurer; and
  - (b) information about the claimants; and
  - (c) information about whether liability was admitted by the insurer, when liability was admitted or denied and, if liability was admitted, the extent to which liability was admitted; and
  - (d) information about the costs of the insurer on claims, and how the costs are made up.
- (c) information about applications for defined benefits made to the insurer—
  - (i) prescribed by regulation; or
  - (ii) required by the MAI commission by written notice to the insurer; and

- (d) other information that is relevant to the administration of this Act that is—
  - (i) prescribed by regulation; or
  - (ii) required by the MAI commission by written notice to the insurer.
- (2) The MAI commission may require the insurer, by written notice to the insurer, to provide information mentioned in subsection (1)—
  - (a) in the stated time; and
  - (b) using a stated system for the processing and transmission of information.
- (3) A person commits an offence if the person—
  - (a) is a licensed insurer; and
  - (b) must give the MAI commission a periodic return or information under this section; and
  - (c) does not give the periodic return or information as required under this section.

Maximum penalty: 150 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

#### **407 MAI commission may disclose information to licensed insurers etc**

- (1) The MAI commission may disclose any information that has been disclosed to, or obtained by, the MAI commission in the exercise of its functions under this Act to an information sharing entity if the MAI commission considers that—
  - (a) the information is relevant to the exercise of the functions of the information sharing entity; and

- (b) the disclosure of the information to the information sharing entity is appropriate.
- (2) In particular, the MAI commission may disclose information under subsection (1) to an information sharing entity for the purpose of detecting or investigating fraud in relation to a motor accident claim or an application for defined benefits under this Act.
- (3) In this section:  
*information sharing entity* means any of the following:
  - (a) a licensed insurer;
  - (b) the nominal defendant;
  - (c) the road transport authority;
  - (d) a person approved in writing by the MAI commission.

**408 Licensed insurer may disclose information to another licensed insurer**

- (1) A licensed insurer may disclose information about an application for defined benefits or a motor accident claim to another licensed insurer if—
  - (a) the other insurer is liable, or potentially liable, in relation to the application or claim; and
  - (b) the injured person has given the insurer an authority to transfer personal health information to the other insurer.

*Note 1* The other insurer may then require the applicant or claimant to provide an authority to disclose personal health information.

*Note 2* *Authority to disclose personal health information*—see s 56.

- (2) A regulation may prescribe conditions in relation to the disclosure of information under this section.

*Note* The *Health Records (Privacy and Access) Act 1997* and the *Privacy Act 1988* (Cwlth) set out circumstances in which personal information about a person may be disclosed.

- (3) In this section:

***authority to transfer personal health information***, for a person injured in a motor accident, means an authority—

- (a) signed by or on behalf of the injured person; and
- (b) stating that the injured person consents to the disclosure of personal health information about the injured person—
  - (i) by the insurer; and
  - (ii) to another stated insurer; and
  - (iii) for the purposes of transferring the injured person’s motor accident claim or application for defined benefits.

#### **409 Lawyers etc must give information to MAI commission**

- (1) A regulation may require lawyers and other stated service providers to give information to the MAI commission in relation to applications and claims made under this Act.
- (2) The regulations may prescribe—
  - (a) the information that must be given; and
  - (b) the form in which the information must be given; and
  - (c) when the information must be given; and
  - (d) any other relevant matter.
- (3) For subsection (2) (a), the information may include—
  - (a) amounts paid to applicants and claimants; and

- (b) costs and disbursements paid by applicants and claimants; and
  - (c) when payments were received by or made to applicants and claimants.
- (4) The MAI commission may—
  - (a) give the Minister information the commission receives under this section; and
  - (b) publish statistical data based on the information the commission receives under this section.
- (5) The Minister may require the MAI commission to publish statistical data based on the information the commission receives under this section.

**410 MAI commission may disclose information to LTCS commissioner**

- (1) The MAI commission may disclose information to the LTCS commissioner about the following:
  - (a) motor accident claims under this Act;
  - (b) applications for defined benefits under this Act;
  - (c) payments made to or on behalf of a person who is a participant in the LTCS scheme under the [LTCS Act](#);
  - (d) the treatment and care needs of a person who is a participant in the LTCS scheme in relation to the motor accident injury as a consequence of which the person became a participant in the scheme.

*Note* **LTCS Act**—see the dictionary.

**LTCS scheme**—see the [LTCS Act](#), dictionary.

**Participant**, in the LTCS scheme—see the [LTCS Act](#), dictionary.



- (2) In this section:

*information*, about the treatment and care needs of a participant in the LTCS scheme, includes the expenses paid or payable by the LTCS commissioner under the scheme in relation to those needs.

*Note* *LTCS commissioner*—see the [LTCS Act](#), dictionary.

*treatment and care needs* see the [LTCS Act](#), section 9.

#### **411 MAI injury register**

- (1) The MAI commission must keep a register of motor accident claims and applications for defined benefits (the *MAI injury register*).
- (2) The MAI injury register must contain information provided under this Act by insurers that the MAI commission considers appropriate to include in the MAI injury register.
- (3) The MAI injury register must also include information provided by the LTCS commissioner under the [LTCS Act](#), section 94 (Exchange of information) that the MAI commission considers appropriate for inclusion in the MAI injury register.

*Note* *LTCS commissioner*—see the [LTCS Act](#), dictionary.

- (4) The information contained in the MAI injury register must be accessible to licensed insurers and others to the extent that the MAI commission decides.
- (5) However, information that would, if it became generally known, affect an insurer's competitive position must not be disclosed in a form that would allow the insurer to be identified.

**412 Publication of information—licensed insurers**

(1) The MAI commission may publish the following information in relation to licensed insurers:

(a) information about a licensed insurer's level of compliance with the following:

- (i) this Act;
- (ii) the insurance industry deed;
- (iii) the conditions of the licensed insurer's MAI insurer licence;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (b) information about a licensed insurer's pricing of premiums for MAI policies;
- (c) information about the profitability of a licensed insurer's insurance operations;
- (d) information that compares the performance of licensed insurers in relation to applications for defined benefits and claims;

**Examples—performance**

- timeliness with dealing with applications for defined benefits and claims
- outcomes of applications for defined benefits and claims
- customer service or complaints

(e) any other information about licensed insurers that the MAI commission considers to be a matter of public interest.

**Example—other information**

a licensed insurer's market share for a quarter or financial year

(2) Information published under this section may identify a particular insurer (an *identified insurer*).

- (3) However, the MAI commission must not publish confidential information relating to an identified insurer if—
  - (a) the identified insurer tells the MAI commission that publication of the information would disclose a trade secret not known by other insurers; and
  - (b) the MAI commission is satisfied that, having regard to its knowledge of the business practices of insurers, the publication of the information would disclose a trade secret.
- (4) In this section:

*publish* includes disseminate by oral, visual, written, electronic or other way.

#### **413 Offences—use or divulge protected information**

- (1) A person to whom this section applies commits an offence if—
  - (a) the person uses information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and

- (c) the person is reckless about whether—
  - (i) the information is protected information about someone else; and
  - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (3) Subsections (1) and (2) do not apply—
  - (a) if the information is used or divulged—
    - (i) under this Act or another territory law; or
    - (ii) in relation to the exercise of a function by a person to whom this section applies under this Act or another territory law; or
    - (iii) under the insurance industry deed; or
    - (iv) in a court proceeding; or
  - (b) to the using or divulging of protected information about a person with the person's consent; or
  - (c) to the divulging of protected information by an insurer only to another insurer that is in accordance with the insurance industry deed.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the Territory.

- (5) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***divulge*** includes—

- (a) communicate; or
- (b) publish.

***person to whom this section applies*** means—

- (a) a person who is or has been—
  - (i) the MAI commissioner; or
  - (ii) a member of staff of the MAI commission; or
  - (iii) a licensed insurer; or
  - (iv) an actuary engaged by the MAI commission for this Act; or
- (b) anyone else who exercises, or has exercised, a function under this Act.

***produce*** includes allow access to.

***protected information*** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

***use***, in relation to information, includes make a record of the information.

## Chapter 8      Miscellaneous

### 414      Referral fees prohibited

- (1) A lawyer commits an offence if—
- (a) the lawyer, or an entity related to the lawyer, gives consideration to someone else; and
  - (b) the lawyer, or entity, gives the consideration for the referral of a person to the lawyer for the purpose of the lawyer representing the person in relation to—
    - (i) an application for defined benefits; or
    - (ii) a motor accident claim.

Maximum penalty: 200 penalty units.

- (2) A lawyer commits an offence if—
- (a) the lawyer, or an entity related to the lawyer, receives consideration from someone else; and
  - (b) the lawyer, or entity, receives the consideration for referring a claimant represented by the lawyer to a person for the purpose of a service being provided in relation to the claimant's motor accident claim.

Maximum penalty: 200 penalty units.

*Note*      Penalties imposed under this Act must be paid into the nominal defendant fund (see s 281).

- (3) In this section:
- close associate***, of a lawyer, means—
- (a) an employer of the lawyer (including, if the employer is a corporation, a director of the corporation); or

- (b) a partner, or a close relative of the partner, in a partnership in which the lawyer is also a partner; or
- (c) an employee or agent of the lawyer or of a person mentioned in paragraph (a) or (b).

**close relative**, of a lawyer, means—

- (a) a domestic partner of the lawyer; or
- (b) a parent, grandparent, child or step-child of the lawyer; or
- (c) a sibling, half-sibling or step-sibling of the lawyer; or
- (d) an aunt, uncle, cousin, niece or nephew of the lawyer.

**consideration** includes a fee or other financial benefit but does not include hospitality that is reasonable in the circumstances.

**related**—an entity is **related** to a lawyer if the entity is—

- (a) a close relative of the lawyer; or
- (b) a close associate of the lawyer; or
- (c) owned or controlled by the lawyer or a close relative or close associate of the lawyer.

#### **415 Extraterritorial operation**

- (1) It is the intention of the Legislative Assembly that any provision of a territory law that provides for limits on liability for personal injury including damages, resulting from motor accidents that happen in the ACT—
  - (a) is to apply to the full extent of the Legislative Assembly's capacity to legislate extraterritorially, even if damages are assessed outside the ACT; and
  - (b) is to be regarded by courts as a substantive rather than a procedural provision.

- (2) Subsection (3) applies if, in a proceeding on a claim for damages brought in another jurisdiction, a person recovers damages in excess of the total of the following (the **ACT total**):
  - (a) the defined benefits that would have been payable under this Act;
  - (b) the maximum amount that could have been recovered if the proceeding had been brought in the ACT.
- (3) The respondent may recover from the person the amount (the **excess amount**) by which the damages exceed the ACT total.
- (4) The excess amount may be recovered as a debt to the claimant.
- (5) In this section:  
**another jurisdiction** means a jurisdiction other than the ACT and includes a jurisdiction outside Australia.

**416 Application to Territory and Commonwealth motor vehicles**

- (1) A requirement under this Act for an MAI policy does not apply in relation to a motor vehicle owned by—
  - (a) the Territory or a territory authority; or
  - (b) the Commonwealth or a Commonwealth authority.
- (2) However, the Territory, territory authority, Commonwealth or Commonwealth authority is, for a motor vehicle for which an MAI policy is not in force—
  - (a) under the same liabilities as a licensed insurer would be under if the insurer had issued an MAI policy for the vehicle; and
  - (b) has the same rights as a licensed insurer would have if the insurer had issued an MAI policy for the vehicle.



- (3) In this section:

***Commonwealth authority*** means a body, whether or not incorporated, established under a Commonwealth Act.

#### **417 MAI guidelines**

- (1) The MAI commission may make guidelines (the ***MAI guidelines***) about any matter required or permitted by this Act to be included in the guidelines.

*Note* The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

- (2) The MAI guidelines may make provision in relation to any matter required or permitted by this Act.
- (3) The MAI guidelines may apply, adopt or incorporate an instrument, as in force from time to time.

*Note* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (4) The [Legislation Act](#), section 47 (5) and (6) does not apply to an instrument mentioned in subsection (3).

*Note* An instrument applied, adopted or incorporated by the MAI guidelines does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (5) An MAI guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**418 Forms—MAI guidelines**

The MAI guidelines may make provision in relation to forms for this Act, including the following:

- (a) the information that must be included in a form;
- (b) where forms for this Act may be accessed.

**419 Determination of fees**

- (1) The MAI commission may determine fees for this Act.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see [Legislation Act](#), pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**420 Determination of motor accident levy**

- (1) The Minister must determine a levy (a ***motor accident levy***) that the Minister believes on reasonable grounds will fund the MAI commission's functions, including the MAI commission's staff.
- (2) The Minister may determine a motor accident levy as any of the following:
  - (a) a fixed amount;
  - (b) a percentage of the MAI premium payable for an MAI policy;
  - (c) a combination of a fixed amount and percentage of the MAI premium payable for an MAI policy.
- (3) The Minister may determine a period for which the levy is payable.

- (4) A motor accident levy may be determined to differ according to any classification or other criteria for the determination of premiums for MAI policies as provided for by the MAI guidelines.
- (5) A determination is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

*Note 2* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, and to make determination that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

*Note 3* The power to make a determination includes the power to amend or repeal the determination (see [Legislation Act](#), s 46).

#### **421 Refund of motor accident levy**

- (1) This section applies if an MAI policy issued to a person is cancelled on the cancellation of the registration for the motor vehicle to which the policy relates.
- (2) The MAI commission must refund to the person, on a proportionate basis, the motor accident levy paid in relation to the MAI policy.
- (3) In this section:

*motor accident levy*—see section 420.

#### **422 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

**423 Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of every 3rd year of its operation.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The Minister must present a report of the review to the Legislative Assembly at a time decided in consultation with the Speaker.

## Chapter 9                      Repeals and consequential amendments

### **424                      Legislation repealed**

- (1) The following legislation is repealed:
  - *Road Transport (Third-Party Insurance) Act 2008* (A2008-1)
  - *Road Transport (Third-Party Insurance) Regulation 2008* (SL2008-37).
- (2) All other legislative instruments under the *Road Transport (Third-Party Insurance) Act 2008* are repealed.

### **425                      Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

## **Schedule 1 Consequential amendments**

(see s 425)

### **Part 1.1 Civil Law (Wrongs) Act 2002**

#### **[1.1] Section 4, note 1**

*omit*

(Offence not to disclose particular material)

*substitute*

(Offence—failure to give document or information)

#### **[1.2] Section 5 (2), example and note**

*substitute*

**Example—scheme of compulsory third-party motor vehicle insurance**  
the scheme under the *Motor Accident Injuries Act 2018*

#### **[1.3] Section 18 (3)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*

*substitute*

*Motor Accident Injuries Act 2018*

**[1.4] Section 38 (3)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, section 25  
(CTP insurer to indemnify insured people)

*substitute*

*Motor Accident Injuries Act 2018*, section 246 (MAI insurer to  
indemnify MAI insured people)

**[1.5] Section 50 (1)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor  
Accident Claims)

*substitute*

*Motor Accident Injuries Act 2018*, Chapter 3 (Motor accident  
injuries—common law damages)

**[1.6] Section 50 (4) (a)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, chapter 4

*substitute*

*Motor Accident Injuries Act 2018*, Chapter 3

**[1.7] Section 51 (3)**

*after*

based on a

*insert*

motor accident claim or

**[1.8] New section 51 (3A)**

*insert*

- (3A) For a proceeding based on a motor accident claim, the notice must be given within 3 months after the claimant receives a WPI report under the *Motor Accident Injuries Act 2018* stating the person has a WPI, or estimated WPI, of at least 10%.

**[1.9] New section 51A**

*insert*

**51A Motor accident claims—respondent to identify and notify others**

- (1) If a respondent to a motor accident claim knows of anyone else (a ***relevant person***) against whom the claimant may be able to begin a proceeding based on the claim, the respondent must, not later than 7 days after the day the respondent receives the notice of claim—
- (a) give a copy of the notice of claim to the relevant person; and
  - (b) tell the claimant, in writing, about the relevant person, including a short written explanation of why the respondent believes that the person may be a relevant person.
- (2) If the respondent is a child, the respondent's parent or legal guardian may comply with subsection (1) for the respondent.



**[1.10] Section 56 (1)**

*substitute*

- (1) If there are 2 or more respondents to a claim, other than a motor accident claim, 1 of the respondents (the ***respondents' claim manager***) may act for 1 or more of the other respondents under this chapter with the agreement of the other respondents.
- (1A) If there are 2 or more respondents to a motor accident claim, 1 of the respondents (the ***respondents' claim manager***) must act for all of the respondents under this chapter.
- (1B) For subsection (1A)—
  - (a) the respondents' claim manager must be decided—
    - (i) by agreement between the respondents; or
    - (ii) if the respondents cannot agree within 2 months after the day the claimant first gave, or is taken to have given, a respondent for the motor accident claim a complying notice of claim—under the insurance industry deed; and
  - (b) until the respondents' claim manager is decided under paragraph (a), the respondent to which the notice of claim is first given under section 51 is the respondents' claim manager.

**[1.11] Section 56 (4)**

*after*

under subsection (1)

*insert*

or (1B) (a) (i)

**[1.12] New section 57 (2A) and (2B)**

*insert*

- (2A) If the claim is a motor accident claim and the respondent proposes to add the nominal defendant as a contributor because the motor accident involved an unidentified motor vehicle, the respondent may add the nominal defendant only if the respondent has made reasonable inquiry and search for the identity of the motor vehicle.
- (2B) The inquiry or search may be proved orally or by affidavit of the person who made the inquiry or search.

**[1.13] Section 64 (1) (a) (ii) and (iii)**

*after*

reports

*insert*

or surveillance film

**[1.14] Section 64 (2) (b)**

*after*

report

*insert*

, film

**[1.15] Section 68 (1) (a) (ii) and (iii)**

*after*

reports

*insert*

or surveillance film

**[1.16] Section 68 (2) (b)**

*after*

report

*insert*

, film

**[1.17] Section 69 (1) (b) and (c)**

*after*

reports

*insert*

or surveillance film

**[1.18] Section 69 (2) (b)**

*after*

report

*insert*

, film

**[1.19] Section 70 (1)**

*after*

reports

*insert*

, surveillance film

**[1.20] Section 70 (2) (b)**

*after*

report

*insert*

, film

**[1.21] Section 74**

*substitute*

**74 Offence—failure to give document or information**

A person commits an offence if the person—

- (a) is a party for a motor accident claim; and
- (b) is obliged to give a document or information under this chapter;  
and
- (c) does not give the document or information in the way required  
under this chapter.

Maximum penalty: 100 penalty units.

**[1.22] Section 93 (1)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor Accident Claims)

*substitute*

*Motor Accident Injuries Act 2018*, Chapter 3 (Motor accident injuries—common law damages)

**[1.23] Section 95 (1)**

*substitute*

- (1) Contributory negligence must be presumed if—
- (a) the injured person was—
    - (i) at least 16 years old at the time of the accident; and
    - (ii) intoxicated at the time of the accident; and
  - (b) the defendant claims contributory negligence.

**[1.24] Section 99 (4), note**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, pt 4.9A

*substitute*

*Motor Accident Injuries Act 2018*, pt 3.3

**[1.25]       Sections 107B (4) (b) and 108 (3) (a)**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor Accident Claims)

*substitute*

*Motor Accident Injuries Act 2018*, Chapter 3 (Motor accident injuries—common law damages)

**[1.26]       Section 209**

*omit*

*Road Transport (Third-Party Insurance) Act 2008*

*substitute*

*Motor Accident Injuries Act 2018*

**[1.27]       Dictionary, new definition of *motor accident claim***

*insert*

***motor accident claim***—

- (a) means a claim for damages for personal injury caused by a motor accident; and
- (b) includes, for a fatal injury, a claim by the dead person's dependants or estate.

## **Part 1.2                      Limitation Act 1985**

### **[1.28]      New section 16AA**

*insert*

#### **16AA      Motor accident claims**

- (1) This section applies to a cause of action that is a motor accident claim under the *Motor Accident Injuries Act 2018*, Chapter 3 (Motor accident injuries—common law damages).
- (2) The cause of action is not maintainable if brought 5 years or more after the day the injury happened.

### **[1.29]      Section 16B (1)**

*omit*

section 16 (Compensation to relatives) or section 16A

*substitute*

section 16, section 16A or section 16AA

### **[1.30]      New section 36 (5)**

*substitute*

- (5) This section does not apply in relation to a cause of action to which any of the following applies:
  - (a) section 16AA (Motor accident claims);
  - (b) section 16B (Other claims for damages for personal injury);
  - (c) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or omission causing death).

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- ACT
- corporation
- Corporations Act
- disallowable instrument (see s 9)
- financial year
- health practitioner
- Legislative Assembly
- Minister (see s 162)
- notifiable instrument (see s10)
- occupational discipline order
- penalty unit (see s 133)
- person (see s 160)
- quarter
- Speaker
- State
- statutory instrument (see s 13)
- the Territory
- under.

*Note 3* The [Road Transport \(General\) Act 1999](#) contains definitions relevant to this Act. For example, the following terms are defined in the [Road Transport \(General\) Act 1999](#), dictionary:

- driver
- infringement notice



- infringement notice penalty
- jurisdiction
- light rail vehicle
- motor vehicle
- registered operator
- ride
- road transport authority (or authority) (see s 16)
- road transport legislation (see s 6)
- trader's plate
- trailer
- vehicle.

*Note 4* If a word or expression is defined in an Act (but not a regulation or another publication) included in the road transport legislation, the definition applies to each use of the word or expression in other road transport legislation unless the contrary intention appears (see [Road Transport \(General\) Act 1999](#), s 8).

**ACTIA** means the Australian Capital Territory Insurance Authority established under the [Insurance Authority Act 2005](#).

**allowable expenses**, for Chapter 2 (Motor accident injuries—defined benefits)—see section 63.

**application period**, for an application for defined benefits, for Chapter 2 (Motor accident injuries—defined benefits)—see section 60.

**appointed auditor**—see section 350.

**APRA** means the Australian Prudential Regulation Authority established under the [Australian Prudential Regulation Authority Act 1998](#) (Cwlth), section 7.

**ASIC** means the Australian Securities and Investments Commission under the [Australian Securities and Investments Commission Act 2001](#) (Cwlth).

*at* premises, for Chapter 6 (Enforcement)—see section 378.

*authorised IME providers*—see section 37.

*authorised officer*, for Chapter 6 (Enforcement)—see section 378.

*authority to disclose personal health information*, for a person injured in a motor accident—see section 56.

*average weekly earnings* (or *AWE*)—see section 15.

*AWE*—see section 15.

*AWE adjusted*, for an injured person's pre-injury income, for division 2.4.3 (Income replacement benefits—payments)—see section 95.

*AWE indexed*, for an amount—see section 16.

*business plan*—see section 341.

*capable*, of being in paid work, for Part 2.4 (Defined benefits—income replacement benefits)—see section 80.

*claimant*, for a motor accident claim—see section 189.

*compliance notice*, for division 3.5.5 (Judgment for noncompliance with time limits)—see section 231.

*complying notice of claim*, for part 3.5 (Court proceedings on motor accident claims)—see section 210.

*compulsory conference*—see section 211.

*connected*, for Chapter 6 (Enforcement)—see section 378.

*contributor*, to a motor accident claim, for part 3.5 (Court proceedings on motor accident claims)—see section 210.

**costs—**

- (a) when used in reference to the costs of an insurer for a motor accident claim, for part 4.10 (MAI insurer and nominal defendant may recover costs incurred)—see section 292; and
- (b) when used in reference to the costs of an insurer for an application for defined benefits by a person injured in a motor accident, for part 4.10 (MAI insurer and nominal defendant may recover costs incurred)—see section 292.

**dead person** means a person who died as a result of a motor accident.

**defined benefits**—see section 31.

**domestic services expenses**—see section 114.

**drive**, a vehicle, includes—

- (a) be in control of the steering, movement or propulsion of the vehicle; and
- (b) if the vehicle is a trailer—draw or tow the vehicle; and
- (c) if the vehicle can be ridden—ride the vehicle.

**driving offence**—see section 33.

**enforcing party**, for division 3.5.5 (Judgment for noncompliance with time limits)—see section 231.

**externally reviewable decision**, for Division 2.10.2 (External review of insurer's decision)—see section 177.

**externally reviewable matter**, for Division 2.10.2 (External review of insurer's decision)—see section 177.

**external reviewer**, for an externally reviewable decision, for Division 2.10.2 (External review of insurer's decision)—see section 177.

**final offer WPI**—see section 154.

***first payment period***, for division 2.4.3 (Income replacement benefits—payments)—see section 94.

***first WPI report***—see section 152.

***fitness for work certificate***, for Part 2.4 (Income replacement benefits)—see section 104.

***foreign national*** means a person who—

- (a) is a national of a foreign country; and
- (b) lives outside Australia.

***former licensed insurer***, for Chapter 5 (MAI insurer licences)—see section 306.

***full and satisfactory explanation*** by an applicant for a delay in applying for defined benefits, for Chapter 2 (Motor accident injuries—defined benefits)—see section 34.

***gross income***, of an injured person who is an employee, for Part 2.4 (Defined benefits—income replacement benefits)—see section 77.

***ground for occupational discipline***—see section 332.

***IME***—see section 36.

***impairment***—see section 12.

***income replacement benefit payment***, for an injured person, for Part 2.4 (Defined benefits—income replacement benefits)—see section 76.

***independent medical examiner*** (or ***IME***)—see section 36.

***information***, for part 2.3 (Application for defined benefits)—see section 55.

***initial period***, for Chapter 2 (Motor accident injuries—defined benefits)—see section 63.

***injured person*** means a person injured in a motor accident.

***insolvent insurer***, for Part 5.9 (MAI insurer licences—insolvent insurers)—see section 365.

***insolvent insurer declaration***, for Part 5.9 (MAI insurer licences—insolvent insurers)—see section 367.

***insurance industry deed***—see section 310.

***insured motor vehicle***—see section 238.

***insured person***, for a motor accident claim—see section 191.

***insurer***, of a person, for a motor accident claim—see section 192.

***insurer***—

- (a) of a person, for a motor accident claim—see section 192; and
- (b) of a motor vehicle, for a motor accident claim—see section 192.

***internally reviewable decision***, for Division 2.10.1 (Internal review of insurer's decision)—see section 170.

***internally reviewable matter***, for Division 2.10.1 (Internal review of insurer's decision)—see section 170.

***internal review***, of an insurer's reviewable decision for Division 2.10.1 (Internal review of insurer's decision)—see section 170.

***interstate insurer***—

- (a) means an entity that, under a law of the Commonwealth or a State, indemnifies the responsible person for a motor vehicle, and the driver of the motor vehicle, against liability for the death or injury of a person; and
- (b) includes a Commonwealth or State entity.

*Note* ***State*** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**issue**, of an MAI policy, includes the issue of a renewal of the policy.

**late application**, for defined benefits—see section 61.

**late party**, for division 3.5.5 (Judgment for noncompliance with time limits)—see section 231.

**late receipt notice**—see section 62.

**level**, for a concentration of alcohol in blood or breath, for Division 2.2.2 (Limitations and expectations to entitlement)—see section 42.

**licensed insurer**—

(a) see section 305; or

(a) for Part 5.5 (MAI insurer licences—occupational discipline)—see section 330.

**liquidator**, for Part 5.9 (MAI insurer licences—insolvent insurers)—see section 365.

**LTCS Act** means the [Lifetime Care and Support \(Catastrophic Injuries\) Act 2014](#).

**LTCS commissioner**—see the [LTCS Act](#), dictionary.

**LTCS scheme**—see the [LTCS Act](#), dictionary.

**MAI commission** means the Motor Accident Injuries Commission established under section 20.

**MAI commissioner** means the person appointed as the MAI commissioner under section 22.

**MAI guidelines** means the guidelines made by the MAI commission under section 417.

**MAI injury register**—see section 411.

**MAI insurance business**, for a licensed insurer, means any business of the insurer associated with MAI policies.

***MAI insured person***, for an MAI policy—see section 238.

***MAI insurer***—see section 239.

***MAI insurer licence***—see section 305.

***MAI policy***—see section 238.

***MAI policy issued by an insolvent insurer***, for Part 5.9 (MAI insurer licences—insolvent insurers)—see section 365.

***MAI premium***, for an MAI policy—see section 265.

***mandatory final offer***—see section 216.

***motor accident***—see section 10.

***motor accident claim***—see section 188.

***motor accident injuries policy*** (or ***MAI policy***)—see section 238.

***multiple vehicle accident*** means a motor accident that involves more than 1 motor vehicle.

***net income***, of an injured person who is self-employed, for Part 2.4 (Defined benefits—income replacement benefits)—see section 78.

***no-fault motor accident***—see section 13.

***nominal defendant***—see section 14.

***nominal defendant fund***—see section 281.

***notice of affirmation or increase***—see section 153.

***occupier***, of premises, for Chapter 6 (Enforcement)—see section 378.

***offence***, for Chapter 6 (Enforcement)—see section 378.

***outstanding***, for a charge—see the [Bail Act 1992](#), section 9D (6).

***paid work***, for Part 2.4 (Defined benefits—income replacement benefits)—see section 79.

***participant***, in the LTCS scheme—see the [LTCS Act](#), dictionary.

***party***, to a motor accident claim, for part 3.5 (Court proceedings on motor accident claims)—see section 210.

***personal health information***—see the [Health Records \(Privacy and Access\) Act 1997](#), dictionary.

***personal injury***—see section 9.

***personal representative***, of a person who died as a result of a motor accident, means the person to whom any grant of probate of the will or administration of the estate of the dead person has been made in the ACT, a State or another Territory, and includes an executor by representation or the public trustee and guardian.

***person injured in a motor accident***—see section 8.

***person who died as a result of a motor accident***—see section 35.

***post-injury earning capacity***, of an injured person, for division 2.4.3 (Income replacement benefits—payments)—see section 94.

***pre-injury income***, for an injured person, for division 2.4.3 (Income replacement benefits—payments)—see section 94.

***premises***, for Chapter 6 (Enforcement)—see section 378.

***private medical examiner***, for an injured person, for Chapter 2 (Motor accident injuries—defined benefits)—see section 38.

***QOL benefits application***—see section 134.

***quality of life damages***—see section 200.

***rail transport operator***—see the [Rail Safety National Law \(ACT\)](#), section 4.

***receipt notice***—see section 62.



**recovery plan**, for an injured person, for Part 2.5 (Defined benefits—treatment and care benefits)—see section 122.

**registered motor vehicle** means a motor vehicle registered under—

- (a) the [Road Transport \(Vehicle Registration\) Act 1999](#); or
- (b) the [Interstate Road Transport Act 1985](#) (Cwlth).

**rehabilitation**, of a person injured in a motor accident—see section 111.

**related body corporate**—see the [Corporations Act](#), section 9 (Dictionary).

**relevant insurer**, for a motor accident—see section 32.

**relevant notice claim**, for division 3.5.5 (Judgment for noncompliance with time limits)—see section 232.

**required thing**, for division 3.5.5 (Judgment for noncompliance with time limits)—see section 230.

**respondent**, for a motor accident claim, for chapter 3 (Motor accident injuries—common law damages)—see section 190.

**responsible person**, for a vehicle—see the [Road Transport \(General\) Act 1999](#), section 10 and section 11.

**road** means an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles, but does not include an area that would otherwise be a road so far as a declaration under the [Road Transport \(General\) Act 1999](#), section 12 (Power to include or exclude areas in road transport legislation) declares that this Act does not apply to the area.

**road related area**—

- (a) means—
  - (i) an area that divides a road; or

- (ii) a footpath or nature strip adjacent to a road; or
  - (iii) an area that is open to the public and is designated for use by cyclists or animals; or
  - (iv) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
  - (v) a shoulder of a road; or
  - (vi) any other area that is open to or used by the public so far as a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) declares that this Act applies to the area; but
- (b) does not include an area that would otherwise be a road related area so far as a declaration under that section declares that this Act does not apply to the area.

***second payment period***, for division 2.4.3 (Income replacement benefits—payments)—see section 94.

***second WPI report***—see section 152.

***self-employed***, for Part 2.4 (Defined benefits—income replacement benefits)—see section 75.

***single vehicle accident*** means a motor accident that involves only 1 motor vehicle.

***staff of the MAI commission***—see section 25.

***suspended insurer***, for Part 5.4 (MAI insurer licences—suspension)—see section 322.

***travel expenses***—see section 115.

***treatment and care***, of a person injured in a motor accident—see section 110.

***treatment and care expenses***, for an injured person—see section 113.

***treatment and care needs***, of a participant in the LTCS scheme—see the [LTCS Act](#), section 9.

***unidentified motor vehicle***—see section 278.

***uninsured motor vehicle***—see section 276.

***unpaid leave***, from paid work, for Part 2.4 (Defined benefits—income replacement benefits)—see section 75.

***unregistered vehicle permit***—see the [Road Transport \(Vehicle Registration\) Act 1999](#), dictionary.

***use***, a motor vehicle—see section 11.

***UVP liability contribution***—see section 283.

***valid trader's plate*** means a trader's plate that—

- (a) is issued by the road transport authority to a person; and
- (b) the road transport authority has not required the person to return to the authority under the [Road Transport \(Vehicle Registration\) Regulation 2000](#)—
  - (i) section 89 (Recall of trader's plates); or
  - (ii) section 101 (Return of trader's plate); and
- (c) has not been surrendered to the road transport authority under the [Road Transport \(Vehicle Registration\) Regulation 2000](#), section 102 (Surrender of trader's plates).

***warrant***, for Chapter 6 (Enforcement)—see section 378.

***whole person impairment*** (or ***WPI***), in relation to an injury sustained by a person as a result of a motor accident—see section 12.

***WPI***—see section 12.

***WPI assessment***, of a person injured in a motor accident—see section 139.

***WPI assessment guidelines***—see section 141.

***WPI report***—see section 140.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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