



Australian Capital Territory

# Motor Accident Injuries Act 2019

**A2019-12**

**Republication No 8**

**Effective: 26 December 2025**

Republication date: 26 December 2025

Last amendment made by [A2025-29](#)

## About this republication

### The republished law

This is a republication of the *Motor Accident Injuries Act 2019* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 26 December 2025. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 26 December 2025.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

# Motor Accident Injuries Act 2019

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An Act about motor accident injuries, and for other purposes

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## Chapter 1 Preliminary

### Part 1.1 Preliminary

#### 1 Name of Act

This Act is the *Motor Accident Injuries Act 2019*.

#### 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 '*personal health information*—see the *Health Records (Privacy and Access) Act 1997*, dictionary.' means that the term '*personal health information*' 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, the motor vehicle was owned by—
      - (i) the Territory or a territory authority; or
      - (ii) the Commonwealth or a Commonwealth authority;
- Note* See s 288 for motor vehicles owned by the Territory, a territory authority, the Commonwealth or a Commonwealth authority.
- (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) there is a right of action against the nominal defendant under this Act in relation to the motor accident; or
- (e) 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 the driver of, the motor vehicle in the use or operation of the motor vehicle.

## 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* means a person injured in a motor accident (see dict).

#### 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 *permanent impairment***

In this Act:

*permanent impairment* means the loss of, loss of the use of, or 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.

**13 Meaning of *whole person impairment* (or *WPI*)**

In this Act:

*whole person impairment* (or *WPI*), of a person, means the degree of permanent impairment of the whole person resulting from personal injury sustained as a result of a motor accident, expressed as a whole number percentage.

**14 Meaning of *independent medical examiner* (or *IME*)**

In this Act:

*independent medical examiner* (or *IME*) means a doctor who, under an arrangement with an authorised IME provider, conducts—

- (a) medical examinations for WPI assessments; and
- (b) SOI assessments.

**15 Authorisation of IME providers**

- (1) The MAI commission must authorise entities to be 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—
    - (i) medical examinations for WPI assessments; and
    - (ii) SOI 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 authorised IME provider;
- (c) fees that may be charged by an authorised IME provider for provision of services for WPI assessments and SOI assessments.

## **Division 1.2.2 Insurance concepts**

### **16 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**

### **17 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.

### **18 Meaning of *AWE indexed for amount***

- (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—
  - (i) for an amount referred to in section 96, section 97 or section 103—dollar; or
  - (ii) in any other case—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.

## **19 Indexation of defined benefits and quality of life damages**

- (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.
- (3) In this section:

*AWE indexation factor*, for an amount, means the factor worked out for the amount in the way prescribed by regulation.

*indexation day*—see section 18 (1) (b).

## Division 1.2.4 Duties in relation to motor accidents

### 20 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 claim, as justly and promptly as possible.
- (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  
*Note* **Health practitioner**—see the [Legislation Act](#), dictionary, pt 1.
    - (ii) any other information reasonably requested by an insurer in relation to the application or claim;
  - (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 or the ACAT is hearing a dispute involving a licensed insurer and an applicant or claimant in relation to an application for defined benefits or a motor accident claim, the court or the ACAT 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).

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

- (1) This section applies if personal injury is caused by a motor accident.
- (2) The responsible person for, or the 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 330).

- (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.

### 22 Establishment of commission

The Motor Accident Injuries Commission is established.

### 23 Constitution of commission

The commission consists of the MAI commissioner.

### 24 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*).

### 25 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 (including applications for defined benefits) and motor accident claims, 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 motor accident claims;
- (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;

- (l) to develop and coordinate strategies to identify and combat fraud in or related to applications for defined benefits and 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.

*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*).

## 26 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*).

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

In this Act:

*staff of the MAI commission* means—

- (a) staff employed under section 28; and
- (b) consultants and contractors engaged under section 29.

## 28 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).

## 29 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.

## 30 Delegation by MAI commission

- (1) The MAI commission may delegate the MAI commission'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.

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

## 31 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.

### 32 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

#### 33            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.

#### 34            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—
  - (i) for a no-fault motor accident—the insurer of a motor vehicle involved in the accident determined under an approved industry arrangement to be the relevant insurer for the accident; or

*Note*    *No-fault motor accident*—see s 254.

- (ii) for any other case—the insurer of the motor vehicle whose driver or responsible person was most at fault in the motor accident.

*Note* See s 40 for provisions relating to interstate relevant insurers.

- (2) In this section:

***approved industry arrangement*** means an arrangement—

- (a) between licensed insurers and the nominal defendant for determining the relevant insurer for a motor accident; and
- (b) approved, in writing, by the MAI commission.

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

- (a) for an insured motor vehicle—the MAI insurer for the motor vehicle; or
- (b) for a motor vehicle insured by an interstate insurer—the interstate insurer; or

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

- (c) for an uninsured motor vehicle—the nominal defendant; or
- (d) for an unidentified motor vehicle—the nominal defendant.

### 35 **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 sometime after the motor accident.
- 2 An application for defined benefits in relation to a motor accident is delayed because a person injured in the motor accident was not aware of the application process because the person did not receive accurate or timely information about the process.
- 3 An application for death benefits is delayed because the appointment of an executor for the dead person's estate is delayed.
- 4 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.

**36 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*** means a person who died as a result of a motor accident (see dict).

## Part 2.2 Defined benefits—entitlement

### Division 2.2.1 Entitlement to defined benefits

#### 38 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 in relation to the personal injury.

#### 39 Defined benefits payable by relevant insurer

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

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

- (1) This section applies if the relevant insurer for a motor accident is an interstate insurer (the *interstate relevant insurer*).

*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) However, if the insurance policy of an interstate relevant insurer does not provide benefits, on a no-fault basis, to an at-fault driver who sustains a personal injury in the motor accident—
  - (a) the nominal defendant is the relevant insurer for the motor accident for an application for defined benefits made by the at-fault driver; and
  - (b) the interstate relevant insurer must give the nominal defendant any information it has in relation to the at-fault driver's application for defined benefits.
- (4) If the interstate relevant insurer enters into an arrangement with the nominal defendant under subsection (2) (c), 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 interstate relevant insurer a fee for managing the payment of the defined benefits.
- (5) 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.
- (6) 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.

- (7) 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.

*Note* An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 330).

- (8) In this section:

*associated entity*, of an interstate relevant insurer—see the [Corporations Act](#), section 50AAA.

## **Division 2.2.2 Limitations and exceptions to entitlement**

### **41 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 [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 3; or
  - (ii) section 21 (Prescribed concentration of alcohol and prescribed drug in bodily fluid), if the convicting court finds that the concentration of alcohol in the person’s blood or breath was at level 3; or

- (iii) 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) a copy of a certificate or statement under that [Act](#), section 41 (1) (a), (c) or (g) (Evidentiary certificate—alcohol-related tests) or section 41AD (Evidentiary certificate—analysis of sample for prescribed drug etc) that is admitted in evidence in a proceeding in relation to the offence shows that the concentration of alcohol in the person’s blood or breath was equivalent to level 3; or
- (iv) section 24A (1) (Use vehicle or animal on road or road related area under influence of alcohol or drug), if a copy of a certificate under that [Act](#), section 41 (1) (g) or section 41AD that is admitted in evidence in a proceeding in relation to the offence shows that the concentration of alcohol in the person’s blood was equivalent to level 3; or
- (v) section 24A (2) if—
  - (A) a copy of a certificate under that [Act](#), section 41 (1) (g) or section 41AD that is admitted in evidence in a proceeding in relation to the offence shows that the concentration of alcohol in the person’s blood was equivalent to level 3 or level 4; or
  - (B) the offence relates to the person being under the influence of a drug;
- (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 5C (Failing to stop motor vehicle for police); or
- (iv) section 6 (1) (a), (b) or (c) (Negligent driving); or
- (v) section 7 (Furious, reckless or dangerous driving);
- (e) a provision prescribed by regulation.

#### **42 Definitions—div 2.2.2**

In this division:

*found guilty*, of an offence—

- (a) includes having the offence taken into account under the *Crimes (Sentencing) Act 2005*, section 57 (Outstanding additional offences taken into account in sentencing); but
- (b) does not include having an order made for the offence under the *Crimes (Sentencing) Act 2005*, section 17 (Non-conviction orders—general).

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

*outstanding*, for a charge—see the *Bail Act 1992*, section 9D (6).

#### **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—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 income replacement benefits or quality of life benefits by the injured person ends—
- (a) if the injured person is convicted or found guilty of the driving offence—
    - (i) if the injured person does not appeal the conviction or finding of guilt—at the end of the appeal period for the offence; or
    - (ii) if the injured person appeals the conviction or finding of guilt—when the appeal is finalised and the conviction or finding of guilt is upheld; or
  - (b) if the injured person is entitled to immunity under the *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the MAI commission makes a declaration under subsection (4)—
    - (i) if the injured person does not apply for review of the MAI commission’s decision to make the declaration—at the end of the time allowed under section 479 (3) to apply for review; or
    - (ii) if the injured person applies for review of the MAI commission’s decision to make the declaration—when the review and any subsequent review or appeal of the review decision is finalised, and the decision to make the declaration is upheld.
- (4) The MAI commission may, on request by the relevant insurer for the motor accident, declare that, having taken into consideration the police accident report for the motor accident and any other evidence provided by the police, the injured person is not entitled to income replacement benefits or quality of life benefits.

*Note* A decision to declare that an injured person is not entitled to income replacement benefits or quality of life benefits is a reviewable decision (see ch 10 and sch 2).

- (5) The relevant insurer is not entitled to recover any amount of defined benefits paid to the injured person before the day the injured person's entitlement to defined benefits ends.

#### **45 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 income replacement benefits, treatment and care benefits or quality of life benefits by the injured person ends—
- (a) if the injured person is convicted or found guilty of 2 or more driving offences—
- (i) if the injured person does not appeal the convictions or findings of guilt—at the end of the appeal period for the offences; or
- (ii) if the injured person appeals the convictions or findings of guilt—when the appeal is finalised and the convictions or findings of guilt are upheld; or
- (b) if the injured person is entitled to immunity under the *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the MAI commission makes a declaration under subsection (4)—
- (i) if the injured person does not apply for review of the MAI commission's decision to make the declaration—at the end of the time allowed under section 479 (3) to apply for review; or
- (ii) if the injured person applies for review of the MAI commission's decision to make the declaration—when the review and any subsequent review or appeal of the review decision is finalised, and the decision to make the declaration is upheld.

- (4) The MAI commission may, on request by the relevant insurer for the motor accident, declare that, having taken into consideration the police accident report for the motor accident and any other evidence provided by the police, the injured person is not entitled to the defined benefits mentioned in subsection (3).

*Note* A decision to declare that an injured person is not entitled to the defined benefits mentioned in s (3) is a reviewable decision (see ch 10 and sch 2).

- (5) If the injured person is convicted or found guilty of only 1 driving offence, any entitlement to income replacement benefits or quality of life benefits by the injured person ends—
- (a) if the injured person does not appeal the conviction or finding of guilt—at the end of the appeal period for the offence; or
  - (b) if the injured person appeals the conviction or finding of guilt—when the appeal is finalised and the conviction or finding of guilt is upheld.
- (6) The relevant insurer is not entitled to recover any amount of defined benefits paid to the injured person before the day the injured person's entitlement to defined benefits ends.

#### **46 Entitlement limited—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 an intentionally self-inflicted injury.
- (2) If the death of a person who died as a result of a motor accident is caused by an intentionally self-inflicted injury—
- (a) the person's estate is not entitled to quality of life benefits; and
  - (b) a dependant of the person is not entitled to death benefits.

#### **47 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.

#### **48 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 income replacement benefits, treatment and care benefits or quality of life benefits by the injured person ends—
- (a) if the injured person is convicted or found guilty of the serious offence—
- (i) if the injured person does not appeal the conviction or finding of guilt—at the end of the appeal period for the offence; or
- (ii) if the injured person appeals the conviction or finding of guilt—when the appeal is finalised and the conviction or finding of guilt is upheld; or

- (b) if the injured person is entitled to immunity under the *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the MAI commission makes a declaration under subsection (4)—
- (i) if the injured person does not apply for review of the MAI commission’s decision to make the declaration—at the end of the time allowed under section 479 (3) to apply for review; or
  - (ii) if the injured person applies for review of the MAI commission’s decision to make the declaration—when the review and any subsequent review or appeal of the review decision is finalised, and the decision to make the declaration is upheld.
- (4) The MAI commission may, on request by the relevant insurer for the motor accident, declare that, having taken into consideration the police accident report for the motor accident and any other evidence provided by the police, the injured person is not entitled to the defined benefits mentioned in subsection (3).

*Note* A decision to declare that an injured person is not entitled to the defined benefits mentioned in s (3) is a reviewable decision (see ch 10 and sch 2).

- (5) The relevant insurer is not entitled to recover any amount of defined benefits paid to the injured person before the day the injured person’s entitlement to defined benefits ends.

- (6) 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 *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 21 (Prescribed concentration of alcohol and prescribed drug in bodily fluid), if the convicting court finds that the concentration of alcohol in the person’s blood or breath was at level 4; or
  - (iii) section 22 (Refusing to provide breath sample); or
  - (iv) section 22A (Refusing to provide oral fluid sample); or
  - (v) section 22B (Failing to stay for screening test); or
  - (vi) section 22C (Refusing to undergo screening test); or
  - (vii) section 23 (Refusing blood test etc); or
  - (viii) 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) a copy of a certificate or statement under that [Act](#), section 41 (1) (a), (c) or (g) (Evidentiary certificate—alcohol-related tests) or section 41AD (Evidentiary certificate—analysis of sample for prescribed drug etc) that is admitted in evidence in a proceeding in relation to the offence shows that the concentration of alcohol in the person’s blood or breath was equivalent to level 4; or
  - (ix) section 24, if the offence relates to driving under the influence of a drug; or

- (x) section 24A (1) (Use vehicle or animal on road or road related area under influence of alcohol or drug) if—
  - (A) a copy of a certificate under that [Act](#), section 41 (1) (g) or section 41AD that is admitted in evidence in a proceeding in relation to the offence shows that the concentration of alcohol in the person’s blood was equivalent to level 4; or
  - (B) the offence relates to the person being under the influence of a drug;
- (c) the [Road Transport \(Safety and Traffic Management\) Act 1999](#)—
  - (i) section 5A (Races, attempts on speed records, speed trials etc), if the offence is an aggravated offence; or
  - (ii) section 7 (Furious, reckless or dangerous driving), if the offence is an aggravated offence; or
  - (iii) section 8 (Menacing driving);
- (d) a provision prescribed by regulation.

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

- (1) If the MAI commission notifies, in writing, the relevant insurer for a motor accident that the motor accident was caused by, or attributable to, an act of terrorism—
  - (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 dependants of a person who died as a result of the motor accident are not entitled to quality of life benefits or death benefits in relation to the person's death.
- (2) In this section:
- act of terrorism***—
- (a) means an act that—
    - (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; but
  - (b) does not include a lawful activity or industrial action.

**50 Entitlement limited—workers compensation claimant**

- (1) This section applies if a person—
  - (a) is injured in a motor accident; and
  - (b) is entitled to defined benefits; and
  - (c) makes a claim for compensation under a workers compensation scheme in relation to the injury.
- (2) A person's entitlement to relevant defined benefits ends on the day the person's claim for workers compensation is—
  - (a) accepted; or

- (b) otherwise settled in accordance with the workers compensation scheme, including on a without prejudice basis.

**Example—par (b)**

a licensed insurer under the *Workers Compensation Act 1951* settles a claim with the claimant by agreement to make a payment to the claimant without accepting liability for the claimant's injury (see that *Act*, s 133)

- (3) However, the person's entitlement to relevant defined benefits is revived if the person's claim for workers compensation is—
- (a) withdrawn within 13 weeks after the date of the motor accident;  
or
- (b) rejected.

*Note* See also the withdrawal requirements under s 73 (4).

- (4) Relevant defined benefits are not payable in relation to any benefits paid and not recovered under the workers compensation scheme before the claim was withdrawn or rejected.
- (5) In this section:

*relevant defined benefits* means the following:

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

## **Division 2.2.3 End of entitlement to certain benefits**

### **51 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—
    - (i) the person reaches the pension age plus 2 years; or
    - (ii) if, on the date of the motor accident, the person has reached the pension age and is in paid work—2 years after the date of the motor accident;
  - (c) a motor accident claim for the motor accident is finalised;
  - (d) the person obtains a judgment or an agreement for damages in relation to the person's injury independently of this Act;
  - (e) 5 years after the date of the motor accident.

*Note 1* See also s 184, which provides that a foreign national's entitlement to defined benefits ends in certain circumstances.

*Note 2* See also divs 2.6.2 and 2.6.3, which provide for when a quality of life benefits application is finally dealt with.

*Note 3* **Pension age**—see the dictionary.

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

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

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

- (1) The MAI guidelines may make provision for information and support that the relevant insurer for a motor accident must give 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 60 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, domestic services expenses and travel 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;
  - (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 is taken, under section 133 (WPI taken to be 10% in certain circumstances), to have a WPI of 10%, including the following information:
    - (i) the time limits for making a motor accident claim;
    - (ii) seeking legal advice about whether to make a motor accident claim;
  - (g) information to be given to a person who receives a WPI report under section 157 (WPI 10% or more—injured person entitled to make motor accident claim) or section 164 (Final offer WPI 10% or more—injured person entitled to make motor accident claim) stating that the person’s WPI 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 motor accident claim;
    - (iii) seeking legal advice about whether to make a motor accident claim;
  - (h) information to be given to a person injured in a motor accident who receives a notice under section 213 (SOI report—injury has significant occupational impact) stating that the person is entitled to make a motor accident claim in relation to the motor accident, including the following information:
    - (i) the time limits for making a motor accident claim;
    - (ii) seeking legal advice about whether to make a motor accident claim.
- (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

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

In this part:

*information* includes a record containing information.

#### 54 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) a health practitioner who conducts an assessment of the injured person’s needs for treatment and care, including a medical or other examination;
    - (D) an authorised IME provider and an independent medical examiner who conducts a WPI assessment of the person;

*Note* **WPI assessment**—see s 143.

- (E) an authorised IME provider and an independent medical examiner or independent assessor who conducts an SOI assessment of the person; and

- (ii) to a stated insurer; and
  - (iii) for 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 any of the people mentioned in paragraph (b) (i); and
  - (iii) for 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) 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 Making an application for defined benefits**

### **55 Who may apply for defined benefits?**

- (1) 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 dependant of a person who died as a result of the motor accident;

*Note* The dependant may be entitled to death benefits (see s 169).

- (c) 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 (see s 178).

- (2) The following people may make an application for defined benefits on behalf of a person mentioned in subsection (1):

- (a) for an applicant for defined benefits who is a person with a legal disability—the applicant's guardian;

- (b) for an applicant for defined benefits mentioned in subsection (1) (b)—the personal representative of the person who died as a result of the motor accident.

*Note* **Personal representative**, of a person who died as a result of a motor accident—see the dictionary.

**Person with a legal disability**—see the dictionary.

**56 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 487.

- (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.

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

- (1) 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 54.

- (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, in writing, any information disclosure consents 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 an information disclosure consent under subsection (3).
- (5) In this section:

**information disclosure consent** means either of the following:

- (a) a consent, signed by or on behalf of the injured person, 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) a health practitioner who conducts an assessment of the injured person’s needs for treatment and care, including a medical or other examination;
- (D) an authorised IME provider and an independent medical examiner who conducts a WPI assessment of the person;

*Note* **WPI assessment**—see s 143.

- (E) an authorised IME provider and an independent medical examiner or independent assessor who conducts an SOI assessment of the person; and
  - (ii) to a stated insurer; and
  - (iii) for processing the injured person’s application for defined benefits or assessing or otherwise managing the injured person’s entitlement to defined benefits;
- (b) a consent, signed by or on behalf of the injured person, to the disclosure of personal health information about the injured person—
  - (i) by the stated insurer; and
  - (ii) to any of the people mentioned in paragraph (a) (i); and
  - (iii) for processing the injured person’s application for defined benefits or assessing or otherwise managing the injured person’s entitlement to defined benefits.

## **58**      **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 beginning on 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 137).

- (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 beginning on the date of the injured person's death; or

*Note*      The person may be entitled to funeral benefits (see s 178).

- (c) for the dependant or personal representative of a person who died as a result of a motor accident—the period of 13 weeks beginning on the date of the injured person's death.

*Note*      The dead person's dependants may be entitled to death benefits (see s 169).

**59 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 or treatment and care benefits, or both—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 35.*
- (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.
- (5) The relevant insurer need not accept an application if the application is made after the time stated in subsection (2) (a).

**60 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.

## Division 2.3.3 Payment of allowable expenses

### 61 Meaning of *allowable expenses*—ch 2

- (1) 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 for the application for defined benefits.

- (2) In this section:

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

- (a) beginning on the date of the receipt notice for the application;  
and
- (b) ending—
  - (i) on the day 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 for the application; or
  - (iii) if there is a dispute between insurers about liability under section 70—4 weeks after the date of the receipt notice for the application.

### 62 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.

**63 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 doctor's 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.

**64 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.

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

#### **65 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 date of the receipt notice given to the applicant—
  - (a) decide whether the relevant insurer accepts or rejects liability for the defined benefits; and
  - (b) give the applicant a notice about the decision.
- (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 69.

- (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 68).

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

- (5) This section is subject to section 70 (Dispute about liability for application).

## **66 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.

*Note* If relevant insurer receives an application for death benefits, the insurer must apply to the ACAT for an order for the payment of the death benefits to the dependants (see s 176).

- (2) The MAI guidelines may make provision in relation to the payment of defined benefits.

## **67 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.

- (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 45 (No entitlement—multiple driving offences);
    - (ii) section 48 (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 69 (Transferring application to another insurer).

## **68 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.

*Note* Section 65 (3) applies to a later decision to reject liability.

- (2) However, if a relevant insurer later rejects 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**

### **69      Transferring 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 65 (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 date of the receipt notice given to the applicant by the first insurer—
  - (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 54.*

- (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;
  - (b) the cost of managing the application.

## **70 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 65 (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;
  - (b) any defined benefits already paid;
  - (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**

### **71      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 reasonably 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 1* 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).

*Note 2* The insurer may recover from the applicant any costs reasonably incurred because of the applicant's fraudulent conduct (see s 349).

- (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.

## **72 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.

**73 Application for defined benefits—notification of claim under workers compensation scheme**

- (1) This section applies if—
  - (a) an application for defined benefits (the *defined benefits application*) is made under this part—
    - (i) by a person injured in a motor accident; or
    - (ii) in relation to the injured person; and
  - (b) a claim for compensation under a workers compensation scheme (the *workers compensation claim*) is made in relation to the injury.

*Note* There is no requirement for both an application for defined benefits and a claim for workers compensation to be made in relation to a motor accident.

- (2) The claimant for the workers compensation claim must give the relevant insurer written notice about the following:
  - (a) that the workers compensation claim has been made;
  - (b) whether liability for the workers compensation claim has been accepted or rejected;
  - (c) any amounts paid to or on behalf of the claimant under the workers compensation claim.

- (3) The notice must be given to the relevant insurer—
- (a) if the workers compensation claim is made before the defined benefits application—when the defined benefits application is made; or
  - (b) if the workers compensation claim is made after the defined benefits application—within 3 business days after the workers compensation claim is made.
- (4) However, if the person withdraws the workers compensation claim within 13 weeks after the date of the motor accident, the person must give the relevant insurer for the motor accident written notice of the withdrawal—
- (a) if the workers compensation claim is withdrawn before the defined benefits application is made—when the defined benefits application is made; or
  - (b) if the workers compensation claim is withdrawn after the defined benefits application is made—within 3 business days after the workers compensation claim is withdrawn.
- (5) If a relevant insurer receives a notice under subsection (2) or (4), the relevant insurer may get information about the workers compensation claim from the insurer for the workers compensation claim.

*Note* A person's entitlement to certain defined benefits ends on the day a workers compensation claim is accepted, however may be revived if the person's workers compensation claim is withdrawn within 13 weeks after the date of the motor accident or if the claim is rejected (see s 50 (3)).

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

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

#### 74                      **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.

#### 75                      **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 96 (Amount of income replacement benefits—first payment period);
- (b) section 97 (Amount of income replacement benefits—second payment period).

## **76**      **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;
  - (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 for loss of income under a workers compensation scheme; 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 on 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.

**77 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.

**78 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.

**79 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 immediately 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 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); or

*Note* The person's pre-injury weekly income is worked out under s 84.

- (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 85.

- (d) 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 86.

- (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 87.

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

**80 Meaning of *pre-injury income***

In this Act:

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

**81 Meaning of *pre-injury weekly income*—ongoing employee or fixed term contractor**

(1) In this Act:

*pre-injury weekly income*, for an ongoing employee or fixed term contractor, means—

- (a) the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks immediately before the date of the motor accident:
  - (i) the person's gross income as an employee;
  - (ii) the person's net income as a self-employed person; or
- (b) if the person had a recent change in employment circumstances—the average weekly amount of the person's gross income for the period—
  - (i) starting on the date of the change; and
  - (ii) ending on the day before the date of the motor accident.

(2) In this section:

*eligible fixed term contractor* means a fixed term contractor who, at the time of the motor accident, had at least 26 weeks remaining on their contract.

*ongoing employee or fixed term contractor* means a person injured in a motor accident who was, on the date of the motor accident engaged in ongoing employment or under a fixed term contract.

*recent change in employment circumstances*, for an ongoing employee or eligible fixed term contractor, means a change that—

- (a) happened during the 52 weeks immediately before the date of the motor accident; and
- (b) was a significant change in the person’s employment circumstances that resulted in the person regularly earning, or becoming entitled to earn, more on a weekly basis.

**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

**82 Meaning of *pre-injury weekly income*—self-employed person**

- (1) In this Act:

*pre-injury weekly income*, for a self-employed person, means the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks immediately 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.
- (2) 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 working out the person’s pre-injury weekly income.

- (3) In this section:

*self-employed person* means a person injured in a motor accident who was, on the date of the motor accident, self-employed.

### 83 Meaning of *pre-injury weekly income*—casual worker

(1) In this Act:

*pre-injury weekly income*, for a casual worker, means 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 immediately before the date of the motor accident:
  - (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 immediately before the date of the motor accident—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.

(2) In this section:

*casual worker* means a person injured in a motor accident who—

- (a) was not, on the date of the motor accident—
  - (i) an ongoing employee or fixed term contractor; or
  - (ii) a self-employed person; but
- (b) was in paid work for at least 260 hours in the 52 weeks immediately before the date of the motor accident.

**84 Meaning of *pre-injury weekly income*—person receiving workers compensation**

(1) In this Act:

*pre-injury weekly income*, for a person receiving workers compensation, means the average weekly amount of the sum of the following amounts from all paid work undertaken by the person in the 52 weeks immediately 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 88).

(2) In this section:

*person receiving workers compensation* means a person injured in a motor accident who was, on the date of the motor accident, receiving a weekly payment or other payment in relation to loss of income under a workers compensation scheme.

**85 Meaning of *pre-injury earning capacity*—person on unpaid leave**

(1) In this Act:

*pre-injury earning capacity*, for a person on unpaid leave, means the average weekly amount of the person's gross income from paid work—

- (a) in the 52 weeks immediately 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

- (2) In this section:

*person on unpaid leave* means a person injured in a motor accident who—

- (a) was on unpaid leave from paid work on the date of the motor accident; and
- (b) anticipated returning to paid work on a date after the motor accident.

**86 Meaning of *pre-injury earning capacity*—person with new work arrangement**

- (1) In this Act:

*pre-injury earning capacity*, for a person with a new work arrangement, means 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.

(2) In this section:

***person with a new work arrangement*** means a person injured in a motor accident who, on the date of the motor accident—

- (a) has an arrangement—
  - (i) with an employer or other person to undertake employment; or
  - (ii) to start business as a self-employed person on or after the date of the motor accident; but
- (b) is not any of the following:
  - (i) an ongoing employee mentioned in section 81;
  - (ii) a self-employed person mentioned in section 82;
  - (iii) a casual worker mentioned in section 83;
  - (iv) an apprentice, trainee or young person mentioned in section 99;
  - (v) a person mentioned in section 84 receiving workers compensation;
  - (vi) a person mentioned section 85 on unpaid leave;
  - (vii) a full-time student mentioned in section 87.

## **87 Meaning of *pre-injury earning capacity*—full-time student**

(1) In this Act:

***pre-injury earning capacity***, for a full-time student, means the weekly amount the student would have received if—

- (a) the student had been employed in the occupation for which the student would be qualified on completion of the course of studies in which the student is a full-time student; or

- (b) if the person is a full-time student at a secondary school—the student had been employed on successfully completing the final year of secondary school.
- (2) In this section:

***full-time student*** means a person injured in a motor accident who, on the date of the motor accident—

- (a) was at least 15 years old; and
- (b) was enrolled in a course of studies as a full-time student; and
- (c) expected 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.

**88 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**

**89 Who is entitled to income replacement benefits?**

- (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.

*Note 1* **Paid work** includes paid leave from paid work—see s 78.

*Note 2* An injured person who is self-employed when the motor accident happened is in paid work—see s 78.

- (2) The MAI guidelines may make provision in relation to entitlement to income replacement benefits.
- (3) This section is subject to the following:
- (a) division 2.2.2 (Limitations and exceptions to entitlement);
  - (b) section 90 (Limited entitlement to income replacement benefits—pension-aged injured person);
  - (c) section 91 (No entitlement to income replacement benefits—death of injured person);
  - (d) section 92 (No entitlement to income replacement benefits—damages already paid).

## **90 Limited entitlement to income replacement benefits—pension-aged injured person**

- (1) This section applies to a person injured in a motor accident if, on the date of the accident, the person was the pension age, or older.
- (2) The injured person is entitled to income replacement benefits only if, on the date of the motor accident, the person was in paid work.

*Note 1* See s 101 for the period for which income replacement benefits are payable for the injured person.

*Note 2* **Pension age**—see the dictionary.

**91 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.

**92 No entitlement to income replacement benefits—damages already paid**

A person injured in a motor accident is not entitled to income replacement benefits if an insurer has already paid damages for the loss of income under a motor accident claim for the motor accident.

**Division 2.4.3 Income replacement benefits—payments**

**93 Definitions—div 2.4.3**

In this division:

*first payment period* means the period of 13 weeks beginning on 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).

*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.

## 94 Meaning of *AWE adjusted*—div 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 personal 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 has pre-injury income of \$1 500 per 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 \$1 884.30. The AWE published for November 2019 (being 6 months before May 2020) is \$1 856.80.

The AWE adjustment factor for Penny's pre-injury income is calculated as follows:

$$\$1\,884.30 \div \$1\,856.0 = 1.015 \text{ (rounded to 3 decimal places).}$$

The amount of Penny's pre-injury income on the 1 October 2020 adjustment date is calculated as follows:

$$\$1\,500 \times 1.015 = \$1\,522.50.$$

Penny's benefit from the adjustment date of 1 October 2020 is \$1 522.50, rounded to \$1 523.

## **95 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.
- (3) In this section:

*adjustment day*—see section 94 (1) (b).

*AWE adjustment factor*, for an amount, means the factor worked out for the amount in the way prescribed by regulation.

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

- (1) An injured person entitled to income replacement benefits 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 \$100 AWE indexed or less—1.0; or
- (b) if *P* is more than \$100 AWE indexed but less than \$800 AWE indexed— $1.0 + \frac{SG}{100}$ ; or

(c) if  $P$  is \$800 AWE indexed or more—0.95.

*Note* *AWE indexed*, for an amount—see s 18.

**Example—working out  $N$ , par (b)**

Kristin is injured in a motor accident on 1 March 2021. Because of her injuries, Kristin is unable to return to her part-time job as a teacher's assistant at Lyneham Primary School for 8 weeks following the accident. Kristin does not perform any other paid work during the 8 weeks.

Kristin gives the relevant insurer for the motor accident a letter from her employer stating that Kristin's annual salary at the time of the motor accident was \$36 500 and that Kristin had been a part-time employee at Lyneham Primary School for 18 months before the accident.

The relevant insurer for the motor accident calculates Kristin's gross income for the 52 weeks before the accident as follows:

$$\$36\,500 \times \frac{364}{365}$$

Kristin's gross income for the 52 weeks before the motor accident is \$36 400 and her pre-injury income is \$700.

Kristin also gives the relevant insurer a copy of the last payslip she received from her employer before the motor accident, which shows that employer contributions were payable to her chosen superannuation fund for the 52 weeks before the motor accident. The superannuation charge number for the 2020-21 year is 9.5%.

In working out the amount of income replacement benefits Kristin is entitled to each week,  $N$  is calculated as follows:

$$N = 1 + \frac{9.5}{100}$$

$N$  is therefore 1.095. Using the formula set out in subsection (1), the amount of income replacement benefits payable to Kristen for each week during the first payment period after the motor accident that Kristin is entitled to income replacement benefits is calculated as follows:

$$\$700 \times 1.095 = \$766.50$$

**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.

(2) In this section:

**SG**, for the factor N, paragraph (b), means—

- (a) if superannuation contributions were paid or payable to a superannuation scheme on behalf of the injured person by an employer of the injured person during the 52 weeks before the motor accident—the superannuation guarantee charge number set out in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 19 (2) for the year in which the contributions were paid or payable; or
- (b) if no superannuation contributions were paid or payable to a superannuation scheme on behalf of the injured person by an employer of the injured person during the 52 weeks before the motor accident—0.

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

- (1) An injured person entitled to income replacement benefits 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 \$100 AWE indexed or less—1.0; or
- (b) if *P* is more than \$100 AWE indexed but less than \$800 AWE indexed— $1.0 + \text{SG}/100$ ; or
- (c) if *P* is at least \$800 AWE indexed and not more than \$1 000 AWE indexed—0.95; or
- (d) if *P* is more than \$1 000 AWE indexed—0.8.

*Note* *AWE indexed*, for an amount—see s 18.

*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.

(2) In this section:

*SG*, for the factor *N*, paragraph (b)—see section 96 (2).

## **98 Amount of income replacement benefits—injured person receiving workers compensation**

- (1) This section applies if an injured person receives a weekly payment or other payment in relation to loss of income under a workers compensation scheme (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.

**99 Payment of increments—apprentice, trainee or young person**

- (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 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.

### **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) a relevant insurer accepts liability under section 65 (Relevant insurer must decide liability for defined benefits) for an application for defined benefits for a person injured in a motor accident; and

- (b) the injured person is entitled to income replacement benefits.
- (2) The period for which income replacement benefits are payable—
  - (a) starts on the start date for the injured person; and
  - (b) ends—
    - (i) if a person to whom section 90 (Limited entitlement to income replacement benefits—pension-aged injured person) applies is in paid work on the date of the motor accident—2 years after the date of the motor accident; or
    - (ii) in any other case—
      - (A) 2 years after the person reaches the pension age; or
      - (B) 5 years after the date of the motor accident.
- Note* **Pension age**—see the dictionary.
- (3) The **start date** for an ongoing employee or fixed term contractor, self-employed person, casual worker or person receiving workers compensation is—
  - (a) for an application made during the application period—the date of the motor accident; or
  - (b) for a late application—
    - (i) 28 days before the date of the late application; or
    - (ii) if the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment—the date of the motor accident.
- (4) The **start date** for a person on unpaid leave is—
  - (a) for an application made during the application period—the date the person anticipated returning to paid work; or

- (b) for a late application—
  - (i) the later of the following:
    - (A) the date the person anticipated returning to paid work;
    - (B) 28 days before the date of the late application; or
  - (ii) if the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment—the date the person anticipated returning to paid work.
- (5) The *start date* for a person with a new work arrangement or a full-time student is—
  - (a) for an application made during the application period—the date the person anticipated starting work with an employer or starting business as a self-employed person; or
  - (b) for a late application—
    - (i) the later of the following:
      - (A) the date the person anticipated starting work with an employer or starting business as a self-employed person;
      - (B) 28 days before the date of the late application; or
    - (ii) if the insurer is satisfied on reasonable grounds that there are exceptional circumstances justifying earlier payment—the date the person anticipated starting work with an employer or starting business as a self-employed person.
- (6) The MAI guidelines may make provision for the kinds of circumstances that may be exceptional circumstances for subsections (3) to (5).

(7) In this section:

*casual worker*—see section 83 (2).

*full-time student*—see section 87 (2).

*ongoing employee or fixed term contractor*—see section 81 (2).

*person on unpaid leave*—see section 85 (2).

*person receiving workers compensation*—see section 84 (2).

*person with a new work arrangement*—see section 86 (2).

*self-employed person*—see section 82 (3).

## **102 Income replacement benefits—payable fortnightly**

(1) Income replacement benefit payments are payable to an injured person every 14 days after the start date for the injured person.

(2) In this section:

*start date*, for an injured person, means the start date for the person worked out under section 101.

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

(1) This section applies if—

- (a) a person injured in a motor accident is entitled to be paid 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*, for an amount—see s 18.

- (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 start date for the injured person.
- (6) The MAI guidelines may make provision in relation to interim weekly payments.
- (7) In this section:

*start date*, for an injured person, means the start date for the injured person worked out under section 101.

## 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 an 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 injured 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 injured person written notice (a *suspension notice*) stating—
  - (a) the reasons for the suspension; and
  - (b) the actions the injured person may take to avoid the benefit payments being suspended; and
  - (c) the date the suspension takes effect; and
  - (d) that the injured person may seek internal review of the suspension under part 2.10 (Defined benefits—dispute resolution).
- (4) A suspension notice must be given at least 2 weeks before the date the suspension takes effect.

- (5) The MAI guidelines may make provision in relation to the following:
- (a) the conduct of medical and other examinations under this section;
  - (b) the information a health practitioner may ask a person injured in a motor accident for in relation to a medical or other examination of the person by the health practitioner under this section;
  - (c) the information a health practitioner may ask the relevant insurer for a motor accident in relation to a medical or other examination of a person injured in the motor accident by the health practitioner under this section;
  - (d) the circumstances in which the relevant insurer for a motor accident may ask for a medical or other examination of a person injured in the motor accident under this section.

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

- (1) This section applies if—
- (a) an injured 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 within the prescribed period after the change happens.
- (2) The injured person commits an offence if—
- (a) the person has a change in circumstances; and
  - (b) the person fails to notify the insurer about the change in circumstances within the prescribed period 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 330).

(3) A regulation may prescribe how notice under subsection (2) (b) must be given.

(4) 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.

*prescribed period* means—

- (a) 10 business days; or
- (b) if a regulation prescribes a different period—the different period.

**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—
    - (i) section 105 (Suspension of benefit payments—failure to comply with request for assessment); or
    - (ii) section 121 (3) (Assessment of injured person's injuries); or
    - (iii) section 124A (Recovery plan—suspension of benefits);
  - (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 (Defined benefits—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 income replacement 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 income replacement 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 184 (Lump sum payment of certain 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 payments to which the injured person is entitled.

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

### **Division 2.5.1**            **Preliminary**

#### **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 mental health treatment and 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**

- domestic services
- home maintenance
- nursing
- personal assistance

*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 Who is entitled to treatment and care benefits?**

- (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 45 (No entitlement—multiple driving offences);
  - (b) section 47 (Entitlement limited—detainees and young detainees);
  - (c) section 48 (No entitlement—serious offences);
  - (d) section 49 (No entitlement—act of terrorism);
  - (e) section 50 (Entitlement limited—workers compensation claimant);
  - (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*—ch 2**

In this chapter:

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

- (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 a personal injury sustained in the motor accident; or

(iii) for which the injured person has not paid and is not liable to pay.

**Example—par (iii)**

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

**114 Meaning of *domestic services expenses*—pt 2.5**

(1) In this part:

*domestic services expenses*, for a person injured in a motor accident, means the reasonable and necessary expenses incurred by the 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* Section 128 sets out the period for which defined benefits to which an injured person is entitled are payable.

*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, step-child, grandchild or step-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*—pt 2.5**

In this part:

*travel expenses*, for a person injured in a motor accident, 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 1* Also, common law damages for treatment and care are not available for LTCS scheme participants (see s 250).

*Note 2* **LTCS Act**—see the dictionary.

**LTCS scheme**—see the dictionary.

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

**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 57.

*Note 2* **Authority to disclose personal health information**—see s 54.

*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 request, the relevant insurer may suspend either or both of the following until the person complies with the request:
  - (a) the person's treatment and care benefits;
  - (b) the person's income replacement benefit payments.
- (4) If the relevant insurer decides to suspend the injured person's treatment and care benefits and income replacement benefits, the insurer must give the injured person written notice (a *suspension notice*) stating—
  - (a) the reasons for the suspension; and
  - (b) the actions the injured person may take to avoid the benefits or payments being suspended; and
  - (c) the date the suspension takes effect; and
  - (d) that the injured person may seek internal review of the suspension under part 2.10 (Defined benefits—dispute resolution).
- (5) A suspension notice must be given at least 2 weeks before the date the suspension takes effect.
- (6) The MAI guidelines may make provision in relation to the conduct of assessments 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 a personal 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—
  - (a) give the injured person and the injured person's doctor a draft of a recovery plan proposed for the injured person; and
  - (b) allow the injured person and the injured person's doctor a reasonable opportunity to consider the draft.

- (4) The relevant insurer may include in the recovery plan any recommendations by the injured person’s doctor for treatment and care that is reasonable and necessary.
- (5) The relevant insurer must give the injured person and the injured person’s doctor a final version of the recovery plan 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 for a person injured in a motor accident 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 recovery plan:
  - (i) treatment and care benefits;
  - (ii) income replacement benefits.

## **124A Recovery plan—suspension of benefits**

- (1) If an injured person fails, without reasonable excuse, to undergo the treatment and care stated in the person's recovery plan, the relevant insurer may suspend either or both of the following until the person undergoes the treatment and care:
  - (a) the person's treatment and care benefits;
  - (b) the person's income replacement benefit payments.
- (2) If the relevant insurer decides to suspend the injured person's benefit or payment, the insurer must give the injured person written notice (a *suspension notice*) stating—
  - (a) the reasons for the suspension; and
  - (b) the actions the injured person may take to avoid the benefits or payments being suspended; and
  - (c) the date the suspension takes effect; and
  - (d) that the injured person may seek internal review of the suspension under part 2.10 (Defined benefits—dispute resolution).
- (3) A suspension notice must be given to the injured person at least 2 weeks before the date the suspension takes effect.
- (4) The MAI guidelines may provide for the matters that must be taken into consideration by an insurer in deciding to suspend an injured person's benefits or payments.

## **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.
- (3) If the relevant insurer proposes to amend the recovery plan, the relevant insurer must give the injured person and the injured person’s doctor a reasonable opportunity to consider the proposed amendments.
- (4) The relevant insurer may include in the amended recovery plan any recommendations by the injured person’s doctor for treatment and care that is reasonable and necessary.

## **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 65 for an application for defined benefits.
- (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, domestic services expenses and travel expenses of an injured person entitled to treatment and care benefits.

*Note 1 Domestic services expenses*—see s 114.

*Note 2 Travel expenses*—see s 115.

- (2) The MAI guidelines may make provision in relation to verifying the injured person's treatment and care expenses, domestic services expenses and travel 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 in which the relevant insurer may make a payment under this section for treatment and care benefits before the expense for the benefit 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 not commutable to lump sum**

- (1) The relevant insurer for a motor accident must not commute treatment and care benefits to which an injured person is, or may be, entitled to a lump sum payment.
- (2) This section is subject to section 184 (Lump sum payment of certain defined benefits—foreign nationals).

## **131 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 health practitioner may ask a person injured in a motor accident 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 a health practitioner may ask the relevant insurer for a motor accident for in relation to an assessment of a person injured in the motor accident by the health practitioner under section 121;
- (g) the circumstances in which the relevant insurer for a motor accident may ask for a medical assessment of a person injured in the motor accident 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 people injured in motor accidents.

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

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

#### **132**            **Who is entitled to quality of life benefits?**

- (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—single driving offence);
  - (c) section 45 (No entitlement—multiple driving offences);
  - (d) section 46 (Entitlement limited—injuries self-inflicted);
  - (e) section 48 (No entitlement—serious offences);
  - (f) section 49 (No entitlement—act of terrorism);
  - (g) section 50 (Entitlement limited—workers compensation claimant);
  - (h) section 134 (No entitlement to quality of life benefits—foreign national living outside Australia);
  - (i) section 135 (No entitlement to quality of life benefits—benefits already paid);
  - (j) section 136 (No entitlement to quality of life benefits—damages already paid).

**133 WPI taken to be 10% in certain circumstances**

- (1) A person injured in a motor accident is taken to have a WPI of 10% for this Act if the person—
- (a) was a child on the date of the motor accident; and
  - (b) 4 years and 6 months after the date of the motor accident—
    - (i) is receiving treatment and care benefits in relation to the person's injury and meets the requirements prescribed by regulation; or
    - (ii) is a participant in the LTCS scheme in relation to the person's injury.

*Note* The MAI guidelines may make provision about the information that may be given to a person mentioned in s (1) about the time limits for making a motor accident claim and seeking legal advice about whether to make a motor accident claim (see s 52 (2) (f)).

- (2) Subsection (1) does not prevent a person mentioned in that subsection from making a quality of life benefits application under division 2.6.2 (Quality of life benefits—application).
- (3) If a WPI assessment is carried out in relation to an injured person mentioned in subsection (1), the assessment may increase, but not reduce, the injured person's assessed WPI.

**134 No entitlement to quality of life benefits—foreign national living outside Australia**

A person injured in a motor accident is not entitled to quality of life benefits if the injured person is a foreign national living permanently outside Australia.

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

**135 No entitlement to quality of life 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.

**136 No entitlement to quality of life 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 quality of life damages in a proceeding for a motor accident claim for the motor accident.

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

**137 Quality of life benefits application**

- (1) A person may apply to the relevant insurer for a motor accident for quality of life benefits (a *quality of life benefits application*) if the insurer accepts, or is taken to have accepted, liability for defined benefits under section 65.
- (2) The quality of life 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 quality of life benefits application must—
  - (a) request that the relevant insurer refer the injured person to an authorised IME provider for a WPI assessment; and
  - (b) include the details required by the MAI guidelines; and

- (c) be accompanied by the documents required by the MAI guidelines.
- (4) To remove any doubt, if a person makes a quality of life benefits application—
  - (a) the relevant insurer must refer the injured person to an authorised IME provider for a first WPI assessment in accordance with this division; and
    - Note* If a person has injuries to more than 1 body system, the WPI assessment of each body system may be carried out by different medical examiners or combined in accordance with the WPI assessment guidelines (see s 151).
  - (b) the injured person may arrange for a private medical examiner to carry out a second or subsequent WPI assessment only in accordance with section 158 (Second WPI report).

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

- (1) This section applies if the relevant insurer for a motor accident—
  - (a) receives a quality of life 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.

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

- (1) This section applies if the relevant insurer for a motor accident—
  - (a) receives a quality of life 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) 25% of the fee payable for the WPI assessment.

*Note* *AWE indexed*, for an amount—see s 18.

**140 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 quality of life benefits application from a person injured in the 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.

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

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident receives a quality of life benefits application from a person injured in the accident and—
    - (i) section 138 applies to the person; or
    - (ii) section 140 applies to the person; or
    - (iii) both of the following apply:
      - (A) the person is receiving income replacement benefits or, because of the circumstances prescribed by regulation, would have been eligible to receive income replacement benefits;
      - (B) the person’s injuries may have a significant occupational impact on the person’s ability to undertake employment; 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 have 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) for a person who is not a person mentioned in subsection (4)—the estimated WPI is taken to be the person's WPI.

*Note* If more than 1 WPI assessment is carried out in relation to the injured person, payment of the assessments must be in accordance with the MAI guidelines (see s 147 (3)).

- (4) Subsections (5) and (6) apply if—
- (a) either of the following applies:
- (i) if separate reports from an independent medical examiner assess an injured person's physical injuries and psychological injuries—the higher estimated WPI is at least 5%;
- (ii) if only 1 WPI report from an independent medical examiner assesses an injured person's WPI—the estimated WPI is at least 5%; and
- (b) the injured person is entitled to make a motor accident claim in relation to the motor accident.
- (5) The relevant insurer for the motor accident must, within 14 days after receiving the WPI report about the injured person, 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) accept the estimated WPI as the person's WPI; or
- (ii) make a motor accident claim and apply to stay a proceeding on the claim until the person's injuries have stabilised; and

- (c) telling the person that if the person decides to take the action mentioned in paragraph (b) (ii)—
  - (i) the person must notify the relevant insurer when the person’s injuries have stabilised; and
  - (ii) that the relevant insurer will refer the person to an authorised IME provider for a second WPI assessment; and
  - (iii) that the person is liable for the costs of the second WPI assessment; and
  - (iv) that if the WPI report from the second WPI assessment assesses the person’s WPI as less than 10%, the person is not entitled to proceed with the motor accident claim and is liable for their own costs in relation to the claim.
- (6) The injured person must make a decision under subsection (5) within 26 weeks after the date the person is notified of the person’s estimated WPI.

*Note* If the injured person’s estimated WPI is taken to be the person’s WPI, div 2.6.3 and ch 3 apply to the person.

- (7) If the injured person does not notify the insurer within the 26 weeks, the injured person is taken to have accepted the estimated WPI as the person’s WPI.
- (8) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (5) within the 26 weeks.

**Examples—reasonable steps**

- 1 including information in the written notice under s (5) about the consequences of failing to notify the insurer within the 26 weeks
  - 2 sending the injured person a reminder notice before the end of the 26 weeks
- (9) If the injured person refuses to have a WPI assessment, the person’s quality of life benefits application is taken to have been finally dealt with.

**142 WPI assessment—injured person’s injuries stabilised**

- (1) This section applies if an injured person to whom section 141 (4) applies—
  - (a) makes a motor accident claim in relation to the motor accident;  
and
  - (b) applies to stay a proceeding on the claim until the person’s injuries have stabilised.
- (2) The injured person must tell the relevant insurer for the motor accident, in writing, that the person’s injuries have stabilised.
- (3) The relevant insurer must refer the injured person to an authorised IME provider for a second WPI assessment.
- (4) The injured person is liable for the costs of the second WPI assessment.

*Note* The IME provider must give the WPI report about the assessment to the relevant insurer (see s 152).

- (5) If the WPI report assesses the injured person’s WPI as 10% or more, the injured person is entitled to proceed with the motor accident claim.
- (6) If the WPI report assesses the injured person’s WPI as less than 10%, the relevant insurer must, within 14 days after receiving the report, give the injured person a written notice—
  - (a) stating that the person—
    - (i) is not entitled to proceed with the motor accident claim;  
and
    - (ii) is liable for their own costs in relation to the motor accident claim; and
    - (iii) is not entitled to a further WPI assessment; and
    - (iv) is not entitled to an SOI assessment; 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 28 days after receiving the notice, notify the insurer, in writing, whether they accept the offer.
- (7) If the injured person does not notify the relevant insurer within the 28 days, the person is taken to have accepted the offer.
- (8) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (6) within the 28 days.

**Examples—reasonable steps**

- 1 including information in the written notice under s (6) about the consequences of failing to notify the insurer within the 28 days
  - 2 sending the injured person a reminder notice before the end of the 28 days
- (9) 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 person the amount of quality of life benefits payable for their WPI under division 2.6.4.

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

### **143 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.

**144 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.

**145 Meaning of *private medical examiner*—div 2.6.3**

In this division:

*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 and experience relevant to the nature of the injured person's injuries.

**146 WPI assessment guidelines**

- (1) The MAI commission must make guidelines (the *WPI assessment guidelines*) for WPI assessments.
- (2) The WPI assessment guidelines—
  - (a) must explain how a person's whole person impairment is assessed; 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 applied, adopted or incorporated under s (2) (c) 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.

## **147 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 138 (Insurer believes injuries stable and permanent impairment); or
  - (b) section 139 (Insurer believes injuries stable but no permanent impairment); or
  - (c) section 140 (Insurer believes injuries not stabilised—up to 4 years 6 months after motor accident); or
  - (d) section 141 (WPI assessment 4 years 6 months after motor accident); or
  - (e) section 142 (WPI assessment—injured person’s injuries stabilised).
- (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.

**148 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 authorised IME provider and 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 authorised IME provider or independent medical examiner reasonably requires for the WPI assessment.
- (3) The relevant insurer for the motor accident must give the authorised IME provider and independent medical examiner—
  - (a) all information in the insurer’s possession that is relevant to the WPI assessment; and
  - (b) any other information the authorised IME provider or independent medical examiner reasonably requires for the WPI assessment.
- (4) The information must be given to the authorised IME provider and 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 authorised IME provider or independent medical examiner.

**149 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 person.

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

- (1) This section applies if an injured person sustains both a physical injury and a primary psychological injury resulting from a motor accident.
- (2) The injured person may request separate WPI assessments of—
- (a) the physical injury; and
  - (b) the primary psychological injury.
- (3) However, the injured person may request a WPI assessment of the primary psychological injury only if the person has received—
- (a) mental health treatment for the injury; and

- (b) a notice, in writing, from a psychiatrist or clinical psychologist that the psychiatrist or clinical psychologist reasonably believes the person is likely to have a permanent psychological injury resulting from the motor accident.
- (4) To remove any doubt—
  - (a) a WPI assessment of a physical injury may take into account a secondary psychological injury; but
  - (b) a WPI assessment of a primary psychological injury must not take into account a secondary psychological injury.
- (5) The relevant insurer for the motor accident is only liable for the costs of 1 WPI assessment for each kind of injury.
- (6) In this section:

***primary psychological injury***—

- (a) means an injury that is—
  - (i) a psychological or psychiatric disorder, including the physiological effect of a psychological or psychiatric disorder on the nervous system, that results directly from a motor accident; and
  - (ii) diagnosed by a psychiatrist or clinical psychologist; but
- (b) does not include a psychological or psychiatric disorder that results from a physical injury resulting from a motor accident.

**Example—psychological injury resulting from a motor accident**

post-traumatic stress disorder as a result of witnessing the motor accident

***secondary psychological injury*** means an injury that is—

- (a) a psychological or psychiatric disorder that results from a physical injury resulting from a motor accident; and

(b) diagnosed by a psychiatrist or clinical psychologist.

**Example—psychological injury that results from physical injury**

depression and anxiety as a result of ongoing pain from the physical injury

**151 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 of each physical body system may be combined in accordance with the WPI assessment guidelines to decide the injured person’s WPI for the person’s physical injuries; and
  - (d) the WPI assessments for a primary psychological injury must be conducted in accordance with the WPI guidelines to decide the person’s WPI for their psychological injuries.

(2) In this section:

*injury*, to a person’s body system, includes a primary psychological injury to the person.

*primary psychological injury*—see section 150 (6).

**152 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.

**153 WPI—both physical and psychological injuries**

- (1) This section applies if—
- (a) a WPI assessment of an injured person’s physical injuries and psychological injuries has been carried out; and
  - (b) the WPI for each kind of injury is assessed at more than 0%.
- (2) The relevant insurer for the motor accident may take into account the WPI for each kind of injury to determine the amount of quality of life benefits the insurer may offer the injured person.

**154 WPI less than 5%—insurer may make offer**

- (1) This section applies if—
- (a) if separate WPI reports from an independent medical examiner assess an injured person’s physical injuries and psychological injuries—the higher WPI assessment assesses the person’s WPI as less than 5%; or
  - (b) if only 1 WPI report from an independent medical examiner assesses an injured person’s WPI—the person’s WPI is assessed as less than 5%.
- (2) The relevant insurer for the motor accident must give the injured person a written notice—
- (a) including a copy of each report; and

- (b) if there are separate WPI reports for the person’s physical and psychological injuries, and the insurer considers that it is appropriate to make an offer to the person—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 each report; and
  - (ii) if the person disagrees with a 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) The relevant insurer for the motor accident must give the notice to the injured person—
  - (a) if there are separate WPI reports for the person’s physical and psychological injuries—within 14 days after receiving the later report; or
  - (b) if there is only 1 WPI report—within 14 days after receiving the report.
- (4) 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—
  - (a) if the relevant insurer has made an offer—the offer; and
  - (b) if the relevant insurer has not made an offer—each report stated in the notice under subsection (2).

- (5) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (2) within the 26 weeks.

**Examples—reasonable steps**

- 1 including information in the written notice under s (2) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
  - 2 sending the injured person a reminder notice before the end of the 26 weeks
- (6) If the injured person accepts (or is taken to accept) the offer or the report, the person's application for quality of life benefits is taken to have been finally dealt with.

**155 WPI 5% to 9%—insurer must make offer**

- (1) This section applies if—
- (a) separate WPI reports from an independent medical examiner assess an injured person's physical injuries and psychological injuries; and
  - (b) the higher WPI assessment assesses the person's WPI as at least 5% but not more than 9%.
- (2) This section also applies if—
- (a) only 1 WPI report from an independent medical examiner assesses an injured person's WPI; and
  - (b) the person's WPI is assessed as at least 5% but not more than 9%.
- (3) The relevant insurer for the motor accident must give the injured person a written notice—
- (a) including a copy of each 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 each report; and
  - (ii) if the person disagrees with a 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.
- (4) The relevant insurer for the motor accident must give the notice to the injured person—
  - (a) if there are separate WPI reports for the person’s physical and psychological injuries—within 14 days after receiving the later report; or
  - (b) if there is only 1 WPI report—within 14 days after receiving the report.
- (5) 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.

- (6) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (3) within the 26 weeks.

**Examples—reasonable steps**

- 1 including information in the written notice under s (3) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
  - 2 sending the injured person a reminder notice before the end of the 26 weeks
- (7) 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.

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

- (1) This section applies if—
- (a) separate WPI reports from an independent medical examiner assess an injured person’s physical injuries and psychological injuries; and
  - (b) the higher WPI assessment assesses the person’s WPI as at least 10%; but
  - (c) the injured person is not entitled to make a motor accident claim in relation to the motor accident.
- (2) This section also applies if—
- (a) only 1 WPI report from an independent medical examiner assesses an injured person’s WPI; and
  - (b) the person’s WPI is assessed as at least 10%; but

- (c) the injured person is not entitled to make a motor accident claim in relation to the motor accident.
- (3) The relevant insurer for the motor accident must give the injured person a written notice—
  - (a) including a copy of each 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 each report; and
    - (ii) if the person disagrees with a 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.
- (4) The relevant insurer for the motor accident must give the notice to the injured person—
  - (a) if there are separate WPI reports for the person’s physical and psychological injuries—within 14 days after receiving the later report; or
  - (b) if there is only 1 WPI report—within 14 days after receiving the report.
- (5) 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.

- (6) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, as stated in the notice under subsection (3) within the 26 weeks.

**Examples—reasonable steps**

- 1 including information in the written notice under s (3) about the consequences of failing to notify the insurer, and failing to give the insurer the second WPI report, within the 26 weeks
  - 2 sending the injured person a reminder notice before the end of the 26 weeks
- (7) 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.

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

- (1) This section applies if—
- (a) separate WPI reports from an independent medical examiner assess an injured person’s physical injuries and psychological injuries; and
  - (b) the higher WPI assessment assesses the person’s WPI as at least 10%; and
  - (c) the injured person is entitled to make a motor accident claim in relation to the motor accident.
- (2) This section also applies if—
- (a) only 1 WPI report from an independent medical examiner assesses an injured person’s WPI; and
  - (b) the person’s WPI is assessed as at least 10%; and

- (c) the injured person is entitled to make a motor accident claim in relation to the motor accident.
- (3) The relevant insurer for the motor accident must give the injured person a written notice—
  - (a) including a copy of each 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; and
    - (ii) that if the person accepts the offer and makes a motor accident claim, the person is not entitled to damages for loss of quality of life under chapter 5 (Motor accident injuries—common law damages); 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 each report; and
    - (ii) if the person disagrees with a 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.
- (4) The relevant insurer for the motor accident must give the notice to the injured person—
  - (a) if there are separate WPI reports for the person’s physical and psychological injuries—within 14 days after receiving the later report; or

- (b) if there is only 1 WPI report—within 14 days after receiving the report.
- (5) 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.
- (6) 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.
- (7) The relevant insurer must take all reasonable steps to notify the injured person about the due date and the consequences of failing to notify the insurer as stated in the notice under subsection (3) by the due date.

**Examples—reasonable steps**

- 1 including information in the written notice under s (3) about the due date and the consequences of failing to notify the insurer by the due date
- 2 sending the injured person a reminder notice before the due date

- (8) In this section:

***complying notice of claim***—see section 257.

***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; and

- (c) if the injured person gives a complying notice of claim—  
6 weeks after the date the claim is finally decided.

### **158 Second WPI report**

- (1) This section applies if an injured person notifies the relevant insurer for the motor accident under section 154, section 155, section 156 or section 157 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.
- (6) The relevant insurer must reimburse the injured person for the amount of the second WPI assessment if—
  - (a) the first WPI report assesses the person’s WPI as less than 10%; and
  - (b) the second WPI report assesses the person’s WPI as at least 10%; and
  - (c) the person makes a motor accident claim in relation to the motor accident.
- (7) 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.

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

- (1) This section applies if—
  - (a) the relevant insurer for a motor accident receives—
    - (i) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries—at least 1 second WPI report; or
    - (ii) if only 1 first WPI report is provided—a second WPI report; 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 the independent medical examiner who carried out the WPI assessment to which the first WPI report relates; 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 for giving the second WPI report to the IME provider and the independent 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.

**160 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 not less than—
  - (a) if the insurer has not requested the IME provider to arrange a review of the first WPI report under section 159—the WPI assessed in the first WPI report; or
  - (b) if the insurer has requested the IME provider to arrange a review of the first WPI report under section 159—the affirmed or increased assessment of WPI stated in the notice of affirmation or increase.

**161 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 159—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 to the ACAT for review of the final offer WPI decision; and
- (iii) if separate WPI reports assess an injured person's physical injuries and psychological injuries—how the final offer WPI was determined.

(2) In this section:

*stated time* means—

- (a) if separate first WPI reports are provided for the injured person's physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of only 1 report under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (b) if separate first WPI reports are provided for the injured person's physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of both reports under section 159—14 days after receiving the IME provider's notice of affirmation or increase for both reports; or
- (c) if only 1 first WPI report is provided and the insurer requests the IME provider arrange a review under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (d) if separate first WPI reports are provided for the injured person's physical injuries and psychological injuries and the insurer did not request the IME provider arrange a review of either report under section 159—28 days after receiving the later of the second WPI reports; or
- (e) if only 1 first WPI report is provided and the insurer did not request the IME provider arrange a review under section 159—28 days after receiving the second WPI report.

**162 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 159—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 to the ACAT for review of the final offer WPI decision; and
    - (iii) if separate WPI reports assess an injured person's physical injuries and psychological injuries—how the final offer WPI was determined; 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 to the ACAT for 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) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (1) within the 28 days.

**Examples—reasonable steps**

- 1 including information in the written notice under s (1) about the consequences of failing to notify the insurer within the 28 days
  - 2 sending the injured person a reminder notice before the end of the 28 days
- (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 separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of only 1 report under section 159—14 days after receiving the IME provider’s notice of affirmation or increase; or
- (b) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of both reports under section 159—14 days after receiving the IME provider’s notice of affirmation or increase for both reports; or
- (c) if only 1 first WPI report is provided and the insurer requests the IME provider arrange a review under section 159—14 days after receiving the IME provider’s notice of affirmation or increase; or

- (d) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer did not request the IME provider arrange a review of either report under section 159—28 days after receiving the later of the second WPI reports; or
- (e) if only 1 first WPI report is provided and the insurer did not request the IME provider arrange a review under section 159—28 days after receiving the second WPI report.

**163 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 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 159—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 to the ACAT for review of the final offer WPI decision; and
    - (iii) if separate WPI reports assess an injured person’s physical injuries and psychological injuries—how the final offer WPI was determined; 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 to the ACAT for 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) The relevant insurer must take all reasonable steps to notify the injured person about the consequences of failing to notify the insurer as stated in the notice under subsection (2) within the 28 days.

**Examples—reasonable steps**

- 1 including information in the written notice under s (2) about the consequences of failing to notify the insurer within the 28 days
- 2 sending the injured person a reminder notice before the 28 days
- (5) 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.

(6) In this section:

*stated time* means—

- (a) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of only 1 report under section 159—14 days after receiving the IME provider’s notice of affirmation or increase; or
- (b) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer requests the IME provider arrange a review of both reports under section 159—14 days after receiving the IME provider’s notice of affirmation or increase for both reports; or
- (c) if only 1 first WPI report is provided and the insurer requests the IME provider arrange a review under section 159—14 days after receiving the IME provider’s notice of affirmation or increase; or
- (d) if separate first WPI reports are provided for the injured person’s physical injuries and psychological injuries and the insurer did not request the IME provider arrange a review of either report under section 159—28 days after receiving the later of the second WPI reports; or
- (e) if only 1 first WPI report is provided and the insurer did not request the IME provider arrange a review under section 159—28 days after receiving the second WPI report.

**164 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%; and

- (b) the injured person is entitled to make a motor accident claim 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 159—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 to the ACAT for review of the final offer WPI decision; and
    - (iii) if separate WPI reports assess an injured person’s physical injuries and psychological injuries—how the final offer WPI was determined; 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; and
    - (ii) that if the person accepts the offer and makes a motor accident claim, the person is not entitled to damages for loss of quality of life under chapter 5; 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 to the ACAT for 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) The relevant insurer must take all reasonable steps to notify the injured person about the due date and the consequences of failing to notify the insurer as stated in the notice under subsection (2) by the due date.

**Examples—reasonable steps**

- 1 including information in the written notice under s (2) about the due date and the consequences of failing to notify the insurer by the due date
- 2 sending the injured person a reminder notice before the due date

- (6) In this section:

***complying notice of claim***—see section 257.

***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; and
- (c) if the injured person gives a complying notice of claim—6 weeks after the date the claim is finally decided.

*stated time* means—

- (a) if separate WPI reports were provided for the injured person's physical injuries and psychological injuries and the insurer requested the IME provider arrange a review of only 1 report under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (b) if separate first WPI reports were provided for the injured person's physical injuries and psychological injuries and the insurer requested the IME provider arrange a review of both reports under section 159—14 days after receiving the IME provider's notice of affirmation or increase for both reports; or
- (c) if only 1 first WPI report was provided and the insurer requested the IME provider arrange a review under section 159—14 days after receiving the IME provider's notice of affirmation or increase; or
- (d) if separate first WPI reports are provided for the injured person's physical injuries and psychological injuries and the insurer did not request the IME provider arrange a review of either report under section 159—28 days after receiving the later of the second WPI reports; or
- (e) if only 1 first WPI report is provided and the insurer did not request the IME provider arrange a review under section 159—28 days after receiving the second WPI report.

**165 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) If section 151 does not apply, the relevant insurer is only liable for the costs of—
  - (a) 1 WPI assessment of the person's physical injuries; and

- (b) if the person may request a WPI assessment of the person's primary psychological injury under section 150—1 WPI assessment of the person's primary psychological injury.
- (3) If section 151 applies, the relevant insurer is only liable for the costs of 1 WPI assessment for each affected body system.
- (4) In this section:  
*injury*, to a person's body system, includes a primary psychological injury to the person.

*primary psychological injury*—see section 150 (6).

**166 Effect of certain WPI assessments on motor accident claim**

Despite the *Limitation Act 1985*, section 16AA (Motor accident claims), a person injured in a motor accident who has had a WPI assessment has 3 months from whichever of the following dates applies to make a motor accident claim:

- (a) if the injured person receives a notice under section 141 (5) (WPI assessment 4 years 6 months after motor accident)—the date that is 26 weeks after the date of the notice;
- (b) if the injured person receives a notice under section 157 (3) (WPI 10% or more—injured person entitled to make motor accident claim) or section 164 (2) (Final offer WPI 10% or more—injured person entitled to make motor accident claim)—the due date for the notice.

## Division 2.6.4 Quality of life benefits—amount payable

### 167 Amount of quality of life benefits payable

- (1) The amount of quality of life benefits payable to a person injured in a motor accident is the amount stated in table 167—
  - (a) if there are separate WPI reports for the person’s physical and psychological injuries—as at the date of the later WPI report; or
  - (b) if there is only 1 WPI report—as at the date of the WPI report; or
  - (c) if a WPI report is reviewed under section 159 (4) (Second WPI report—original WPI may be affirmed or increased)—
    - (i) if separate WPI reports for the person’s physical and psychological injuries are reviewed—as at the date of the notice of affirmation or increase of the later review; or
    - (ii) if only 1 WPI report is reviewed—as at the date of the notice of affirmation or increase.

**Table 167 Amount of quality of life benefits payable**

column 1 item	column 2 WPI %	column 3 amount payable
1	less than 5%	nil
2	5%	\$7 000 AWE indexed
3	6% to 10%	\$7 000 AWE indexed + [(W-5) x \$2 100 AWE indexed]
4	11% to 20%	\$17 500 AWE indexed + [(W-10) x \$2 450 AWE indexed]
5	21% to 50%	\$42 000 AWE indexed + [(W-20) x \$2 800 AWE indexed]
6	51% to 99%	\$126 000 AWE indexed + [(W-50) x \$4 480 AWE indexed]
7	100%	\$350 000 AWE indexed

*Note* **AWE indexed**, for an amount—see s 18.

(2) In this section:

*W* means  $WPI/100\% \times 100$ .

**Example**

if a person's WPI is 8%, the corresponding *W* is 8

## Part 2.7 Defined benefits—death benefits

### Division 2.7.1 Preliminary

#### 168 Meaning of *dependant*—pt 2.7

(1) In this part:

*dependant*, of a person who died as a result of a motor accident, means someone who was, when the person died—

- (a) a dependent child of the person; or
- (b) a domestic partner of the person; or
- (c) a dependent former domestic partner of the person.

(2) In this section:

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

- (a) either—
  - (i) a child of the person (including a child born after the person's death), whether or not living with the person as a member of the person's family; or
  - (ii) a grandchild or step child of the person, living with the person as a member of the person's family; and
- (b) 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*, in relation to a person—see the *Disability Services Act 1991*, dictionary.

## **Division 2.7.2 Death benefits—entitlement**

### **169 Who is entitled to death benefits?**

- (1) A dependant of a person who died as a result of a motor accident is entitled to death benefits in relation to the person's death.

*Note* *Person who died as a result of a motor accident*—see s 36.

- (2) This section is subject to the following sections:
- (a) section 46 (Entitlement limited—injuries self-inflicted);
  - (b) section 49 (No entitlement—act of terrorism);
  - (c) section 170 (No entitlement to death benefits—death of foreign national outside Australia);
  - (d) section 171 (No entitlement to death benefits—conduct making up offence);
  - (e) section 172 (No entitlement to death benefits—quality of life benefits or damages already paid);
  - (f) section 173 (No entitlement to death benefits—death benefits paid under workers compensation scheme).

### **170 No entitlement to death benefits—death of foreign national outside Australia**

- (1) This section applies if—
- (a) a person dies as a result of a motor accident; and
  - (b) the person is a foreign national; and

(c) the person's death happens outside Australia.

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

(2) A dependant of the person is not entitled to death benefits in relation to the person's death.

**171 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) A dependant of the person is not entitled to death benefits in relation to the person's death.

(3) In this section:

*serious offence*—see section 48 (6).

**172 No entitlement to death benefits—quality of life benefits or damages already paid**

A dependant of a person who died as a result of a motor accident is not entitled to death benefits in relation to the person's death if the person received—

(a) quality of life benefits in relation to the motor accident; or

(b) quality of life damages in relation to the motor accident.

**173 No entitlement to death benefits—death benefits paid under workers compensation scheme**

- (1) This section applies if—
  - (a) a person dies as a result of a motor accident; and
  - (b) death benefits (other than funeral expenses) are paid under a workers compensation scheme for the benefit of a dependant of the person.
- (2) The dependant is not entitled to death benefits in relation to the person's death.
- (3) If the dependant has been paid death benefits under this part, the insurer is entitled to recover the death benefits from the dependant.

**Division 2.7.3 Death benefits—amount payable**

**174 Amount of death benefits payable**

The following amounts of death benefits are payable to the dependants 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**, for an amount—see s 18.

**175 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.

**Division 2.7.4 Death benefits—payment**

**176 Payment of death benefits—application to ACAT**

- (1) This section applies if the relevant insurer for a motor accident receives an application for death benefits from—
  - (a) the dependant of a person who died as a result of the motor accident; or
  - (b) if the dependant is a person with a legal disability—the dependant's guardian; or
  - (c) the personal representative of a person who died as a result of the motor accident.

- (2) The relevant insurer must apply to the ACAT for an order for the payment of the death benefits to the dependants.
- (3) The application must be made after the later of the following:
  - (a) 5 business days after the day the relevant insurer accepts liability for an application for death benefits received under subsection (1);
  - (b) 28 days after the day the relevant insurer gives notice to a dependant for additional information in relation to the application for death benefits.
- (4) The MAI guidelines may make provision in relation to the following:
  - (a) the procedures to be undertaken in relation to processing an application for death benefits;
  - (b) the information to be given to the ACAT with an application under subsection (2).

### **177 Payment of death benefits—ACAT orders**

- (1) On application under section 176, the ACAT must decide—
  - (a) whether to make an order for payment of death benefits; and
  - (b) if the ACAT makes an order under paragraph (a)—
    - (i) the amount of death benefits the ACAT considers appropriate for each dependant; and
    - (ii) any other matter the ACAT considers relevant for the making of the order.
- (2) However, the order must not be for more than an amount stated in section 174 (Amount of death benefits payable).

- (3) In considering an application under section 176, the ACAT may—
- (a) consider any relevant matter; and
  - (b) ask for additional information in relation to the application.

*Note 1* The ACAT may inform itself in any way it considers appropriate in the circumstances (see *ACT Civil and Administrative Tribunal Act 2008*, s 26).

*Note 2* See s 370 for when a licensed insurer must comply with an order of the ACAT.

## Part 2.8                      Defined benefits—funeral benefits

### 178            Who is entitled to funeral benefits?

- (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.

*Note*     The funeral benefits must be paid as soon as possible (see [Legislation Act](#), s 151B).

- (2) This section is subject to—
  - (a) section 49 (No entitlement—act of terrorism); and
  - (b) section 179 (No entitlement to funeral benefits—death of foreign national outside Australia); and
  - (c) section 180 (No entitlement to funeral benefits—funeral expenses paid under workers compensation scheme).

- (3) In this section:

*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.

### 179            No entitlement to funeral benefits—death of foreign national outside Australia

- (1) This section applies if—
  - (a) a person dies as a result of a motor accident; and
  - (b) the person is a foreign national; and
  - (c) the person's death happens outside Australia.

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

- (2) The person who has paid, or is liable to pay, the funeral expenses is not entitled to funeral benefits in relation to the person's death.

**180 No entitlement to funeral benefits—funeral expenses paid under workers compensation scheme**

- (1) This section applies if—
- (a) a person dies as a result of a motor accident; and
  - (b) funeral expenses in relation to the person are paid under a workers compensation scheme.
- (2) The person who has paid, or is liable to pay, the funeral expenses is not entitled to funeral benefits in relation to the person's death.
- (3) If the person who has paid, or is liable to pay, the funeral expenses has been paid funeral benefits under this part, the insurer is entitled to recover from the person the lesser of—
- (a) the amount of the funeral expenses paid under the workers compensation scheme; and
  - (b) the amount of the funeral benefits paid under this part.

**181 Funeral benefits—maximum amount payable**

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

*Note* *AWE indexed*, for an amount—see s 18.

**182 Funeral benefits—MAI guidelines**

The MAI guidelines may make provision in relation to funeral benefits, including what expenses may be included as funeral benefits.

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

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

- (1) This section applies if—
  - (a) an insurer must pay defined benefits to a person; and
  - (b) the person is an Australian living overseas.
- (2) The insurer must pay the amount of treatment and care benefits and income replacement 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](#), dictionary, 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 at least the eligibility period (if any); and
- (d) intends to live outside Australia permanently or for an extended time.

**184 Lump sum payment of certain defined benefits—foreign nationals**

(1) This section applies if—

- (a) an insurer must pay treatment and care benefits or income replacement benefits to a person injured in a motor accident; and
- (b) the injured person is a foreign national; and
- (c) the injured person intends to leave Australia permanently before the end of the period for which the benefits are payable.

(2) Before the injured person leaves Australia permanently, the injured person—

- (a) must notify the insurer that the person intends to leave Australia permanently; and
- (b) may apply to the insurer for the payment of a lump sum (a *lump sum payment*) to cover the person's future entitlement to defined benefits.

(3) The insurer must continue to pay the injured person the defined benefits to which the person is entitled until the day the person leaves Australia permanently.

- (4) If the insurer receives an application under subsection (2) (b), the insurer must—
  - (a) calculate the amount of the lump sum payable to the person; and
  - (b) notify the injured person, in writing, about the amount calculated.
- (5) If the amount calculated under subsection (4) (a) is less than \$10 000, the injured person is not entitled to a lump sum payment.
- (6) If the amount calculated under subsection (4) (a) is \$10 000 or more, the insurer must pay the injured person the lump sum payment.
- (7) The lump sum may be calculated and made after the injured person leaves Australia permanently.
- (8) The injured person’s entitlement to defined benefits ends—
  - (a) on the day the injured person leaves Australia permanently, if the injured person—
    - (i) does not tell the insurer that the person intends to leave Australia permanently; or
    - (ii) tells the insurer that the person intends to leave Australia permanently but does not apply for a lump sum payment; or
    - (iii) applies for a lump sum payment but the amount of the lump sum is less than \$10 000; or
  - (b) if the insurer pays the injured person a lump sum payment—the day the injured person receives the lump sum payment.
- (9) The injured person’s entitlement to defined benefits is not revived if the person returns to Australia.

- (10) The MAI guidelines may make provision for determining the following:
- (a) the eligibility of an injured person who is a foreign national to a lump sum payment;
  - (b) the amounts to be included when calculating the amount of a lump sum and how the amount of the lump sum is to be calculated.
- (11) If the injured person makes a motor accident claim in relation to the motor accident, the amount of the lump sum payment must be taken into account when assessing damages for the motor accident claim.

## Part 2.10 Defined benefits—dispute resolution

### Division 2.10.1 Preliminary

#### 185 Definitions—pt 2.10

- (1) In this part:

*insurer*, in relation to an application for defined benefits, means the insurer of a motor vehicle involved in a motor accident to which the application relates.

*internal review notice*—see section 191 (1) (b).

- (2) In this section:

*insurer*, of a motor vehicle—see section 34 (2).

### Division 2.10.2 Internal review of insurer's decisions

#### 186 Definitions—div 2.10.2

In this division:

*internally reviewable decision* means a decision of an insurer—

- (a) mentioned in schedule 1, part 1.1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision; or  
(b) prescribed by regulation.

*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 internally reviewable decision, means a review of the decision, carried out by the insurer under this part.

## **187 Internal review—application**

- (1) The following people may apply to an insurer for internal review of an internally reviewable decision the insurer has made about an application for defined benefits:
  - (a) an applicant for defined benefits;
  - (b) if an applicant for defined benefits is a person with a legal disability—the applicant's guardian;
  - (c) if the dependant of a person who died as a result of the motor accident is a person with a legal disability—the dependant's guardian;
  - (d) the personal representative of a person who died as a result of the motor accident.
- (2) An application for internal review must be made within 28 days after—
  - (a) the date of the internally reviewable decision; or
  - (b) if the insurer has not made the internally reviewable decision within the time required under this Act—the end of the time required for making the 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; and
  - (c) the late application is made within the 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, beginning on 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 circumstances explained by the applicant would have been justified in delaying the application.

**188 Conduct of internal review—MAI guidelines**

- (1) The MAI guidelines may make provision for the internal review of internally reviewable decisions, including applications for internal review.
- (2) An application for internal review, and the conduct of the review, must comply with the MAI guidelines.

**189 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.

**190 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 reviewer may consider information that was not provided before the decision being reviewed was made.

**191 Internal review—decision**

- (1) An insurer must, within 10 business days after receiving an application for internal review of an internally reviewable decision—
  - (a) decide to—
    - (i) affirm the decision; or
    - (ii) amend the decision; or
    - (iii) set aside the decision and make a substitute decision; and
  - (b) give the applicant written notice of the decision (an *internal review notice*) that includes the following:
    - (i) the reasons for the decision;
    - (ii) information about how the applicant may apply for external review of the decision.
- (2) However, the MAI guidelines may provide for particular circumstances in which the 10 business days may be extended.
- (3) A decision by the insurer under subsection (1) takes effect on the day the internally reviewable decision was made.
- (4) A regulation may prescribe—
  - (a) additional information an internal review notice may or must contain; and
  - (b) any document or thing that must accompany a notice; and
  - (c) anything else in relation to a notice.

## Division 2.10.3 ACAT review of insurer's decisions

### 192 Meaning of *ACAT reviewable decision*—div 2.10.3

In this division:

*ACAT reviewable decision* means a decision of an insurer—

- (a) mentioned in schedule 1, part 1.2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision; or
- (b) prescribed by regulation.

*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).

### 193 ACAT review—application

- (1) The following people may apply to the ACAT for external review of an ACAT reviewable decision on a question of law or fact:
  - (a) an applicant for defined benefits;
  - (b) if an applicant for defined benefits is a person with a legal disability—the applicant's guardian;
  - (c) if the dependant of a person who died as a result of the motor accident is a person with a legal disability—the dependant's guardian;
  - (d) the personal representative of a person who died as a result of the motor accident;
  - (e) the insurer of a motor vehicle involved in the motor accident.

- (2) An application for external review of an ACAT reviewable decision must be made within—
- (a) 28 days after the day the applicant for external review is given an internal review notice in relation to the ACAT reviewable decision; or
  - (b) if the applicant for external review is not given an internal review notice in relation to the ACAT reviewable decision—28 days after the applicant becomes aware of the decision; or
  - (c) if a regulation prescribes a different time within which to make an application—the prescribed time.

*Note 1* For how to make an application to the ACAT, see the [ACT Civil and Administrative Tribunal Act 2008](#), s 10.

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

## **194 Time for making application when no decision made under s 191**

- (1) This section applies if—
- (a) an insurer is required to make a decision under section 191 (Internal review—decision) (a **section 191 decision**) in relation to an application for internal review of an internally reviewable decision; and
  - (b) the insurer has not made the section 191 decision within the time required under section 191 (1), or any further time allowed under the MAI guidelines; and
  - (c) the applicant for internal review may apply to the ACAT for review of the internally reviewable decision.
- (2) An application for review of the internally reviewable decision may be made within 28 days after the end of the period mentioned in subsection (1) (b).

**195 External review—ACAT to notify insurer etc**

As soon as practicable after receiving an application for external review of an ACAT reviewable decision, the ACAT must give written notice of the application to—

- (a) if the applicant is an applicant for defined benefits—the insurer who made the decision; or
- (b) if the applicant is the insurer of a motor vehicle involved in the motor accident—
  - (i) the applicant for defined benefits; and
  - (ii) the insurer who made the decision.

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

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

*Note* The ACAT may order a stay of the ACAT reviewable decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 53).

**197 External review—decision**

- (1) In deciding an application for external review of an ACAT reviewable decision, the ACAT must, by order—
  - (a) affirm the decision; or
  - (b) amend the decision; or
  - (c) set aside the decision and—
    - (i) make a substitute decision; or
    - (ii) remit the matter for reconsideration by the insurer that made the decision (the *decision-maker*) in accordance with any direction of the ACAT.

- (2) In deciding the application for external review, the ACAT must only consider the information that was available to the decision-maker when the decision was made.
- (3) However, the ACAT may, on application by a party, give the party leave to present information or evidence that was not reasonably available to the decision-maker when the decision was made.

**Example**

a medical report for an examination undertaken, but not reported on, when the decision was made

- (4) A regulation may prescribe conditions for allowing additional information or evidence to be presented under subsection (3).

**198 External review—costs of proceedings**

- (1) The ACAT may order a party to pay the costs of the other party arising from an application for external review of an ACAT reviewable decision.
- (2) However, the ACAT must not award the costs of, or incidental to, an application for external review against an injured person if—
  - (a) the injured person made the application in good faith; and
  - (b) the ACAT is satisfied that the applicant has an arguable basis for the application.
- (3) The ACAT may be satisfied an applicant has an arguable basis for an application for external review if the applicant appears in person.
- (4) A regulation may prescribe the following:
  - (a) when an order under subsection (1) may be made;
  - (b) what may be considered to be a disbursement;
  - (c) the maximum amount that can be awarded for particular costs;

- (d) the maximum amount of costs that can be awarded in relation to an application for external review of an ACAT reviewable decision.

*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).

- (5) In this section:  
*costs* include disbursements.

## **199 External review—effect of decision**

- (1) This section applies if the ACAT makes an order under section 197 (External review—decision) in relation to an ACAT reviewable decision (other than an order under section 197 (1) (c) (ii)).
- (2) The order—
  - (a) is taken to be the decision of the decision-maker who made the ACAT reviewable decision; and
  - (b) takes effect—
    - (i) for an order relating to an application for external review of an internally reviewable decision—on the day the internally reviewable decision was made, unless the ACAT otherwise orders; and
    - (ii) in any other case—on the day the externally reviewable decision was made, unless the ACAT otherwise orders.
- (3) If the ACAT orders the payment of a defined benefit to an applicant for defined benefits, the relevant insurer for the application must pay the applicant the amount of defined benefits owing to the applicant.

**200 External review—time for appeal**

- (1) This section applies to an application for external review of an ACAT reviewable decision under the *ACT Civil and Administrative Tribunal Act 2008*, section 79 (Appeals within tribunal) to appeal the ACAT's decision under section 197 (External review—decision).
- (2) The application must be made within 28 days after the date of the ACAT reviewable decision.

**201 No monetary limit on jurisdiction of ACAT**

- (1) The ACAT is not, in exercising jurisdiction conferred on it by this part, limited in the amount of money that it may order to be paid.
- (2) This section is subject to—
  - (a) section 198 (External review—costs of proceedings); and
  - (b) any other provision under this Act relating to an amount payable in relation to a defined benefit.

**202 Inconsistency between Act and ACAT Act, pt 4A**

This part prevails if there is an inconsistency between this part and the *ACT Civil and Administrative Tribunal Act 2008*, part 4A (Administrative review).

## Part 2.11 Defined benefits—miscellaneous

### 203 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) If a legal cost or fee is prescribed under subsection (1), a lawyer who provides a service to which the cost or fee relates to an applicant or insurer in relation to an application for defined benefits is only entitled to be paid, or to recover, the prescribed cost or fee for the service.

### 204 Defined benefits information service

- (1) The MAI commission may approve an entity (other than an individual) to provide a defined benefits information service for this Act.
- (2) 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.
- (3) To remove any doubt, nothing in this section prevents a lawyer from providing advice about defined benefits in the course of providing legal services.
- (4) In this section:  
*legal services*—see the *Legal Profession Act 2006*, dictionary.

## Chapter 3                    Motor accident injuries—     significant occupational impact

### Part 3.1                    Significant occupational impact     of injuries—important concepts

#### 205                    Meaning of *significant occupational impact*

In this Act:

*significant occupational impact* (or *SOI*), of an injured person’s injury on the person’s ability to undertake employment—an injury sustained by a person injured in a motor accident has a *significant occupational impact* on the person’s ability to undertake employment if the person—

- (a) either—
  - (i) is prevented from performing the work the person performed before the motor accident; or
  - (ii) has reduced capacity to perform the work the person performed before the motor accident; and
- (b) either—
  - (i) is unable, or has limited ability, to undertake training in another area of work; or
  - (ii) cannot undertake appropriate alternative employment.

#### 206                    Meaning of *independent assessor*

In this Act:

*independent assessor*—

- (a) means a person who conducts SOI assessments under an arrangement with an authorised IME provider; but

- (b) does not include a person prescribed by regulation.

## 207 Meaning of *SOI assessment* and *SOI report*

In this Act:

*SOI assessment*, of a person injured in a motor accident, means an assessment to evaluate and report on whether the person's injury has a significant occupational impact on the person's ability to undertake employment.

*SOI report* means a written report, by an independent medical examiner or independent assessor, of an injured person's injury that—

- (a) states whether the person's injury has a significant occupational impact on the person's ability to undertake employment; and
- (b) complies with the SOI assessment guidelines.

## 208 SOI assessment guidelines

- (1) The MAI commission must make guidelines (the *SOI assessment guidelines*) for SOI assessments.
- (2) The SOI assessment guidelines may—
  - (a) state procedures and principles to be followed in making an SOI assessment; and
  - (b) 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) (b).

*Note* A law or instrument applied, adopted or incorporated under s (2) (b) 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 SOI assessment guidelines are a disallowable instrument.

## **Part 3.2 SOI assessments**

### **209 SOI assessment 4 years 6 months after motor accident**

- (1) This section applies if—
  - (a) a person injured in a motor accident is receiving income replacement benefits or, because of the circumstances prescribed by regulation, would have been eligible to receive income replacement benefits; and
  - (b) the person made a quality of life benefits application and—
    - (i) if separate WPI reports from an independent medical examiner assess the person’s physical injuries and psychological injuries—the higher WPI assessment assesses the person’s WPI as less than 10%; or
    - (ii) if only 1 WPI report from an independent medical examiner assesses the person’s WPI—the person’s WPI is less than 10%; and
  - (c) the relevant insurer has not previously referred the injured person to an authorised IME provider under this section for an SOI assessment in relation to the injuries; and
  - (d) 4 years and 6 months has passed since the date of the motor accident; and
  - (e) the person consents to the relevant insurer referring the injured person to an authorised IME provider for an SOI assessment.
- (2) The relevant insurer must refer the injured person to an authorised IME provider for an SOI assessment.
- (3) The relevant insurer for a motor accident is liable for the costs of an SOI assessment, unless otherwise provided in this chapter.

## 210 Arrangement of SOI assessment

- (1) This section applies if an injured person is referred to an authorised IME provider for an SOI assessment under section 209.
- (2) The IME provider must arrange for the SOI assessment to be carried out—
  - (a) by 1 or more independent medical examiners or independent assessors who are trained as required by the SOI assessment guidelines; and
  - (b) in accordance with the SOI assessment guidelines.
- (3) The MAI guidelines may make provision in relation to the procedure for arranging an SOI 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.

## 211 SOI assessment—provision of information

- (1) This section applies if an authorised IME provider arranges for an independent medical examiner or independent assessor to carry out an SOI assessment of an injured person.
- (2) The injured person must give the authorised IME provider and the person carrying out the assessment (the *assessor*)—
  - (a) all information in the injured person’s possession that is relevant to the SOI assessment; and
  - (b) any other information the authorised IME provider or assessor reasonably requires for the SOI assessment.

- (3) The relevant insurer for the motor accident must give the authorised IME provider and the assessor—
  - (a) all information in the insurer’s possession that is relevant to the SOI assessment; and
  - (b) a copy of any WPI reports in the insurer’s possession; and
  - (c) any other information the authorised IME provider or assessor reasonably requires for the SOI assessment.
- (4) The information must be given to the authorised IME provider and the assessor at least 10 days before the day the assessor is to carry out the SOI assessment.
- (5) The assessor may decline to carry out the SOI assessment if the injured person or the insurer fails to give any information reasonably required by the authorised IME provider or assessor.

**212 SOI report to be prepared**

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

**213 SOI report—injury has significant occupational impact**

- (1) This section applies if—
  - (a) a relevant insurer refers an injured person to an authorised IME provider for an SOI assessment; and

- (b) the authorised IME provider arranges for an independent medical examiner or independent assessor to carry out an SOI assessment of the person; and
  - (c) an SOI report from the independent medical examiner or independent assessor confirms the person's injury has a significant occupational impact on the person's ability to undertake employment.
- (2) The injured person—
- (a) is taken to have a WPI of 10% for this Act; and
  - (b) is entitled to make a motor accident claim in relation to the motor accident.
- (3) Subsection (2) does not prevent a person mentioned in that subsection from reviving a quality of life benefits application.
- (4) The relevant insurer for the motor accident must, within 14 days after receiving the SOI report, give the injured person a written notice—
- (a) including a copy of the report and the WPI report, if any; and
  - (b) stating that—
    - (i) the person is taken to have a WPI of 10% for this Act; and
    - (ii) the person is entitled to make a motor accident claim in relation to the motor accident.

#### **214 SOI report—no significant occupational impact**

- (1) This section applies if an SOI report of an injured person confirms that the injured person's injury has not had a significant occupational impact on the person's ability to undertake employment.
- (2) The relevant insurer for the motor accident must, within 14 days after receiving the SOI report, give the injured person a written notice—
  - (a) including a copy of the report; and

- (b) stating that the person may apply to the ACAT for a review of the SOI report.

## **Part 3.3 SOI reports—ACAT review**

### **215 SOI report—no significant occupational impact—ACAT review**

- (1) If an injured person receives a notice under section 214 in relation to an SOI report, the injured person may apply to the ACAT for review of the report.
- (2) An application for review of the SOI report must be made within 14 days after the day the injured person received the notice.
- (3) The independent medical examiner or independent assessor who carries out the SOI assessment of the injured person must not be—
  - (a) named as a respondent to an application made under subsection (1); or
  - (b) joined as a party to an application made under subsection (1).

### **216 Review of SOI report—ACAT to notify insurer etc**

As soon as practicable after receiving an application for review of an SOI report under section 215, the ACAT must give written notice of the application to—

- (a) the IME provider that arranged the SOI assessment to which the SOI report relates; and
- (b) the relevant insurer for the motor accident.

**217 Review of SOI report—IME provider to give ACAT information**

- (1) This section applies if an IME provider receives a notice under section 216 in relation to an application for review of an SOI report.
- (2) The IME provider must, within 14 days after receiving the notice, give the ACAT all information in the provider's possession that was used in carrying out the SOI assessment to which the SOI report relates.

**218 ACAT review—decision**

- (1) In deciding an application for review of an SOI report of a person injured in a motor accident, the ACAT must, by order—
  - (a) affirm the SOI report; or
  - (b) set aside the SOI report and make an order confirming that the injured person's injury has had a significant occupational impact on the person's ability to undertake employment.
- (2) In deciding the application for review, the ACAT must only consider the information that was available to the independent medical examiner or independent assessor when the SOI assessment to which the SOI report relates was carried out.
- (3) However, the ACAT may, on application by a party, give the party leave to present information or evidence that was not reasonably available to the independent medical examiner or independent assessor when the SOI assessment was carried out.

**Example**

a medical report for an examination undertaken, but not reported on, when the SOI assessment was carried out

- (4) If the ACAT makes an order under subsection (1), the order takes effect on the date the ACAT makes the order, unless the ACAT otherwise orders.

- (5) To remove any doubt, if the ACAT makes an order under subsection (1) (b), section 213 applies as if the decision of the ACAT is an SOI report from an independent medical examiner or independent assessor.
- (6) A regulation may prescribe conditions for allowing additional information or evidence to be presented under subsection (3).

### **219 Effect of ACAT order affirming SOI report**

- (1) This section applies if the ACAT makes an order under section 218 (1) (a) affirming an SOI report in relation to a person injured in a motor accident.
- (2) The relevant insurer for the motor accident must pay the injured person the amount of quality of life benefits payable to the person under section 167 (Amount of quality of life benefits payable).

*Note* The amount of quality of life benefits payable under s 167 depends on the injured person's WPI, as assessed under s 141 or div 2.6.3.

## Part 3.4                      Significant occupational impact of injuries—miscellaneous

### 220                      Effect of SOI assessment on motor accident claim

Despite the *Limitation Act 1985*, section 16AA (Motor accident claims), a person injured in a motor accident who has had an SOI assessment has 3 months from the latest of the following dates to make a motor accident claim in relation to the motor accident:

- (a) if the injured person receives a notice under section 213 (4) (SOI report—injury has significant occupational impact)—the date of the notice;
- (b) if the ACAT makes an order under section 218 (1) (b)—
  - (i) if no appeal from the order is made—the date the appeal period for the order ends; or
  - (ii) if an appeal from the order is made—the date the appeal is finally decided.

## Chapter 4                      Payment of future medical treatment expenses

### 221                      Definitions—ch 4

In this chapter:

*future treatment payment*—see section 222 (2).

*medical treatment* means medical treatment prescribed by regulation.

### 222                      Application for future treatment payment

- (1) This section applies to a person injured in a motor accident if—
  - (a) at the relevant date for the motor accident, the person is receiving treatment and care benefits for treatment and care expenses related to medical treatment; and
  - (b) has, immediately before the relevant date for the motor accident, been receiving medical treatment continuously for at least 2 years and 6 months; and
  - (c) was not the driver at fault, or is not taken to be the driver at fault, in the motor accident; and
  - (d) is not entitled to make a motor accident claim.
- (2) The injured person may apply to the relevant insurer for the motor accident for payment of an amount (a *future treatment payment*) to cover expenses for approved medical treatment the person receives—
  - (a) after the person's entitlement to defined benefits for treatment and care ends; and
  - (b) not later than 10 years after the date of the motor accident.

- (3) The application must be made—
- (a) not earlier than the relevant date for the motor accident; and
  - (b) not later than 5 years after the date of the motor accident.

- (4) In this section:

***approved medical treatment***, for a person injured in a motor accident, means medical treatment that is of the same kind that—

- (a) the person received in the 6-month period following the 4th anniversary of the motor accident; and
- (b) the relevant insurer for the motor accident has paid or agreed to pay.

***continuous***—an injured person is receiving medical treatment continuously if the injured person is receiving medical treatment at least monthly.

***expenses***, of an injured person, does not include expenses for medical treatment—

- (a) received before the date of the application; or
- (b) for which the relevant insurer has previously refused to pay.

**Example—par (b)**

the medical treatment was not reasonable and necessary in the circumstances

***relevant date***, for a motor accident, means the date that is 4 years and 6 months after the date of the motor accident.

**223 Future treatment payment—assessment and calculation**

If the relevant insurer for a motor accident receives an application under section 222, the insurer must—

- (a) assess—
  - (i) whether the applicant's approved medical treatment, and the costs of the medical treatment, are reasonable and necessary; and
  - (ii) the period for which the applicant will need the approved medical treatment; and
- (b) consider the opportunities available to the applicant for investing a future treatment payment; and
- (c) calculate the amount payable to the applicant; and

**Example—calculation of amount payable**

A person injured in a motor accident receives the following continuous medical treatment in the 6 months before the relevant date for the motor accident:

- 2 appointments at 3-monthly intervals with a medical specialist;
- 2 appointments at 3-monthly intervals with a physiotherapist;
- 2 appointments at 3-monthly intervals with a psychiatrist.

For the purposes of calculating the amount payable to the person, if they continue to require treatment with the 3 health practitioners after their entitlement to treatment and care benefits ends, expenses for the 3 health practitioners may be included in the calculation.

- (d) within 2 months after the day the application is made, give the applicant a written notice that includes the following:
  - (i) the amount calculated;
  - (ii) information about how the amount was calculated, including what information was considered in calculating the amount;

- (iii) a statement to the effect that the amount calculated relates only to expenses for approved medical treatment the applicant receives—
  - (A) after the person’s entitlement to defined benefits for treatment and care ends; and
  - (B) not later than 10 years after the date of the motor accident;
- (iv) a statement to the effect that—
  - (A) the applicant may agree to the amount calculated or negotiate with the insurer for a different amount; and
  - (B) if the applicant negotiates with the insurer for a different amount—the applicant may rely on medical information the applicant sought for the purposes of the negotiation; and
  - (C) an amount agreed to under this section (including a negotiated amount) applies only to future medical treatment.

**224 No agreement on future treatment payment—application to ACAT**

- (1) If the relevant insurer for a motor accident and an injured person who receives a notice under section 223 are unable to agree on the future treatment payment, the insurer or injured person may apply to the ACAT for—
  - (a) a determination of the future treatment payment; and
  - (b) an order for payment of the future treatment payment.
- (2) The MAI guidelines may make provision in relation to the information to be given to the ACAT with an application under subsection (1).

**225 Decision about future treatment payment—ACAT orders**

- (1) On application under section 224, the ACAT must—
  - (a) decide the future treatment payment the ACAT considers appropriate for the injured person; and
  - (b) order the relevant insurer to pay the future treatment payment to the injured person.
- (2) In deciding the future treatment payment, the ACAT—
  - (a) must consider—
    - (i) evidence about the injured person’s medical treatment; and
    - (ii) the opportunities available to the injured person for investing the payment; and
  - (b) may—
    - (i) consider any other relevant matter; and
    - (ii) ask for additional information in relation to the application.

**226 Future treatment payment—costs of proceedings**

- (1) The ACAT may order a party to pay the costs of the other party arising from an application under section 224.
- (2) A regulation may prescribe the following:
  - (a) when an order under subsection (1) may be made;
  - (b) what may be considered a disbursement;
  - (c) the maximum amount that can be awarded for particular costs;

- (d) the maximum amount of costs that can be awarded in relation to an application under section 224.

*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).

- (3) In this section:  
*costs* include disbursements.

**227 Future treatment payment—no monetary limit on jurisdiction of ACAT**

- (1) The ACAT is not, in exercising jurisdiction conferred on it by this chapter, limited in the amount of the future treatment payment it may order to be paid.
- (2) This section is subject to section 226.

## Chapter 5      Motor accident injuries— common law damages

### Part 5.1      Preliminary

#### 228      **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) for a fatal injury, includes a claim by the dead person's dependants or estate.

#### 229      **Meaning of *claimant* for 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.

#### 230      **Meaning of *respondent* for motor accident claim—ch 5**

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).

### 231 Meaning of *insured person* for 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 326 (Nominal defendant liable—uninsured motor vehicle).

### 232 Meaning of *insurer* for motor accident claim

In this Act:

*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 a motor vehicle insured by an interstate insurer—the interstate insurer; or
- (c) for an uninsured motor vehicle—the nominal defendant; or
- (d) for an unidentified motor vehicle—the nominal defendant.

*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.

**233 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.

**234 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.

**235 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.

**236 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.

**237 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.

**238 Motor accident claim—notification of claim made under workers compensation scheme**

- (1) This section applies if—
  - (a) a claimant makes a motor accident claim in relation to a motor accident; and
  - (b) the claimant has made a claim for compensation under a workers compensation scheme (the *workers compensation claim*) in relation to personal injury or death caused by the motor accident.
- (2) The claimant must, at the time of making a motor accident claim, give the insurer for the motor accident claim notice that the workers compensation claim has been made.
- (3) The claimant must give the insurer for the motor accident claim written notice about the following:
  - (a) the name and address of the insurer for the workers compensation claim;
  - (b) whether liability for the workers compensation claim has been accepted or rejected;
  - (c) any amounts paid to or on behalf of the claimant under the workers compensation claim.
- (4) If the insurer for the motor accident claim receives a notice under subsection (3), the insurer may get information about the workers compensation claim from the insurer for the workers compensation claim.

## Part 5.2 Threshold for damages

### 239 Award of damages—requirements

- (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—
  - (a) has made a quality of life benefits application under division 2.6.2 (Quality of life benefits—application) and either—
    - (i) an assessment has been conducted by an independent medical examiner under division 2.6.3 (Quality of life benefits—WPI assessment) and the person has been assessed as having a WPI of at least 10% as a result of the accident; or
    - (ii) the insurer has decided the person has a WPI of at least 10% and has made a final offer WPI; or
  - (b) is a foreign national who has—
    - (i) received a lump sum payment under a lump sum agreement under section 184 (6) (Lump sum payment of certain defined benefits—foreign nationals); and
    - (ii) been assessed as having a WPI of at least 10% as a result of the accident; and
    - (iii) the assessment—
      - (A) was conducted by a private medical examiner in accordance with the WPI assessment guidelines; but
      - (B) was not conducted under division 2.6.3 (Quality of life benefits—WPI assessment); or

- (c) is taken, under section 133 (WPI taken to be 10% in certain circumstances) or section 213 (2) (a) (SOI report—injury has significant occupational impact), to have a WPI of 10% as a result of the accident; or

*Note* For procedures for a claim for a personal injury suffered by a child, see the *Limitation Act 1985*, s 30A (Special provision for injuries to children).

- (d) has made a successful claim for workers compensation benefits in relation to the injury and either—
- (i) been assessed as having a WPI of at least 10% as a result of the motor accident; or
  - (ii) is taken, under section 213 (2) (a), to have a WPI of 10% as a result of the accident; or
- (e) has died as a result of the accident.

*Note* **Person who died as a result of a motor accident**—see s 36.

- (2) Subsection (1) does not prevent a motor accident claim from being settled at any time.
- (3) For this section, a person has been assessed as having a WPI of at least 10% as a result of the accident if—
- (a) if separate WPI reports assess the person's physical injuries and psychological injuries—the higher WPI assessment assesses the person's WPI as at least 10%; or
  - (b) if only 1 WPI report assesses the person's WPI—the person's WPI assessment assesses the person's WPI as at least 10%.

*Note* If an injured person has physical and psychological injuries, a WPI assessment of a physical injury may take into account a secondary psychological injury (see s 150 (4)).

- (4) In this section:  
**private medical examiner**—see section 145.

***successful claim for workers compensation benefits***, by an injured person in relation to an injury, means a claim by the person for workers compensation benefits that—

- (a) has been made at least 26 weeks before the date—
  - (i) the person gives a notice of claim to the insurer for the motor accident claim; or
  - (ii) a WPI assessment is carried out on the person; and
- (b) has been—
  - (i) accepted by the insurer for the claim; or
  - (ii) otherwise settled with the insurer for the claim in accordance with the workers compensation scheme, including on a without prejudice basis; and

**Example—subpar (ii)**

a licensed insurer under the *Workers Compensation Act 1951* settles a claim with the claimant by agreement to make a payment to the claimant without accepting liability for the claimant's injury (see that *Act*, s 133)

- (c) has not been withdrawn by the injured person.

## Part 5.3                      WPI assessment—claimant receiving workers compensation

### 240            Application—pt 5.3

- (1) This part applies to a person injured in a motor accident if the person—
  - (a) has made a successful claim for workers compensation benefits in relation to the injury; and
  - (b) has given the respondent a notice of claim under the *Civil Law (Wrongs) Act 2002*, section 51 (Notice of claim).

*Note*        The *Civil Law (Wrongs) Act 2002*, s 51 (3) sets out the period within which a notice of claim must be given to the respondent to the claim.

- (2) This part does not apply to a person injured in a motor accident who has made a successful claim for workers compensation benefits in relation to the injury if—
  - (a) the person has been assessed as having a WPI of at least 10% as a result of the motor accident; and
  - (b) the assessment—
    - (i) was conducted by a private medical examiner in accordance with the WPI assessment guidelines; but
    - (ii) was not conducted under division 2.6.3 (Quality of life benefits—WPI assessment).

- (3) In this section:

*private medical examiner*—see section 145.

*successful claim for workers compensation benefits*, by an injured person in relation to an injury—see section 239 (4).

## 241 WPI assessment—application and assessment

- (1) The injured person may apply to the insurer for the motor accident claim for an assessment of the person's WPI.
- (2) The insurer for the motor accident claim must, within the period stated in the MAI guidelines, give the injured person a written notice (an *acknowledgment notice*) acknowledging receipt of the application.
- (3) Division 2.6.2 (Quality of life benefits—application) and division 2.6.3 (Quality of life benefits—WPI assessment) apply to the application and assessment as if—
  - (a) the application were a quality of life benefits application; and
  - (b) a reference to the relevant insurer were a reference to the insurer for the motor accident claim; and
  - (c) a reference in section 137 (1) (Quality of life benefits application) to an insurer accepting liability were a reference to receiving an acknowledgment notice; and
  - (d) a reference in section 141 (1) (a) (ii) (A) (WPI assessment 4 years 6 months after motor accident) to income replacement benefits were a reference to payments for the loss of income under a workers compensation scheme.
- (4) However, the following provisions do not apply:
  - (a) section 154 (2) (b) (WPI less than 5%—insurer may make offer);
  - (b) section 155 (3) (b), (5) and (7) (WPI 5% to 9%—insurer must make offer);
  - (c) section 156 (3) (b), (5) and (7) (WPI 10% or more—injured person not entitled to make motor accident claim);
  - (d) section 157 (3) (b), (c), (5) and (6) (WPI 10% or more—injured person entitled to make motor accident claim);

- (e) section 161 (1) (c) (Final offer WPI less than 5%);
- (f) section 162 (1) (c), (d) (i), (2) and (4) (Final offer WPI 5% to 9%);
- (g) section 163 (2) (c), (d) (i), (3) and (5) (Final offer WPI 10% or more—injured person not entitled to make motor accident claim);
- (h) section 164 (2) (c), (d), (e) (i), (3) and (4) (Final offer WPI 10% or more—injured person entitled to make motor accident claim).

*Note* An injured person to whom this part applies is not entitled to receive income replacement benefits, treatment and care benefits or quality of life benefits (see s 50).

- (5) If the injured person makes an application under subsection (1), a reference to income replacement benefits in section 209 (1) (a) (SOI assessment 4 years 6 months after motor accident) is taken to be a reference to payments for the loss of income under a workers compensation scheme.

## Part 5.4 Damages for claims—exclusions and limitations

*Note 1* 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.

*Note 2* A claimant who is a dependant, or personal representative, of a person who has died as a result of a motor accident injury may have a cause of action under the *Civil Law (Wrongs) Act 2002*.

### 242 Quality of life damages—general

- (1) A claimant for a motor accident claim who is the injured person to whom the claim relates may be awarded damages for non-economic loss (*quality of life damages*) only in accordance with—
  - (a) if the claimant was a child on the date of the motor accident—section 244; or
  - (b) in any other case—section 243.
- (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.

**243 Quality of life damages—amount that may be awarded**

- (1) The amount of quality of life damages that may be awarded to a claimant is—
- (a) the amount stated in table 243 as at the date of the WPI report that the claimant relies on for the motor accident claim; and
  - (b) an additional amount that is not more than 20% of the amount awarded under paragraph (a) if the court considers that the WPI report that the claimant relies on for the motor accident claim did not take into account a particular injury, or a particular effect on the claimant’s quality of life.

**Example—particular effect on claimant’s quality of life**  
 chronic pain

**Table 243 Amount of quality of life damages payable**

column 1 item	column 2 WPI %	column 3 amount payable
1	10%	\$25 000 AWE indexed
2	11% to 20%	\$25 000 AWE indexed + [(W-10) x \$3 500 AWE indexed]
3	21% to 50%	\$60 000 AWE indexed + [(W-20) x \$4 000 AWE indexed]
4	51% to 99%	\$180 000 AWE indexed + [(W-50) x \$6 400 AWE indexed]
5	100%	\$500 000 AWE indexed

*Note* **AWE indexed**, for an amount—see s 18.

- (2) However, the court must not award an additional amount under subsection (1) (b) if the claimant is awarded damages for the particular injury or particular effect on the claimant’s quality of life under another head of damages.
- (3) The maximum amount that may be awarded to the claimant for quality of life damages and additional damages is \$600 000 AWE indexed.

- (4) In this section:

*W* means  $\frac{WPI}{100\%} \times 100$ .

**Example**

if a person's WPI is 10%, the corresponding *W* is 10

**244 Quality of life damages—amount that may be awarded for children**

- (1) This section applies to a claimant who was a child on the date of the motor accident in which the claimant was injured.
- (2) The maximum amount that may be awarded to the claimant for quality of life damages is \$600 000 AWE indexed.

*Note* *AWE indexed*, for an amount—see s 18.

**245 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.

**246 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.

**247 Recovery of defined benefits if claimant receives damages**

- (1) This section applies if a claimant—
- (a) receives defined benefits in relation to an injury suffered in a motor accident; and

- (b) is awarded damages in a motor accident claim in relation to the claimant's injuries.

*Note* The claimant may not be awarded damages for any loss of earnings in the first year after the motor accident (see s 246).

- (2) The relevant insurer for the motor accident is entitled to deduct from the damages the lesser of—

- (a) the amount of any defined benefits (other than income replacement benefits received by the claimant in the first year after the motor accident) received by the person; and

- (b) the amount of the damages awarded.

*Note* The relevant insurer may also recover the amount of defined benefits received by an injured person if the injured person obtains a judgment or agreement for damages independently of this Act in relation to the injury (see s 253).

- (3) However, the relevant insurer is not entitled to recover any amount that has been recovered under a provision of part 6.10 (MAI insurer and nominal defendant may recover costs incurred).

*Note* If an insurer has recovered costs under a provision of pt 6.10, the insurer is not entitled to recover the costs under this section (see s 342).

## **248 Damages for compensation paid under workers compensation scheme**

- (1) This section applies if a claimant—
- (a) receives compensation under a workers compensation scheme in relation to a person's injuries or death; and
- (b) is awarded damages in a motor accident claim in relation to the person's injuries or death; and
- (c) because of the award of damages, is liable to repay the compensation received.

- (2) The award of damages must include damages equal to the amount of compensation received by the person under the workers compensation scheme.

**249 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

**250 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.

## **251 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 (5).

***lump sum agreement***—see the [LTCS Act](#), section 30B (1).

## 252 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 5.5 Damages independently of Act

### 253 Repayment of defined benefits if person receives damages independently of Act

- (1) This section applies if a person—
  - (a) is injured in a motor accident; and
  - (b) receives defined benefits in relation to the injury; and
  - (c) obtains a judgment or agreement for damages independently of this Act (the *independent damages*) in relation to the injury.
- (2) The relevant insurer for the motor accident is entitled to recover from the person the lesser of—
  - (a) the amount of defined benefits received by the person; and
  - (b) the amount of the independent damages.

*Note* The injured person's entitlement to defined benefits ends when the judgment is entered or agreement for damages is made (see s 51).

## Part 5.6 No-fault motor accidents

### 254 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 hops onto the road

### 255 Presumption of no-fault motor 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.

### 256 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—
    - (i) to be the driver at fault; and
    - (ii) to have breached their duty of care to the injured person; and

- (b) if the motor accident was a multiple vehicle accident—the driver of the motor vehicle whose act or omission caused the accident is taken—
- (i) to be the driver at fault; and
  - (ii) to have breached their duty of care to the injured person.

**Example—act or omission causing no-fault multiple vehicle accident**

a driver has a heart attack and, as a consequence, crashes into other vehicles

*Note* *Single vehicle accident* and *multiple vehicle accident*—see the dictionary.

## Part 5.7 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 5.7.1 Preliminary

#### 257 Definitions—pt 5.7

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 5.7.2 Compulsory conferences before court proceedings

#### 258 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) However, if the claimant brings a proceeding based on the claim, and applies to stay the proceeding, under section 141 (5) (WPI assessment 4 years 6 months after motor accident), the parties to the claim must have a compulsory conference before the proceeding can proceed.

*Note* The *Civil Law (Wrongs) Act 2002*, s 79 (Need for urgent proceeding) applies to a claimant in relation to a motor accident claim.

- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

**259 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.

**260 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.

## **261 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 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 compulsory 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.

## **262 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 5.7.3 Mandatory final offers**

### **263 Mandatory final offers—requirement**

- (1) This section applies if, for a motor accident claim—
  - (a) the compulsory conference has been dispensed with under section 259; 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) A mandatory final offer for a claimant to whom section 133 (WPI taken to be 10% in certain circumstances) must identify how much of the offer is for quality of life damages.

**264 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.

**265 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.

**266 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:

**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.

## **267 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 5.7.4 Court proceedings**

### **268 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 269 (Time limit—compulsory conference); or
  - (b) section 270 (Time limit—no compulsory conference); or
  - (c) section 271 (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.

*Note* Legal costs and fees may be prescribed under s 284 (1).
- (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.

### **269 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.

**270 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.

**271 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.

**272 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.

### **273 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.

**274 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.

**275 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.

**276 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*, for an amount—see s 18.

- (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.

## **Division 5.7.5 Judgment for noncompliance with time limits**

### **277 Definitions—div 5.7.5**

In this division:

*compliance notice*—see section 278.

*enforcing party*—see section 278.

*late party*—see section 278.

*relevant notice claim*—see section 279.

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

**278 Notice time limit not complied with**

- (1) This section applies if—
  - (a) for a motor accident claim—
    - (i) the court has dispensed with the obligation to exchange mandatory final offers under section 264; or
    - (ii) the time for exchanging mandatory final offers under section 265 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.

**279 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.

**280**      **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.

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

- (1) On application for judgment under section 279 or section 280, 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.

**282      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 279.
- (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 notice of claim was received by the respondent's insurer.

*Note*      Legal costs and fees may be prescribed under s 284 (1).

## **283 Court orders in favour of respondent**

- (1) This section applies if the court makes an order giving judgment in favour of the respondent against the claimant under section 280.
- (2) Unless the court otherwise orders, the claimant must pay the respondent's costs of the proceeding including the costs of the application.

*Note* Legal costs and fees may be prescribed under s 284 (1).

## Part 5.8 Other matters

### 284 Legal costs and fees payable by claimants and insurers

- (1) A regulation may prescribe the legal costs and fees payable by claimants and insurers in relation to motor accident claims.
- (2) If a legal cost or fee is prescribed under subsection (1), a lawyer who provides a service to which the cost or fee relates to a claimant or insurer in relation to a motor accident claim is only entitled to be paid, or to recover, the prescribed cost or fee for the service.

### 285 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](#).

## Chapter 6            Motor accident injuries                                  insurance

### Part 6.1            Important concepts

#### 286            Definitions—Act

In this Act:

*insurance industry deed*—see section 359.

*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 290.

*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 291.

*MAI insurer*—see section 287.

*motor accident injuries policy* (or *MAI policy*) means an insurance policy that complies with part 6.3.

#### 287            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 298 (Selecting for registered vehicle—first registration); or

- (B) section 299 (Selecting for registered vehicle—renewal of registration); or
- (ii) has a valid trader’s plate attached—the insurer selected under section 300 (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 301 (Selecting for light rail vehicle); or
- (b) for a trailer or other thing that is—
  - (i) mentioned in section 290 (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 290 (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.

**288 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) under the same obligation as a licensed insurer would be under in relation to providing benefits, on a no-fault basis, to people who sustain personal injury caused by a motor accident if the insurer had issued an MAI policy for the vehicle; and
  - (c) has the same rights as a licensed insurer would have if the insurer had issued an MAI policy for the vehicle.



- (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 290 and ss 325 to 328).

## **Part 6.3 Motor accident injuries policies**

### **290 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 motor 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.

### **291 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.

## 292 Risks covered by MAI policy

- (1) An MAI policy—
  - (a) insures against liability for personal injury caused by a motor accident; and
  - (b) provides benefits, on a no-fault basis, to people who sustain personal injury caused by a motor accident.

*Note* If an MAI insurer is a relevant insurer for a motor accident under ch 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 39).

- (2) Subsection (1) (b) is subject to part 2.2 (Defined benefits—entitlement).

## 293 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 for personal injury, damage or loss that is attributable to an act that has been notified, in writing, by the MAI commission to be 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, 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) In this section:

***act of terrorism***—

- (a) means an act that—
  - (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; but

(b) does not include a lawful activity or industrial action.

**294 Licensed insurer not to decline etc to issue MAI policy**

A licensed insurer cannot repudiate, or decline to issue or renew, an MAI policy.

**295 MAI insurer to indemnify MAI insured people**

- (1) An MAI policy 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 293 (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).

**296 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 valid 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 valid trader's plate is issued.

## **297 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.

## Part 6.4 Selecting an MAI insurer

### 298 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 6.7.

### 299 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 6.7.

### 300 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 6.7.

### 301 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 6.7.

- (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 other 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 6.5 Length of MAI policy

### 302 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.

### 303 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 304 (Insurer on risk—period of registration); or
- (b) section 305 (Insurer on risk—period of grace).

### 304 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 311.

### 305 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 311.

- (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.

### 306 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.

**307 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 trader’s plate attached is dealt with in s 312.

**308 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.

**309 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 313.

- (4) In this section:

*insurance period*—see section 301 (2).

## Part 6.6 Cancellation of MAI policies

### 310 MAI insurer cannot cancel MAI policy

An MAI insurer has no power to cancel an MAI policy.

### 311 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.

### 312 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).

### 313 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 6.7 MAI premiums

### 314 Meaning of *MAI premium*

In this Act:

*MAI premium*, for an MAI policy, means the insurance premium approved for the policy under—

- (a) section 319 (MAI commission to approve or reject premiums); or
- (b) section 320 (MAI commission may reconsider rejected premiums); or
- (c) section 321 (Mediation of rejected premiums); or
- (d) section 322 (Arbitration of unresolved premiums).

### 315 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.

### 316 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 487.

*Note 2* It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 366).

**317 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 316).

*Note 2* It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 366).

- (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.

**318 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 317 (Licensed insurer to apply for approval of premiums); or
  - (b) section 320 (MAI commission may reconsider rejected premiums); or
  - (c) section 321 (Mediation of rejected premiums); or
  - (d) section 322 (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.
- (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 Act**—see the dictionary.

**LTCS scheme**—see the dictionary.

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

### **319 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.

### **320 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
  - (c) tell the licensed insurer—
    - (i) about the decision; and
    - (ii) the reasons for the decision.

*Note* Criteria for approving or rejecting the premium are in s 318.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

### **321 Mediation of rejected premiums**

- (1) If the MAI commission rejects a premium for an MAI policy under section 320, 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 318.

- (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.

### **322 Arbitration of unresolved premiums**

- (1) If the MAI commission rejects a premium for an MAI policy under section 321, 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* 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 318.

- (6) A regulation may provide for the arbitration of matters.
- (7) In this section:

*arbitral tribunal*—see the *Commercial Arbitration Act 2017*, dictionary.

### **323 Licensed insurer to report on 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.

## Part 6.8 Nominal defendant's liabilities

### 324 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.
- (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 Territory or a territory authority; or
    - (ii) the Commonwealth or a Commonwealth authority; or

*Note* See s 288 for motor vehicles owned by the Territory, a territory authority, the Commonwealth or a Commonwealth authority.

- (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 293.

### **325 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—subpar (ii)**  
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.

### **326 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* 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.

(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 Territory or a territory authority; or

(ii) the Commonwealth or a Commonwealth authority; or

*Note* See s 288 for motor vehicles owned by the Territory, a territory authority, the Commonwealth or a Commonwealth authority.

(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 293.

(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.

### **327 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.

**328 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.
- (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, 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 293.

## Part 6.9 Nominal defendant fund

### 329 Nominal defendant to pay defined benefits and 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**  
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 324 (Nominal defendant liable—unregistered vehicle permits); or
    - (ii) section 326 (Nominal defendant liable—uninsured motor vehicle); or
    - (iii) section 328 (Nominal defendant liable—unidentified motor vehicle);
  - (d) the amount of any costs or expenses incurred by the nominal defendant for a motor accident claim or judgment.
- (2) The nominal defendant is not personally liable to pay an amount mentioned in subsection (1).

**330 Establishment of 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, other than a penalty imposed under part 7.6A (Financial penalties);
  - (b) amounts received or recovered by or on behalf of the nominal defendant under this Act;

*Note* The nominal defendant may recover amounts under the following sections:

- (a) s 348 (Insurer may recover costs if motor vehicle defective);
  - (b) s 349 (Insurer may recover costs if fraud);
  - (c) s 350 (Nominal defendant may recover costs from responsible person or driver at fault);
  - (d) s 424 (Nominal defendant may recover from insolvent insurer).
- (c) amounts collected under section 331;
  - (d) UVP liability contributions paid under section 333;
  - (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 329;
    - (b) any amount requested under section 40 (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.

### **331 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) applications for defined benefits; and
  - (b) motor accident claims made against the nominal defendant.

*Note* The insurance industry deed is dealt with in pt 7.2.

### **332 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.

### **333 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 330).

### **334 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 pt 6.8) and for insolvent insurers (see pt 7.10).
- (2) The nominal defendant must keep accounts for—
  - (a) amounts paid into the nominal defendant fund under section 330; 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.

**335 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.

**336 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.

**337 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 6 (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.

**338 Claims manager's functions**

- (1) This section applies if the nominal defendant engages a claims manager to manage—
  - (a) an application for defined benefits; or
  - (b) a motor accident claim.
- (2) A claims manager may do the following in relation to an application for defined benefits:
  - (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 a 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*).

### **339 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.

### **340 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 330).

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

***insurer*** means a licensed insurer and an interstate insurer.

## Part 6.10 MAI insurer and nominal defendant may recover costs incurred

### Division 6.10.1 Preliminary

#### 341 Meaning of costs—pt 6.10

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 pt 2.5.

- (b) the amounts paid by the insurer in deciding the application.

**342 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.

**343 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 6.10.2 MAI insurers**

**344 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 an application for defined benefits, or a motor accident claim, in relation to 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 an application for defined benefits, or a motor accident claim, in relation to 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 292).

*Note 2* **Costs** include reasonable and necessary treatment and care (see s 341).

*Note 3* 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).

### **345 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 292).

**346 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 292).

**347 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 292).

### **Division 6.10.3 MAI insurer and nominal defendant**

#### **348 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 (the ***repairer***).
- (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 292).

*Note 2* An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 330).

### **349 Insurer may recover costs if fraud**

- (1) This section applies if an applicant for defined benefits, or a claimant for a motor accident claim, in relation to a motor accident is convicted or found guilty of an offence against a provision mentioned in the [Criminal Code](#), part 3.3 (Fraudulent conduct) or part 3.4 (False or misleading statements, information and documents) in relation to the application or claim.
- (2) The insurer for the motor accident may recover from the applicant or claimant any costs reasonably incurred by the insurer because of the applicant's or claimant's conduct.

*Note* An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 330).

- (3) A regulation may prescribe—
- (a) the maximum amount an insurer may recover in relation to an application for defined benefits or a motor accident claim if the applicant for defined benefits or the claimant for the motor accident claim has been convicted or found guilty of an offence mentioned in subsection (1); and
  - (b) the amounts the insurer must not recover in relation to the application for defined benefits or the motor accident claim; and
  - (c) the requirements for recovering the amounts.

## **Division 6.10.4      Nominal defendant**

### **350      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 254.

- (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).

### **351      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 326) and unidentified motor vehicles (see s 328).

- (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 motor 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 motor 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 of the motor vehicle if the driver proves 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 330).

### **352 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 326).
- (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 330).

### **353 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 7 MAI insurer licences

### Part 7.1 MAI insurer licences—preliminary

#### 354 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.

#### 355 Meaning of *former licensed insurer*—ch 7

In this chapter:

*former licensed insurer* means an entity that was, at any time, a licensed insurer but is no longer a licensed insurer.

#### 356 Offences—unlicensed insurer issues 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 330).

**357 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.

**358 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 7.2 MAI insurer licences—insurance industry deed

### 359 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.

### 360 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) an application for defined benefits, including a dispute about who is the relevant insurer for a motor accident; or
    - (ii) a motor accident claim;
  - (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 7.3 MAI insurer licences—issue

### 361 MAI insurer licence—eligibility

A corporation is eligible for an MAI insurer licence only if the corporation—

- (a) is authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business; and
- (b) agrees, in writing, to be a party to the insurance industry deed while the corporation holds an MAI insurer licence.

### 362 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 *Financial Sector (Collection of Data) Act 2001* (Cwlth); and
    - (iii) 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 405.

- (d) a draft business plan.

*Note* Business plans are dealt with in pt 7.9.

- (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* 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).

### **363 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.

*Note 1* A decision to refuse to issue an MAI insurer licence is a reviewable decision (see ch 10 and sch 2).

*Note 2* An MAI insurer licence is subject to the conditions mentioned in pt 7.4.

- (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 ch 10 and sch 2).

- (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 injury insurance 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).

### **364 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 7.4 MAI insurer licences—conditions

### 365 Compliance with certain provisions

It is a condition of an MAI insurer licence that the licensed insurer complies with the following provisions:

- (a) section 66 (Accepting liability—payment of defined benefits);
- (b) section 315 (Premium that can be charged by licensed insurer);
- (c) section 317 (Licensed insurer to apply for approval of premiums);
- (d) section 401 (Licensed insurer to have business plan);
- (e) section 402 (Licensed insurer to comply with business plan);
- (f) section 403 (Licensed insurer to revise business plan);
- (g) section 405 (Reinsurance arrangements of licensed insurers);
- (h) section 412A (Notice of reportable conduct).

### 366 Compliance with MAI guidelines

It is a condition of an MAI insurer licence that the licensed insurer complies with the MAI guidelines.

### 366A Compliance with directions and remediation plans

It is a condition of an MAI insurer licence that the licensed insurer complies with the following:

- (a) any direction given to the insurer by the MAI commission under section 394G;
- (b) any remediation plan approved by the MAI commission under section 394I (5) (a).

**367 Prompt management of applications for defined benefits**

It is a condition of an MAI insurer licence that the licensed insurer manages applications for defined benefits promptly.

**368 Early payment of treatment and care**

- (1) It is a condition of an MAI insurer licence that the licensed insurer pay for the reasonable and necessary treatment and care for injured people as soon as practicable.
- (2) A licensed insurer is taken not to have contravened the condition mentioned in subsection (1) 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.

**369 Resolution of motor accident claims**

- (1) It is a condition of an MAI insurer licence that the licensed insurer resolve motor accident claims as soon as practicable.
- (2) A licensed insurer is taken not to have contravened the condition mentioned in subsection (1) 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.

### 370 Compliance with ACAT orders

- (1) It is a condition of an MAI insurer licence that the licensed insurer complies with an order of the ACAT made in relation to a decision under this Act not later than 14 days after—
  - (a) if no appeal from the order is made—the appeal period for the order has ended; or
  - (b) if an appeal from the order is made—the appeal has been finally decided.
- (2) In this section:

*appeal* means an appeal from a decision of the ACAT under the *ACT Civil and Administrative Tribunal Act 2008*, section 79 (Appeals within tribunal) or section 86 (Appeals to Supreme Court).

*appeal period* means the period mentioned in section 200 (2) (External review—time for appeal).

### 371 Protected information

- (1) 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.
- (2) 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.

**372 Provision of information to MAI commission**

It is a condition of an MAI insurer licence that the licensed insurer gives the MAI commission the information prescribed by regulation in relation to—

- (a) applications for defined benefits; and
- (b) motor accident claims; and
- (c) profits.

**373 Dealing with complaints**

It is a condition of an MAI insurer licence that the licensed insurer deal with complaints in an expedient manner.

**374 Licensed insurer's conduct and practices**

It is a condition of an MAI insurer licence that the licensed insurer's conduct and practices are consistent with—

- (a) the licensed insurer's duty under section 20 (4) (Duty to act in good faith—applicants, claimants and insurers) to act in good faith; and
- (b) the objects of this Act.

**375 Licensed insurer's measures and policies**

It is a condition of an MAI insurer licence that the licensed insurer adopts measures and policies, and ways of monitoring the effectiveness of adopted measures and policies, to ensure that staff of the licensed insurer—

- (a) act fairly and without prejudice when dealing with injured people and their representatives; and
- (b) treat injured people and their representatives with dignity and respect; and

- (c) give information that is consistent with 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).

### **376 Compliance with MAI commission conditions**

It is a condition of an MAI insurer licence that the licensed insurer comply with an MAI commission condition included on the insurer's licence.

### **377 MAI commission conditions—power to include conditions**

- (1) The MAI commission may include 1 or more of the following conditions (an *MAI commission condition*) on an MAI insurer licence:
- (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 applications for defined benefits and motor accident claims;
  - (c) a condition for ensuring general efficiency in relation to—
    - (i) applications for defined benefits; and
    - (ii) motor accident claims and payments;
  - (d) a condition relating to the provision of information about—
    - (i) applications for defined benefits; and
    - (ii) motor accident claims; and
    - (iii) profits;

(e) a condition prescribed by regulation.

*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 397 (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 397 (4)).

(2) An MAI commission condition may be included on an MAI insurer licence—

- (a) when the licence is issued; or
- (b) by amending the licence.

(3) The MAI commission may amend or revoke an MAI commission condition included on an MAI insurer licence.

*Note* A decision by the MAI commission under s (2) or (3) is a reviewable decision (see ch 10 and sch 2).

(4) If the MAI commission amends a licensed insurer's licence under subsection (2) or (3), 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.

(5) This section is subject to section 378.

### **378 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.

**379 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: 200 penalty units.

- (2) This section does not apply to a condition mentioned in section 378.

*Note 1* Contravention of a licence condition is also a ground for the following:

- (a) suspension of the MAI insurer licence (see s 383);
- (b) the MAI commission to apply to the ACAT for an occupational discipline order in relation to the licensed insurer (see pt 7.6).

*Note 2* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

**380 Contravention of licence condition does not affect MAI policy**

If an MAI insurer issues an MAI policy in contravention of a condition of their MAI insurer licence, the MAI policy is not annulled or affected only because the MAI insurer is in contravention of the condition.

**381 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: 200 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

## Part 7.5 MAI insurer licences— suspension

### 382 Meaning of *suspended insurer*—pt 7.5

In this part:

*suspended insurer* means an insurer whose MAI insurer licence is suspended under section 385 (Licence suspension).

### 383 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 385 until at least 21 days after the day the contravention happened.

*Note* 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 pt 7.6).

### 384 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 9 (Directions);
- (d) an inspector is appointed to investigate the affairs of the insurer under the *Insurance Act 1973* (Cwlth), part 5 (Investigations of general insurers etc);
- (e) the MAI commission receives a report under section 407 (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* 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 416).

### 385 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*).

*Note* A decision by the MAI commission to suspend an MAI insurer licence is a reviewable decision (see ch 10 and sch 2).

- (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).

**386 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.

**387 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 330).

**388 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.

### **389 Suspended insurer selected after suspension**

- (1) If a suspended insurer is selected under part 6.4 (Selecting an MAI insurer) to be the MAI insurer for an MAI policy, the MAI commissioner 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 not 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 7.6 MAI insurer licences— occupational discipline

### 390 Meaning of *licensed insurer*—pt 7.6

In this part:

*licensed insurer* includes a former licensed insurer.

### 391 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 commission 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 393.

### 392 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 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 383.

### **393 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.

### **394 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 of not more than \$100 000 to the Territory or someone else.

*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 379 (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 7.6A Financial penalties

### 394A Definitions—pt 7.6A

In this part:

*financial penalty notice*—see section 394D (3).

*ground for financial penalty*—see section 394B.

*minor contravention* means conduct by a licensed insurer that constitutes a ground for financial penalty that does not involve a serious contravention.

*serious contravention* means conduct by a licensed insurer that constitutes a ground for financial penalty that involves any of the following:

- (a) dishonest or misleading conduct by the licensed insurer;
- (b) underpayment or delay in paying defined benefits by the licensed insurer;
- (c) failure by the licensed insurer to ensure protected information is disclosed only in accordance with section 371;
- (d) failure by the licensed insurer to comply with an order of the ACAT made for this Act;
- (e) anything else prescribed by regulation.

### 394B Meaning of *ground for financial penalty*—pt 7.6A

For this part, each of the following is a *ground for financial penalty* in relation to a licensed insurer:

- (a) the licensed insurer has contravened this Act;
- (b) the licensed insurer has contravened a condition of the MAI insurer licence;

- (c) the licensed insurer has contravened the insurance industry deed.

### **394C Notice of proposed financial penalty**

- (1) The MAI commission may propose to impose a financial penalty on the insurer if the commission is satisfied that—
  - (a) a ground for financial penalty exists in relation to the insurer; and
  - (b) the imposition of the financial penalty is in the public interest.
- (2) The MAI commission must give the insurer a written notice about the proposed financial penalty (a *show cause notice*) stating—
  - (a) the grounds on which the commission is proposing to impose a financial penalty; and
  - (b) whether the proposed financial penalty is for a minor or serious contravention; and
  - (c) the amount of the proposed financial penalty; and
  - (d) that the insurer may give the commission a written submission about the proposed financial penalty not later than—
    - (i) for a minor contravention—15 business days after the day the insurer is given the notice; or
    - (ii) for a serious contravention—20 business days after the day the insurer is given the notice; or
    - (iii) if the commission agrees to a longer period—the agreed period.

### **394D Imposing financial penalties**

- (1) The MAI commission may impose a financial penalty on a licensed insurer if the commission—
  - (a) has given the insurer a show cause notice; and

- (b) has considered any written submission given by the insurer in accordance with section 394C (2) (d); and
  - (c) has considered the matters prescribed by regulation; and
  - (d) is satisfied that—
    - (i) a ground for financial penalty exists in relation to the insurer; and
    - (ii) the imposition of the financial penalty is—
      - (A) in the public interest; and
      - (B) appropriate taking into account the nature of the contravention.
- (2) A financial penalty must not be more than—
- (a) for a minor contravention—\$20 000; or
  - (b) for a serious contravention—\$100 000.
- (3) If the MAI commission imposes a financial penalty on a licensed insurer, the commission must give the insurer a notice (a ***financial penalty notice***) stating—
- (a) that the commission has decided to impose a financial penalty on the insurer; and
  - (b) the amount of the financial penalty; and
  - (c) the grounds on which the penalty is being imposed; and
  - (d) that the notice is a financial penalty notice under this section; and
  - (e) for a serious contravention—that the insurer may request a mediation under section 394E if the insurer disagrees with the financial penalty; and
  - (f) that the penalty must be paid to the MAI commission in accordance with section 394F.

- (4) In this section:  
*show cause notice*—see section 394C (2).

**394E Mediation for serious contravention financial penalty notice**

- (1) If the MAI commission imposes a financial penalty on a licensed insurer for a serious contravention, the insurer may make a written request to the commission for the matter to be mediated.
- (2) A request under subsection (1) must be made within 10 business days after the day the insurer is given the financial penalty notice.
- (3) A mediation under this section must be mediated by an accredited mediator.
- (4) The mediator must be—
- (a) a person who is independent of the MAI commission and the licensed insurer; and
  - (b) decided by agreement between the MAI commission and the licensed insurer.
- (5) 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.
- (6) After mediation, the MAI commission must give the mediator and the licensed insurer a written notice that—
- (a) if the commission and insurer reach an agreement—confirms, varies or withdraws the financial penalty notice in accordance with the agreement; or
  - (b) if no agreement is reached—confirms the financial penalty notice.

- (7) In this section:  
*accredited mediator*—see section 321 (6).

### **394F Payment of financial penalty**

- (1) This section applies if the MAI commission imposes a financial penalty on a licensed insurer under section 394D (2).
- (2) The licensed insurer must pay the financial penalty to the MAI commission not later than 15 business days after the later of—
- (a) if the insurer requests a mediation under section 394E—the day the financial penalty is confirmed or varied under section 394E (6); and
  - (b) in any other case—the day the financial penalty notice is given to the insurer.
- (3) A financial penalty may be recovered as a debt payable to the MAI commission.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## **Part 7.6B MAI insurer licences—directions to licensed insurers**

### **394G Directions to licensed insurers—general**

- (1) This section applies if the MAI commission believes on reasonable grounds that a licensed insurer is contravening, has contravened or is likely to contravene—
- (a) this Act; or
  - (b) a condition of the MAI insurer licence; or
  - (c) the insurance industry deed.

- (2) The MAI commission may direct the licensed insurer to do 1 or more of the following things:
  - (a) rectify the contravention or avoid the likely contravention mentioned in subsection (1);
  - (b) comply with the Act, condition of the licence or insurance industry deed.
- (3) A direction must be in writing and include the following:
  - (a) details of the licensed insurer's contravention or likely contravention;
  - (b) details of the thing required to be done or not done by the licensed insurer;
  - (c) the day by which the licensed insurer must comply with the direction;
  - (d) a statement that, under section 394H, the insurer may object to the direction.
- (4) The licensed insurer must comply with the direction by the later of—
  - (a) the day stated in the direction; and
  - (b) if a later day is agreed between the MAI commission and the insurer—that day.

### **394H Objection to direction**

- (1) A licensed insurer may make a written objection to the MAI commission about a direction given to the insurer under section 394G.
- (2) However, an objection may only be made on 1 or more of the following grounds:
  - (a) the stated contravention did not happen or the stated likely contravention is unlikely to happen;

- (b) doing or not doing the stated thing would place an unreasonable cost burden on the insurer;
  - (c) the stated time for compliance is either not reasonable or not proportionate to the thing that must be done or not done.
- (3) An objection does not operate to stay the direction or otherwise prevent action being taken based on the direction.
- (4) As soon as practicable after receiving an objection, the MAI commission must review the direction and decide to—
- (a) affirm the direction; or
  - (b) amend the direction; or
  - (c) set aside the direction and make a different direction; or
  - (d) withdraw the direction.
- (5) After making a decision under subsection (4), the MAI commission must give the licensed insurer a written notice that states—
- (a) the commission's decision; and
  - (b) the reasons for the decision; and
  - (c) if the decision is to amend the direction or set aside the direction and substitute it for a different direction—the day the amended or different direction takes effect.

### **394I Directions to licensed insurers—remediation plans**

- (1) The MAI commission may direct a licensed insurer to give the commission a proposed remediation plan if the commission believes on reasonable grounds that the insurer is contravening, has contravened or is likely to contravene—
- (a) this Act; or
  - (b) a condition of the MAI insurer licence; or
  - (c) the insurance industry deed.

- (2) A direction must be in writing and include the following:
  - (a) details of the licensed insurer's contravention or likely contravention (the *identified contravention*);
  - (b) a statement that the licensed insurer must give the MAI commission a proposed remediation plan;
  - (c) the day by which the licensed insurer must give the MAI commission the proposed remediation plan.
- (3) The licensed insurer must give the MAI commission the proposed remediation plan by the later of—
  - (a) 15 business days after the day the direction is given to the insurer; and
  - (b) if a later day is agreed between the MAI commission and the insurer—that day.
- (4) A licensed insurer must include the following details in a proposed remediation plan:
  - (a) the nature and extent of—
    - (i) the identified contravention mentioned in the direction given to the insurer; and
    - (ii) any other contravention or likely contravention (a *further contravention*) that is the same as or similar to the identified contravention mentioned in the direction; and
  - (b) any action the insurer has taken, or proposes to take, to remediate the identified contravention and further contravention;
  - (c) the insurer's assessment of the risk of the further contravention happening;
  - (d) any action the insurer has taken, or proposes to take, to remove or minimise the risk of the further contravention happening;

- (e) the timeframes for the insurer taking the actions mentioned in paragraph (b) and (d).
- (5) If a licensed insurer gives the MAI commission a proposed remediation plan (including an amended proposed remediation plan), the commission must—
  - (a) approve the proposed plan; or
  - (b) require the insurer to amend the proposed plan.
- (6) However, the MAI commission must not approve a proposed remediation plan unless the proposed plan—
  - (a) complies with subsection (4); and
  - (b) identifies appropriate actions and timeframes for responding to the risks identified in the proposed plan.
- (7) If the MAI commission approves a proposed remediation plan, the commission must give the insurer a written notice stating—
  - (a) that the proposed plan has been approved; and
  - (b) that the insurer must comply with the approved remediation plan.
- (8) If the MAI commission requires the licensed insurer to amend a proposed remediation plan, the commission must give the insurer a written notice stating—
  - (a) what amendments the commission requires the insurer to make to the proposed plan; and
  - (b) the day by which the insurer must submit the amended proposed remediation plan.

## Part 7.7 MAI insurer licences— cancellation

### 395 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 398).

### 396 Proposed licence cancellation

- (1) If the MAI commission proposes to cancel a licensed insurer's MAI insurer licence on a ground mentioned in section 395 (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.

### 397 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*).

*Note* A decision by the MAI commission to cancel an MAI insurer licence is a reviewable decision (see ch 10 and sch 2).

- (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.

*Note* A decision to cancel an MAI insurer licence is a reviewable decision (see ch 10 and sch 2).

- (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 impose a condition on an MAI insurer licence is a reviewable decision (see ch 10 and sch 2).

## Part 7.8 MAI insurer licences—transfer

### 398 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*).

*Note* A decision by the MAI commission to refuse to transfer an MAI insurer licence to the new insurer is a reviewable decision (see ch 10 and sch 2).

- (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 pt 7.7).

### 399 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.

*Note* A decision by the MAI commission to refuse to transfer an insurer's MAI policies is a reviewable decision (see ch 10 and sch 2).

- (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 ch 10 and sch 2).

- (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.

### 400 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 399—
- (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 7.9 MAI insurer licences— supervision

### 401 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) the handling of applications for defined benefits;
  - (ii) the handling of motor accident claims;
  - (iii) management;
  - (iv) expenses;
  - (v) 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 404).

- (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* It is a condition of an MAI insurer licence that the licensed insurer must comply with this section (see s 365).

**402 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* It is a condition of an MAI insurer licence that the licensed insurer must comply with this section (see s 365).

**403 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* It is a condition of an MAI insurer licence that the licensed insurer must comply with this section (see s 365).

**404 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* It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 366).

#### 405 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* It is a condition of an MAI insurer licence that the licensed insurer must comply with this section (see s 365).

#### 406 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 330).

- (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.

*Note* A licensed insurer must also comply with the requirements under ch 9 in relation to giving information to the MAI commission (see s 462 and s 465).

#### **407 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 406 (2).

**408 Offence—licensed insurer to assist appointed auditor**

A licensed insurer commits an offence if—

- (a) an appointed auditor is exercising a function under section 407 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 330).

**409 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.

**410 MAI commission to analyse licensed insurer's net profitability**

- (1) The MAI commission may analyse the following information about a licensed insurer (a *net profit analysis*):
  - (a) the insurer's net profit;
  - (b) the insurer's expenses, other than expenses relating to the handling of applications for defined benefits and motor accident claims.
- (2) A net profit analysis 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 409 (Audit of licensed insurer's profitability);

- (b) information the MAI commission receives in relation to the insurer under the following sections:
    - (i) section 401 (Licensed insurer to have business plan);
    - (ii) section 405 (Reinsurance arrangements of licensed insurers);
    - (iii) section 407 (Audit of accounting records and compliance with MAI guidelines);
    - (iv) section 462 (Licensed insurers must give information to MAI commission);
    - (v) section 463 (Licensed insurer to provide investment details);
  - (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) A regulation may prescribe the following:
- (a) when the MAI commission may prepare a net profit analysis;
  - (b) the information that may be included in a net profit analysis.

**411 Action if licensed insurer's actual net profit differs from reasonable industry net profit**

- (1) A regulation may prescribe—
- (a) the way the MAI commission must work out the reasonable net profit for a licensed insurer for a year (the *reasonable industry net profit*); and
  - (b) if a licensed insurer's actual net profit for a year differs from the reasonable industry net profit for the year—action the MAI commission may take in relation to the insurer's actual net profit.

- (2) If the MAI commission proposes to take action prescribed under subsection (1) (b), the MAI commission must give notice, in writing, to the licensed insurer setting out—
  - (a) the MAI commission’s reasons for taking the action; and
  - (b) the action the MAI commission proposes to take; and
  - (c) that the insurer may, not later than 28 days after the day the insurer is given the notice, give a written submission to the MAI commission about the proposed action.
- (3) In deciding whether to take the proposed action, the MAI commission must consider any submission given to the MAI commission in accordance with the notice.
- (4) If the MAI commission decides to take action, the MAI commission must give the licensed insurer written notice of—
  - (a) the decision; and
  - (b) what the insurer must do to comply with the decision.

#### **412 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.

*Note* The Minister may publish a summary of a report prepared under this section. The summary must not identify a licensed insurer, or allow the licensed insurer's identity to be worked out (see s 475).

#### **412A Notice of reportable conduct**

- (1) If a licensed insurer becomes aware of reportable conduct in relation to the insurer, the insurer must give the MAI commission a written notice about the reportable conduct that includes—
  - (a) the known details about the reportable conduct; and
  - (b) details about any action the licensed insurer has taken, or proposes to take to—
    - (i) investigate the nature and extent of the reportable conduct and any other conduct that is the same as or similar to the reportable conduct; and
    - (ii) remediate the reportable conduct and any other conduct identified as a result of an investigation mentioned in subparagraph (i); and
    - (iii) remove or mitigate the risk of the same or similar reportable conduct happening; and
  - (c) any other information required by the MAI guidelines.

- (2) The MAI guidelines may make provision in relation to the following:
- (a) what constitutes a significant contravention;
  - (b) information a licensed insurer must include in a notice given under subsection (1).

- (3) In this section:

*reportable conduct* means conduct by a licensed insurer that causes, or is likely to cause, a significant contravention of—

- (a) this Act; or
- (b) a condition of the MAI insurer licence; or
- (c) the insurance industry deed.

**413 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.

#### **414 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 defined benefits and 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.

#### **415 Offence—contravene court order**

A person commits an offence if—

- (a) a court order under section 414 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 330).

**416 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 384 (Grounds for licence suspension—other grounds) happens, other than an event or thing mentioned in section 384 (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 330).

**417 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 330).

**418 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 330).

- (2) In this section:

*bidder’s statement*—see the [Corporations Act](#), section 9.

*target’s statement*—see the [Corporations Act](#), section 9.

**419 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.

## Part 7.10 MAI insurer licences—insolvent insurers

### 420 Definitions—pt 7.10

In this part:

*insolvent insurer* means a licensed insurer, or former licensed insurer, for which an insolvent insurer declaration is in force.

*insolvent insurer declaration*—see section 422.

*liquidator* includes a provisional liquidator.

*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.

### 421 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.

## 422 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.

## 423 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 pt 7.8.

**424 Nominal defendant may recover from insolvent insurer**

- (1) If the nominal defendant becomes the insurer for an MAI policy in place of an insolvent insurer under section 423, any costs reasonably incurred by the nominal defendant for the following become debts of the insolvent insurer to the nominal defendant and provable in the insolvency:
  - (a) applications for defined benefits in relation to motor accidents for which the insolvent insurer was the relevant insurer;
  - (b) motor accident claims under an MAI policy for which the insolvent insurer was the insurer.
- (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 an MAI insured person under the MAI policy.
- (3) If an application for defined benefits or a motor accident claim for which costs are 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.

**425 Offence—liquidator to give applications for defined benefits and motor accident claims to nominal defendant**

- (1) The liquidator of an insolvent insurer commits an offence if the liquidator—
  - (a) receives an application for defined benefits in relation to a motor accident for which the insolvent insurer is the relevant insurer; and
  - (b) does not give the application to the nominal defendant.

Maximum penalty: 20 penalty units.

- (2) The liquidator of an insolvent insurer commits an offence if the liquidator—
- (a) receives a motor accident claim in relation to 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 330).

**426 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 the following:
    - (i) MAI policies issued by the insolvent insurer;
    - (ii) applications for defined benefits in relation to motor accidents for which the insolvent insurer is the relevant insurer;
    - (iii) 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 330).

- (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.

**427 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) applications for defined benefits in relation to motor accidents for which the insolvent insurer is the relevant insurer; or
    - (iii) 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 330).

- (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.

**428 Borrowing for nominal defendant fund**

The nominal defendant may borrow the amounts that the nominal defendant considers necessary to satisfy applications for defined benefits in relation to motor accidents for which an insolvent insurer is the relevant insurer, 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 applications, claims and judgments from the nominal defendant fund.

**429 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.

**430 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 7.11 MAI insurer licences— miscellaneous

### 431 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.

*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).

### 432 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 a motor accident claim.
- (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 8 Enforcement

### Part 8.1 Enforcement—general

#### 433 Definitions—ch 8

In this chapter:

*at* premises includes in or on the premises.

*authorised person* means a person appointed as an authorised person under section 434.

*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 8.3 (Enforcement—search warrants).

## Part 8.2 Enforcement—authorised people

### 434 MAI commission may appoint authorised people

The MAI commission may appoint a public servant as an authorised person 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).

### 435 MAI commission must give identity cards

- (1) The MAI commission must give each authorised person an identity card that states the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the authorised person; 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.
- (3) A person commits an offence if the person—
  - (a) stops being an authorised person; 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 person.

Maximum penalty: 1 penalty unit.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

- (4) Subsection (3) 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 (4) (see [Criminal Code](#), s 58).

- (5) An offence against this section is a strict liability offence.

#### **436 Authorised person must show identity card on exercising power**

- (1) If an authorised person exercises a power under this Act that affects an individual, the authorised person must first show the authorised person's identity card to the individual.
- (2) If an authorised person exercises a power under this Act that affects a person, other than an individual, the authorised person must first show the authorised person's identity card to an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

##### **Examples—person other than an individual**

- corporation
- partnership

### 437 Power to enter premises

- (1) For this Act, an authorised person 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 person 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 person may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment).

### 438 Production of identity card

An authorised person and any other person other than a uniformed police officer who is accompanying the authorised person must not remain at premises entered under this chapter if the authorised person does not produce the authorised person’s identity card when asked by the occupier.

**439 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 437 (1) (b), an authorised person 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 person 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 person 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 person 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.

#### **440 General powers on entry to premises**

- (1) An authorised person 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 person 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 person 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 person 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 330).

#### **441 Power to seize things**

- (1) An authorised person 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 person who enters premises under a warrant under this chapter may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person 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 authorised person 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 person 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 person’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 330).

- (6) An offence against subsection (5) is a strict liability offence.

#### **442 Power to require name and address**

- (1) An authorised person may require a person to state the person’s name and home address if the authorised person 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 person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised person to produce the authorised person’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 person—
  - (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 330).

- (5) Subsection (3) and subsection (4) (b) do not apply to an authorised person who is a police officer in uniform.
- (6) An offence against this section is a strict liability offence.

## Part 8.3 Enforcement—search warrants

### 443 Warrants generally

- (1) An authorised person 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 person 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 person may, with any reasonable and necessary force and assistance, enter the premises and exercise the authorised person’s powers under this chapter; and

*Note* An authorised person’s powers include the power to search the premises (see s 440 (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.

#### **444 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.

#### **445 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 person;
  - (b) email a scanned copy to the authorised person.

- (2) If it is not practicable to fax or email a copy to the authorised person—
- (a) the magistrate must tell the authorised person—
    - (i) the date and time the warrant was issued; and
    - (ii) the warrant’s terms; and
  - (b) the authorised person 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 person, authorises the entry and the exercise of the authorised person’s powers under the warrant.
- Note* Authorised people have additional powers under this part (see s 440 and s 441).
- (4) The authorised person 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 person 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.

**446 Warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a warrant—
  - (a) announce that the authorised person 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 person is not required to comply with subsection (1) if the authorised person 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 person or anyone assisting the authorised person; or
  - (c) that the effective execution of the warrant is not frustrated.

**447 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 person 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 445 (2) (b).

**448 Occupier entitled to 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.

**449 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 person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person 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 person 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 8.4                      Enforcement—return and forfeiture of things seized

### 450            Receipt for seized thing

- (1) As soon as practicable after an authorised person seizes a thing under this chapter, the authorised person 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 person 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 person'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 person has restricted access to the thing under section 441 (4) (b) (Power to seize things)—that it is an offence under section 441 (5) to interfere with the thing without an authorised person's approval.

### 451            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.

## 452 Return of seized thing

- (1) If a thing was seized under this chapter and 1 of the circumstances set out in section 453 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](#).

## 453 Circumstances—s 452

The circumstances for section 452 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.

#### 454 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 453 (a) or (b); or
  - (b) the 60-day period under section 453 (c).

**455 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.

**456 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 455 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.

**457 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 452; and
  - (b) an application for disallowance of the seizure under section 455—
    - (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 8.5 Enforcement—miscellaneous

### 458 People assisting authorised people

A person may assist an authorised person 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 person.

### 459 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this chapter, an authorised person must take reasonable steps to ensure that the person, and anyone assisting the person, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person, or anyone assisting an authorised person, damages anything in the exercise or purported exercise of a function under this chapter, the authorised person must give written notice of the particulars of the damage to the person the authorised person 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.

### 460 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 person or anyone assisting an authorised person.

- (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.



- (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.
- (3) The MAI commission may request 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.

*Note* A request under s (3) must be in writing and given to the licensed insurer, and state when and how the request is to be complied with (see s 464).

- (4) A regulation may—
- (a) prescribe the time within which information, or a periodic return or document, must be given to the MAI commission; and
  - (b) 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) 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 the following Acts:
    - (i) the [Corporations Act](#);
    - (ii) the [Financial Sector \(Collection of Data\) Act 2001](#) (Cwlth);
    - (iii) the [Insurance Act 1973](#) (Cwlth); and
  - (b) a copy of, or extract from, a document.
- information**, about the business and financial position of a licensed insurer, 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.

#### **463 Licensed insurer to provide investment details**

- (1) The MAI commission may request a licensed insurer to give the MAI commission details of how the insurer's third-party funds, and other funds, are invested.

*Note* A request under s (1) must be in writing and given to the licensed insurer, and state when and how the request is to be complied with (see s 464).

- (2) A licensed insurer commits an offence if—
- (a) the MAI commission requests the licensed insurer to give the MAI commission the details mentioned in subsection (1); and
  - (b) the insurer does not comply with the request within the time stated in the request.

Maximum penalty: 100 penalty units.

- (3) 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).

**464 How MAI commission is to make request**

- (1) A request by the MAI commission under section 462 (Licensed insurers must give information to MAI commission) or section 463 must—
  - (a) be in writing and given to the licensed insurer or former licensed insurer; and
  - (b) state how and when the request must be complied with.
- (2) A statement of how a 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 for stated information or a stated document (or a copy of or extract from a stated document).
- (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;
  - (d) an executive officer of the licensed insurer.

*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).

*registered company auditor*—see the [Corporations Act](#), section 9.

**465 Offences—insurer to give periodic returns, documents and information**

- (1) A licensed insurer commits an offence if the insurer—
- (a) must give the MAI commission information, or a periodic return or document, under section 462 (Licensed insurers must give information to MAI commission); and
  - (b) does not give the MAI commission the information, or the periodic return or document.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

- (2) A licensed insurer commits an offence if the insurer—
- (a) must give the MAI commission information, or a periodic return or document, under section 462; and
  - (b) does not give the MAI commission the information, or the periodic return or document—
    - (i) in the way or time stated by regulation under section 462; or
    - (ii) in the way or time stated by the MAI commission in a notice under section 464.

Maximum penalty: 100 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

- (3) 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 a request or requirement under section 462.

**466 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 an application for defined benefits or a motor accident claim.
- (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) the ACAT;
  - (e) a person approved in writing by the MAI commission.

**467 MAI commission—disclosure of information relating to complaints**

- (1) This section applies if the MAI commission receives a complaint from a person injured in a motor accident, or the injured person's personal representative or guardian (the ***complainant***), about the handling of the injured person's application for defined benefits or motor accident claim by the relevant insurer for the motor accident.

- (2) The MAI commission may give the relevant insurer for the motor accident some or all of the information included with the complaint.
- (3) However, the MAI commission must not disclose any other information in relation to the complaint until the MAI commission has completed its inquiries into the complaint.
- (4) The MAI commission must, as soon as practicable after completing its inquiries into the complaint, give the relevant insurer and the complainant written notice of its findings.
- (5) A notice under subsection (4) may include—
  - (a) some or all of the information included with the complaint; and
  - (b) any response by the relevant insurer to the complaint.
- (6) However, the notice must not include information mentioned in subsection (5) if—
  - (a) the MAI commission believes on reasonable grounds that including the information—
    - (i) may disclose confidential information about the relevant insurer's business operations; or
    - (ii) may prejudice an investigation by the police or relevant insurer of the motor accident, or the application for defined benefits or motor accident claim; or
  - (b) a regulation prescribes the inclusion of the information as a prohibited disclosure of information.
- (7) The MAI guidelines may make provision in relation to the handling of complaints.
- (8) In this section:  
***information*** includes a document.

**468 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 54.

- (2) A regulation may prescribe conditions in relation to the disclosure of information under this section.
- (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 transferring the injured person’s application for defined benefits or motor accident claim.

**469 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 for defined benefits and motor accident claims.
- (2) A regulation 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 MAI commission receives under this section; and
  - (b) publish statistical data based on the information the MAI commission receives under this section.
- (5) The Minister may require the MAI commission to publish statistical data based on the information the MAI commission receives under this section.
- (6) However, the MAI commission must not publish information relating to a lawyer or stated service provider if publication of the information would disclose information that relates to the practices of the lawyer or service provider (*confidential information*).

- (7) Confidential information about the practices of a lawyer or stated service provider, including the practices of a partnership that includes a lawyer or stated service provider, is taken to be protected information for section 476 (Offences—use or divulge protected information).

#### **470 Information about certain offences**

- (1) A court may, on request by the MAI commission, give the MAI commission the following information in relation to a person injured in a motor accident:
- (a) information about whether, as a result of the motor accident, a proceeding has started in the court against the person in relation to any of the following offences and, if so, the outcome of the proceeding:
    - (i) a driving offence;
    - (ii) a serious offence, within the meaning of section 48 (No entitlement—serious offences);
  - (b) if a proceeding has started in the court against the person in relation to an offence mentioned in paragraph (a) that is an offence under the *Road Transport (Alcohol and Drugs) Act 1977*—a copy of a certificate or statement under any of the following provisions of that Act that is admitted in evidence in the proceeding:
    - (i) section 41 (1) (a), (c) or (g) (Evidentiary certificate—alcohol-related tests);
    - (ii) section 41AB (Evidentiary certificate—analysis of oral fluid sample);
    - (iii) section 41AD (Evidentiary certificate—analysis of sample for prescribed drug etc).

- (2) The MAI commission may give the relevant insurer for the motor accident the information the MAI commission receives under subsection (1) in relation to the injured person.

**471 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 commissioner**—see the dictionary.

**LTCS scheme**—see the dictionary.

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

**Treatment and care needs**—see the 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.

**472 MAI injury register**

- (1) The MAI commission must keep a register of applications for defined benefits and motor accident claims (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 Act**—see the dictionary.

**LTCS commissioner**—see the dictionary.

- (4) The following people may access information contained in the MAI injury register:
  - (a) licensed insurers;
  - (b) a person approved, in writing, by the MAI commission.
- (5) The MAI commission must not approve a person to access the MAI injury register unless the MAI commission is satisfied in relation to the following:
  - (a) the purpose for which the person needs to access the register;
  - (b) that the person has appropriate procedures or systems in place to safeguard the handling of information accessed on the register.
- (6) 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.

*Note* It is an offence to use or divulge protected information about a person (see s 476).

**473 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 (including any proposed profit margins) in relation to the motor accident injuries insurance scheme under this Act;
- (d) information that compares the performance of licensed insurers in relation to applications for defined benefits and motor accident claims;

**Examples—performance**

- 1 timeliness with dealing with applications for defined benefits and motor accident claims
  - 2 outcomes of applications for defined benefits and motor accident claims
  - 3 customer service or complaints
- (e) a copy of any return, and any document accompanying a return, given to the MAI commission under section 462 (Licensed insurers must give information to MAI commission);

- (f) information about a licensed insurer's market share in relation to the motor accident injuries insurance scheme under this Act;
  - (g) information (other than personal information) about internal and external review of decisions by a licensed insurer under part 2.10 (Defined benefits—dispute resolution), and the outcomes of those reviews;
  - (h) financial information relating to applications for defined benefits and motor accident claims handled by a licensed insurer, including any amounts ordered by the ACAT or a court, or paid for legal representation, in relation to disputes about applications for defined benefits or motor accident claims;
  - (i) any other information about licensed insurers prescribed by regulation.
- (2) For subsection (1) (i), a regulation may prescribe the manner and form in which the information prescribed may be published.
- (3) Information published under this section may identify a particular insurer (an *identified insurer*).
- (4) 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.
- (5) Also, the MAI commission must not publish information about a licensed insurer under subsection (1) (c) that would identify the licensed insurer or allow the licensed insurer's identity to be worked out.

(6) In this section:

***personal information***—

- (a) means information about a person to whom an internal or external review of a decision under part 2.10 relates that—
  - (i) discloses the name, address or suburb of the person, or of a family member of the person; or
  - (ii) would allow the person's identity to be worked out; and
- (b) includes personal health information.

**474 Publication of net profit analysis of licensed insurer**

- (1) The Minister may publish a net profit analysis, or part of a net profit analysis, of a licensed insurer.
- (2) However, the net profit analysis, or the part of the net profit analysis, must be published in a form that does not identify the licensed insurer or allow the licensed insurer's identity to be worked out.
- (3) In this section:

***net profit analysis***, of a licensed insurer, means a net profit analysis of the licensed insurer prepared by the MAI commission under section 410.

**475 Summary of report about insurers may be made public**

- (1) The Minister may publish a summary of a report prepared under section 412 (Reports about insurers).
- (2) However, the summary must be published in a form that does not identify a licensed insurer or allow a licensed insurer's identity to be worked out.

**476 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.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

- (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.

- (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*—

- (a) 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; and
- (b) includes personal health information.

*use*, in relation to information, includes make a record of the information.

## Chapter 10 Notification and review of MAI commission reviewable decisions

### 477 Definitions—ch 10

In this chapter:

*externally reviewable decision* means a decision by an MAI commission reviewer under section 482.

*internal review notice*—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

*MAI commission reviewable decision* means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

*MAI commission reviewer*—see section 481.

### 478 Internal review notices

If the MAI commission makes an MAI commission reviewable decision, the MAI commission must give an internal review notice to an entity mentioned in schedule 2, column 4 in relation to the decision.

*Note* The MAI commission must also take reasonable steps to give an internal review notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67B).

### 479 Applications for internal review

- (1) The following people may apply to the MAI commission for review of an MAI commission reviewable decision:
  - (a) an entity mentioned in schedule 2, column 4 in relation to the decision;
  - (b) any other person whose interests are affected by the decision.

- (2) The application must—
  - (a) be in writing; and
  - (b) state the applicant's name and address; and
  - (c) set out the applicant's reasons for making the application.
- (3) The application must be given to the MAI commission within—
  - (a) 28 days after the day the applicant is given the internal review notice for the decision; or
  - (b) any longer period allowed by the MAI commission before or after the end of the 28-day period.

*Note* Section 484 provides for ACAT review of reviewable decisions that are MAI commission reviewable decisions.

#### **480 Applications not stay MAI commission reviewable decisions**

The making of an application for review of an MAI commission reviewable decision does not affect the operation of the decision.

#### **481 MAI commission reviewer**

The MAI commission must arrange for a person (the *MAI commission reviewer*) who did not make the MAI commission reviewable decision to review the decision.

#### **482 Review by MAI commission reviewer**

- (1) The MAI commission reviewer must, within 28 days (the *28-day period*) after the day the MAI commission receives the application for review of the MAI commission reviewable decision—
  - (a) confirm the decision; or
  - (b) amend the decision; or
  - (c) set aside the decision and substitute the reviewer's own decision.

- (2) If the decision is not amended or set aside within the 28-day period, the decision is taken to have been confirmed by the MAI commission reviewer.

### **483 Reviewable decision notices**

If an MAI commission reviewer makes an externally reviewable decision, the MAI commission reviewer must give a reviewable decision notice to each person affected by the decision.

*Note* The MAI commission reviewer must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

### **484 Applications for external review**

The following people may apply to the ACAT for review of an externally reviewable decision:

- (a) a person to whom a reviewable decision notice is required to be given in relation to the decision;
- (b) any other person whose interests are affected by the decision.

## Chapter 11      Miscellaneous

### 485      Offences—referral fees

- (1) A lawyer commits an offence if—
- (a) the lawyer, or an entity related to the lawyer, intentionally gives consideration to someone else; and
  - (b) in return for the consideration, another person refers a person to the lawyer for the purpose of that person being represented by the lawyer in relation to an application for defined benefits or a motor accident claim; and
  - (c) the lawyer is reckless about the matters mentioned in paragraph (b).

Maximum penalty: 200 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

- (2) A lawyer commits an offence if—
- (a) the lawyer, or an entity related to the lawyer, intentionally receives consideration from someone else; and
  - (b) the lawyer, or entity, receives the consideration in return for the lawyer referring a person represented by the lawyer in relation to a motor accident claim to a service provider; and
  - (c) the service provider provides a service to the client in relation to the motor accident; and
  - (d) the lawyer is reckless about the matters mentioned in paragraphs (b) and (c).

Maximum penalty: 200 penalty units.

*Note* Penalties imposed under this Act must be paid into the nominal defendant fund (see s 330).

(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.

**486 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 as a debt from the person the amount by which the damages exceed the ACT total.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (4) In this section:

***another jurisdiction*** means a jurisdiction other than the ACT and includes a jurisdiction outside Australia.

**487 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.
- (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 (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.

**488 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.

**489 Determination of fees**

- (1) The MAI commission may determine fees for this Act.
- (2) A determination is a disallowable instrument.

**490 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* 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).

**491 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 490.

**492 Regulation-making power**

- (1) The Executive may make regulations for this 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).

**493 Review of operation 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 review must include the following:
  - (a) the percentage of MAI premiums used to pay defined benefits, including for treatment and care, for people injured in motor accidents during the review period;
  - (b) the number of applications under part 2.10 (Defined benefits—dispute resolution) for review of decisions by insurers relating to applications for defined benefits that have happened during the review period and the outcomes of those applications;
  - (c) the average time taken to resolve a motor accident claim during the review period;
  - (d) the average outcome for motor accident claims made during the review period, including, for example—
    - (i) the degree of severity of personal injuries sustained as a result of motor accidents; and
    - (ii) the costs incurred for rehabilitation of people injured in motor accidents who have made a motor accident claim.

- (3) Subsection (2) does not limit what may be included in the review.
- (4) The Minister must present a report of the review to the Legislative Assembly at a time decided in consultation with the Speaker.

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

- (5) In this section:

**review period** means the 3-year period to which a review under this section relates.

## **Schedule 1**      **Defined benefits—dispute resolution**

(see s 186 and s 192)

### **Part 1.1**      **Internally reviewable decisions**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
1	59 (2)	refuse late application because applicant does not have full and satisfactory explanation
2	62	refuse to pay applicant's expenses because not allowable expenses under MAI guidelines
3	65 (1)	reject liability for defined benefits
4	65 (1)	reject liability for defined benefits because applicant not a person mentioned in s 55 (1)
5	65 (1)	reject liability for defined benefits because application made on behalf of applicant by someone other than a person mentioned in s 55 (2)
6	66 (1)	not pay income replacement benefits because applicant not entitled to those benefits under s 89
7	66 (1)	not pay treatment and care benefits for expenses incurred for stated treatment and care because of 1 or more of the following reasons: <ul style="list-style-type: none"> <li>(a) treatment and care not reasonable and necessary;</li> <li>(b) treatment and care did not relate to personal injury sustained in motor accident;</li> <li>(c) injured person has not paid for the treatment and care and is not liable to pay for the treatment and care</li> </ul>

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
8	66 (1)	not pay treatment and care benefits for domestic services expenses incurred by injured person in employing someone to provide domestic services to injured person's dependants because of 1 or more of the following reasons:  (a) expenses not reasonable and necessary; (b) injured person did not provide those services to dependants before the motor accident; (c) dependants are able to undertake those services
9	66 (1)	not pay treatment and care benefits for travel expenses incurred by injured person and a parent or other carer accompanying injured person because of 1 or both of the following reasons:  (a) expenses for travel and accommodation not reasonable and necessary; (b) travel not undertaken to undergo treatment and care
10	66 (1)	not pay funeral benefits because applicant not entitled to funeral expenses under s 178
11	96	decision about amount of income replacement benefits injured person entitled to for first payment period
12	97	decision about amount of income replacement benefits injured person entitled to for second payment period
13	100 (1)	decision about injured person's post-injury earning capacity
14	101 (3) (b) (ii), 104 (b) (ii) or 105 (b) (ii)	refuse to make earlier payment of income replacement benefits to injured person who makes late application for defined benefits because not satisfied there are exceptional circumstances justifying earlier payment
15	103 (2)	refuse to pay injured person interim weekly payment
16	103 (4)	refuse to pay injured person lower interim weekly payment
17	105 (2)	suspend injured person's benefit payments
18	107 (1) (b)	reduce or stop paying income replacement benefit payments

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
19	121 (1)	make reasonable request to injured person to attend health practitioner for assessment of treatment and care needs
20	121 (3)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with reasonable request to attend health practitioner
21	124A (1)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with a recovery plan for the person
22	126 (2)	refuse to approve treatment and care not mentioned in injured person's recovery plan because treatment and care not reasonable and necessary in the circumstances and will not assist with injured person's recovery or management of person's injury
23	128 (2) (a) (i) (B)	refuse to make earlier payment of treatment and care expenses, domestic services expenses and travel expenses in relation to late application for period starting on date that is 13 weeks before date of application because insurer not satisfied that there are exceptional circumstances justifying earlier payment
24	129 (1)	not pay treatment and care expenses, domestic services expenses and travel expenses because of 1 or more of the following reasons: <ul style="list-style-type: none"> <li>(a) the expenses cannot be verified;</li> <li>(b) the expenses have not been incurred;</li> <li>(c) the insurer has previously paid the expenses;</li> <li>(d) for treatment and care expenses—the expenses were— <ul style="list-style-type: none"> <li>(i) not approved by the insurer; or</li> <li>(ii) not set out in the injured person's recovery plan</li> </ul> </li> </ul>
25	139 (2)	tell applicant for quality of life benefits that insurer believes person's injuries have stabilised but the person is not likely to have a permanent impairment as a result of the injuries

**Schedule 1**  
**Part 1.1**

Defined benefits—dispute resolution  
Internally reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
26	183 (2)	refuse to make periodic payments of treatment and care benefits and income replacement benefits because insurer not satisfied injured person intends to live outside Australia permanently or for an extended time
27	183 (2)	refuse to make periodic payments of treatment and care benefits and income replacement benefits because injured person has not lived outside Australia for at least eligibility period
28	184 (4) (a)	calculate amount of lump sum to be less than \$10 000

## Part 1.2 ACAT reviewable decisions

column 1 item	column 2 section	column 3 decision
1	59 (2)	refuse late application because applicant does not have full and satisfactory explanation
2	65 (1)	reject liability for defined benefits
3	65 (1)	reject liability for defined benefits because applicant not a person mentioned in s 55 (1)
4	65 (1)	reject liability for defined benefits because application made on behalf of applicant by someone other than a person mentioned in s 55 (2)
5	65 (1)	reject liability for death benefits or funeral benefits because person's death was not result of motor accident
6	66 (1)	not pay income replacement benefits because— (a) applicant is person mentioned in s 43 (1); and (b) none of the circumstances mentioned in s 43 (2) applies to the applicant
7	66 (1)	not pay quality of life benefits because— (a) applicant is person mentioned in s 43 (1); and (b) the circumstances mentioned in s 43 (3) do not apply to the applicant
8	66 (1)	not pay income replacement benefits because applicant is person mentioned in s 46 (1)
9	66 (1)	not pay quality of life benefits because applicant is person mentioned in s 46 (1)
10	66 (1)	not pay quality of life benefits and death benefits because person who died as a result of motor accident is person mentioned in s 46 (2)
11	66 (1)	not pay defined benefits because s 49 applies to the injured person or dead person but MAI commission has not notified insurer that motor accident caused by, or attributable to, act of terrorism

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
12	66 (1)	not pay income replacement benefits because applicant not entitled to those benefits under s 89
13	66 (1)	not pay treatment and care benefits for expenses incurred for stated treatment and care because of 1 or more of the following reasons: <ul style="list-style-type: none"><li>(a) treatment and care not reasonable and necessary;</li><li>(b) treatment and care did not relate to personal injury sustained in motor accident;</li><li>(c) injured person has not paid for the treatment and care and is not liable to pay for the treatment and care</li></ul>
14	66 (1)	not pay treatment and care benefits for domestic services expenses incurred by injured person in employing someone to provide domestic services to injured person's dependants because of 1 or more of the following reasons: <ul style="list-style-type: none"><li>(a) expenses not reasonable and necessary;</li><li>(b) injured person did not provide those services to dependants before the motor accident;</li><li>(c) dependants are able to undertake those services</li></ul>
15	66 (1)	not pay treatment and care benefits for travel expenses incurred by injured person and a parent or other carer accompanying injured person because of 1 or both of the following reasons: <ul style="list-style-type: none"><li>(a) expenses for travel and accommodation not reasonable and necessary;</li><li>(b) travel not undertaken to undergo treatment and care</li></ul>
16	66 (1)	not pay death benefits because coroner finds dead person's conduct in relation to motor accident made up physical elements of conduct of serious offence or 2 or more driving offences
17	66 (1)	not pay funeral benefits because applicant not entitled to funeral expenses under s 178

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
18	96	decision about the amount of income replacement benefits an injured person is entitled to for first payment period
19	97	decision about the amount of income replacement benefits an injured person is entitled to for second payment period
20	100 (1)	decision about injured person's post-injury earning capacity
21	101 (3) (b) (ii), (4) (b) (ii) or (5) (b) (ii)	refuse to make earlier payment of income replacement benefits to injured person who makes late application for defined benefits because not satisfied there are exceptional circumstances justifying earlier payment
22	105 (2)	suspend injured person's benefit payments
23	107 (1) (b)	reduce or stop paying income replacement benefit payments
24	121 (1)	make reasonable request to injured person to attend health practitioner for assessment of treatment and care needs
25	121 (3)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with reasonable request to attend health practitioner
26	124A (1)	suspend payment of treatment and care benefits and income replacement benefits because injured person fails to comply with a recovery plan for the person
27	126 (2)	refuse to approve treatment and care not mentioned in injured person's recovery plan because treatment and care not reasonable and necessary in the circumstances and will not assist with injured person's recovery or management of person's injury
28	128 (2) (a) (i) (B)	refuse to make earlier payment of treatment and care expenses, domestic services expenses and travel expenses in relation to late application for period starting on date that is 13 weeks before date of application because insurer not satisfied that there are exceptional circumstances justifying earlier payment
29	160 (2)	amount of injured person's final offer WPI

**Schedule 1**  
**Part 1.2**

Defined benefits—dispute resolution  
ACAT reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>
30	183 (2)	refuse to make periodic payments of treatment and care benefits and income replacement benefits because insurer not satisfied injured person intends to live outside Australia permanently or for an extended time
31	183 (2)	refuse to make periodic payments of treatment and care benefits and income replacement benefits because injured person has not lived outside Australia for at least eligibility period
32	184 (4) (a)	calculate amount of lump sum to be less than \$10 000

## Schedule 2 MAI Commission reviewable decisions

(see ch 10)

column 1 item	column 2 section	column 3 decision	column 4 person
1	44 (4)	MAI commission—declare injured person not entitled to income replacement benefits or quality of life benefits	injured person
2	45 (4)	MAI commission—declare injured person not entitled to defined benefits mentioned in s 45 (3)	injured person
3	48 (4)	MAI commission—declare injured person not entitled to defined benefits mentioned in s 48 (3)	injured person
4	363 (1)	MAI commission—refuse to issue MAI insurer licence	applicant for licence
5	377 (2) (a)	MAI commission—include MAI commission condition on issue of MAI insurer licence	applicant for licence
6	377 (2) (b)	MAI commission—amend MAI insurer licence to include MAI commission condition	licensed insurer
7	377 (3)	MAI commission—amend MAI commission condition included on MAI insurer licence	licensed insurer
8	385 (1)	MAI commission—suspend MAI insurer licence	licensed insurer
9	397 (1)	MAI commission—cancel MAI insurer licence	licensed insurer

**Schedule 2**

## MAI Commission reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 person</b>
10	397 (4)	MAI commission—impose condition on licence prohibiting insurer from issuing further MAI policies	licensed insurer
11	398 (1)	MAI commission—refuse to approve transfer of MAI insurer licence to new insurer	licensed insurer
12	399 (1)	MAI commission—refuse to transfer licensed insurer's MAI policies to another licensed insurer	licensed insurer

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## 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
- appoint
- Australian citizen
- business day
- calendar year
- Commonwealth
- contravene
- coroner
- corporation
- Corporations Act
- Criminal Code
- disallowable instrument (see s 9)
- doctor
- domestic partner (see s 169 (1))
- entity
- Executive
- fail
- financial year
- head of service
- health practitioner
- Legislative Assembly
- may (see s 146)
- Minister (see s 162)
- must (see s 146)

- notifiable instrument (see s 10)
- occupational discipline order
- parent
- penalty unit (see s 133)
- person (see s 160)
- power
- public employee
- Speaker
- State
- statutory instrument (see s 13)
- territory authority
- territory law
- 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 (see s 24 (6))
- infringement notice management plan
- infringement notice penalty
- jurisdiction
- light rail vehicle
- motor vehicle
- registered operator
- responsible person
- 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).

***ACAT reviewable decision***, for division 2.10.3 (ACAT review of insurer's decisions)—see section 192.

***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 61.

***application period***, for an application for defined benefits, for chapter 2 (Motor accident injuries—defined benefits)—see section 58.

***appointed auditor***—see section 407.

***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 8 (Enforcement)—see section 433.

***authorised IME providers***—see section 15.

***authorised person***, for chapter 8 (Enforcement)—see section 433.

***authority to disclose personal health information***, for a person injured in a motor accident—see section 54.

***average weekly earnings*** (or ***AWE***)—see section 17.

***AWE***—see section 17.

***AWE adjusted***, for an injured person's pre-injury income, for division 2.4.3 (Income replacement benefits—payments)—see section 94.

***AWE indexed***, for an amount—see section 18.

***business plan***—see section 401.

***capable***, of being in paid work, for part 2.4 (Defined benefits—income replacement benefits)—see section 79.

***claimant***, for a motor accident claim—see section 229.

***claims manager***—see section 337.

***Commonwealth authority*** means a body, whether or not incorporated, established under a Commonwealth Act.

***compliance notice***, for division 5.7.5 (Judgment for noncompliance with time limits)—see section 278.

***complying notice of claim***, for part 5.7 (Court proceedings on motor accident claims)—see section 257.

***compulsory conference***—see section 258.

***connected***, with an offence, for chapter 8 (Enforcement)—see section 433.

***contributor***, to a motor accident claim, for part 5.7 (Court proceedings on motor accident claims)—see section 257.

***costs***—

- (a) when used in reference to the costs of an insurer for a motor accident claim, for part 6.10 (MAI insurer and nominal defendant may recover costs incurred)—see section 341; 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 6.10—see section 341.

***dead person*** means a person who died as a result of a motor accident.

***defined benefits***—see section 33.

***dependant***, of a person who died as a result of a motor accident, for part 2.7 (Defined benefits—death benefits)—see section 168.

***domestic services expenses***, for a person injured in a motor accident, for part 2.5 (Defined benefits—treatment and care benefits)—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 41.

***enforcing party***, for division 5.7.5 (Judgment for noncompliance with time limits)—see section 278.

***externally reviewable decision***, for chapter 10 (Notification and review of MAI commission reviewable decisions)—see section 477.

***final offer WPI***—see section 160.

***financial penalty notice***, for part 7.6A (Financial penalties)—see section 394D (3).

***first payment period***, for division 2.4.3 (Income replacement benefits—payments)—see section 93.

***first WPI report***—see section 158.

***fitness for work certificate***, for part 2.4 (Defined benefits—income replacement benefits)—see section 104.

***foreign national*** means a person who is not an Australian citizen or permanent resident.

***former licensed insurer***, for chapter 7 (MAI insurer licences)—see section 355.

**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 35.

**future treatment payment**, for chapter 4 (Payment of future medical treatment expenses)—see section 222 (2).

**gross income**, of an injured person who is an employee, for part 2.4 (Defined benefits—income replacement benefits)—see section 76.

**ground for financial penalty**, for part 7.6A (Financial penalties)—see section 394B.

**ground for occupational discipline**—see section 392.

**IME**—see section 14.

**income replacement benefit payment**, for an injured person, for part 2.4 (Defined benefits—income replacement benefits)—see section 75.

**independent assessor**—see section 206.

**independent medical examiner** (or **IME**)—see section 14.

**information**, for part 2.3 (Application for defined benefits)—see section 53.

**injured person** means a person injured in a motor accident.

**insolvent insurer**, for part 7.10 (MAI insurer licences—insolvent insurers)—see section 420.

**insolvent insurer declaration**, for part 7.10 (MAI insurer licences—insolvent insurers)—see section 422.

**insurance industry deed**—see section 359.

**insured motor vehicle**—see section 286.

**insured person**, for a motor accident claim—see section 231.

***insurer***—

- (a) in relation to an application for defined benefits, for part 2.10 (Defined benefits—dispute resolution)—see section 185; and
- (b) of a motor vehicle, for a motor accident claim—see section 232; and
- (c) of a person, for a motor accident claim—see section 232.

***internally reviewable decision***, for division 2.10.2 (Internal review of insurer's decisions)—see section 186.

***internal review***, of an insurer's internally reviewable decision, for division 2.10.2 (Internal review of insurer's decisions)—see section 186.

***internal review notice***—

- (a) for part 2.10 (Defined benefits—dispute resolution)—see section 191 (1) (b); and
- (b) for chapter 10 (Notification and review of MAI commission reviewable decisions)—see section 477.

***interstate insurer*** means an entity (including the Commonwealth, a Commonwealth authority and a State authority) that, under a law of the Commonwealth or a State, indemnifies the responsible person for, and the driver of, the motor vehicle against liability for the death or injury of a person.

*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 59.

***late party***, for division 5.7.5 (Judgment for noncompliance with time limits)—see section 278.

***late receipt notice***—see section 60.

**level**, for a concentration of alcohol in blood or breath, for division 2.2.2 (Limitations and exceptions to entitlement)—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

**licensed insurer**—

- (a) see section 354; or
- (b) for part 7.6 (MAI insurer licences—occupational discipline)—see section 390.

**liquidator**, for part 7.10 (MAI insurer licences—insolvent insurers)—see section 420.

**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 22.

**MAI commission condition**—see section 377.

**MAI commissioner** means the person appointed as the MAI commissioner under section 24.

**MAI commission reviewable decision**, for chapter 10 (Notification and review of MAI commission reviewable decisions)—see section 477.

**MAI commission reviewer**, for chapter 10 (Notification and review of MAI commission reviewable decisions)—see section 481.

**MAI guidelines** means the guidelines made by the MAI commission under section 487.

**MAI injury register**—see section 472.

**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 286.

***MAI insurer***—see section 287.

***MAI insurer licence***—see section 354.

***MAI policy***—see section 286.

***MAI policy issued by an insolvent insurer***, for part 7.10 (MAI insurer licences—insolvent insurers)—see section 420.

***MAI premium***, for an MAI policy—see section 314.

***mandatory final offer***—see section 263.

***medical treatment***, for chapter 4 (Payment of future medical treatment expenses)—see section 221.

***minor contravention***, for part 7.6A (Financial penalties)—see section 394A.

***motor accident***—see section 10.

***motor accident claim***—see section 228.

***motor accident injuries policy*** (or ***MAI policy***)—see section 286.

***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 77.

***no-fault motor accident***—see section 254.

***nominal defendant***—see section 16.

***nominal defendant fund***—see section 330.

***notice of affirmation or increase***—see section 159.

***occupier***, of premises, for chapter 8 (Enforcement)—see section 433.

***offence***, for chapter 8 (Enforcement)—see section 433.

**outstanding**, for a charge, for division 2.2.2 (Limitations and exceptions to entitlement)—see section 42.

**paid work**, for part 2.4 (Defined benefits—income replacement benefits)—see section 78.

**participant**, in the LTCS scheme—see the [LTCS Act](#), dictionary.

**party**, to a motor accident claim, for part 5.7 (Court proceedings on motor accident claims)—see section 257.

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

**permanent impairment**—see section 12.

**permanent resident**—see the [Australian Citizenship Act 2007](#) (Cwlth), section 5.

**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—

- (a) 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
- (b) 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 36.

**person with a legal disability** means—

- (a) a child; or
- (b) a person with a mental disability.

***person with a mental disability***—

- (a) means a person who is not legally competent to apply for defined benefits; and
- (b) includes a person mentioned in paragraph (a) even if a guardian or manager has not been appointed for the person under the [Guardianship and Management of Property Act 1991](#).

***post-injury earning capacity***, of an injured person, for division 2.4.3 (Income replacement benefits—payments)—see section 93.

***pre-injury earning capacity***—

- (a) for a person on unpaid leave—see section 85; or
- (b) for a person with a new work arrangement—see section 86; or
- (c) for a full-time student—see section 87.

***pre-injury income***, for an injured person—see section 80.

***pre-injury weekly income***—

- (a) for an ongoing employee or fixed term contractor—see section 81; or
- (b) for a self-employed person—see section 82; or
- (c) for a casual worker—see section 83; or
- (d) for a person receiving workers compensation—see section 84.

***premises***, for chapter 8 (Enforcement)—see section 433.

***private medical examiner***, for an injured person, for division 2.6.3 (Quality of life benefits—WPI assessment)—see section 145.

***publish***, for chapter 9 (Information collection and secrecy)—see section 461.

***quality of life benefits application***—see section 137.

***quality of life damages***—see section 242.

**rail transport operator**—see the *Rail Safety National Law (ACT)*, section 4.

**receipt notice**—see section 60.

**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**, in relation to a body corporate—see the *Corporations Act*, section 9.

**relevant insurer**, for a motor accident—see section 34.

**relevant notice claim**, for division 5.7.5 (Judgment for noncompliance with time limits)—see section 279.

**required thing**, under a compliance notice, for division 5.7.5 (Judgment for noncompliance with time limits)—see section 277.

**respondent**, for a motor accident claim, for chapter 5 (Motor accident injuries—common law damages)—see section 230.

**road**—

- (a) means an area that is—
  - (i) open to or used by the public; and
  - (ii) developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; but
- (b) does not include an area that would otherwise be a road but for a declaration under the *Road Transport (General) Act 1999*, section 12 (Power to include or exclude areas in road transport legislation) 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 93.

**second WPI report**—see section 158.

**self-employed**, for part 2.4 (Defined benefits—income replacement benefits)—see section 74.

**serious contravention**, for part 7.6A (Financial penalties)—see section 394A.

**significant occupational impact** (or **SOI**), of an injured person's injury on the injured person's ability to undertake employment—see section 205.

**single vehicle accident** means a motor accident that involves only 1 motor vehicle.

**SOI**—see section 205.

**SOI assessment**, of a person injured in a motor accident—see section 207.

**SOI assessment guidelines**—see section 208.

**SOI report**—see section 207.

**staff of the MAI commission**—see section 27.

**suspended insurer**, for part 7.5 (MAI insurer licences—suspension)—see section 382.

**travel expenses**, for a person injured in a motor accident, for part 2.5 (Defined benefits—treatment and care benefits)—see section 115.

**treatment and care**, of a person injured in a motor accident—see section 110.

**treatment and care expenses**, for a person injured in a motor accident, for chapter 2 (Motor accident injuries—defined benefits)—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 327.

**uninsured motor vehicle**—see section 325.

**unpaid leave**, from paid work, for part 2.4 (Defined benefits—income replacement benefits)—see section 74.

**unregistered vehicle permit**—see the [Road Transport \(Vehicle Registration\) Act 1999](#), dictionary.

**use**, a motor vehicle—see section 11.

**UVP liability contribution**—see section 332.

***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 8 (Enforcement)—see section 433.

***whole person impairment*** (or ***WPI***), of a person—see section 13.

***workers compensation scheme*** means a workers compensation scheme under the *Workers Compensation Act 1951*, the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), or a statutory workers compensation scheme of a place outside the ACT.

***WPI***, of a person—see section 13.

***WPI assessment***, of a person injured in a motor accident—see section 143.

***WPI assessment guidelines***—see section 146.

***WPI report***—see section 144.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Motor Accident Injuries Act 2019 A2019-12**

notified LR 31 May 2019

s 1, s 2 commenced 31 May 2019 (LA s 75 (1))

remainder commenced 1 February 2020 (s 2 (1) and [CN2019-13](#))

as amended by

#### **Road Transport Legislation Amendment Act 2019 A2019-21 pt 3**

notified LR 8 August 2019

s 1, s 2 commenced 8 August 2019 (LA s 75 (1))

pt 3 commenced 1 February 2020 (s 2 (2) and see Motor Accident Injuries Act 2019 A2019-12, s 2 (1) and [CN2019-13](#))

#### **Statute Law Amendment Act 2019 A2019-42 sch 1 pt 1.4, sch 3 pt 3.19**

notified LR 31 October 2019

s 1, s 2 commenced 31 October 2019 (LA s 75 (1))

sch 1 pt 1.4, sch 3 pt 3.19 commenced 1 February 2020 (s 2 (2) and see Motor Accident Injuries Act 2019 A2019-12, s 2 (1) and [CN2019-13](#))

#### **Motor Accident Injuries Amendment Act 2020 A2020-2**

notified LR 17 February 2020

s 1, s 2 taken to have commenced 1 February 2020 (LA s 75 (2))

remainder taken to have commenced 1 February 2020 (s 2)

#### **Justice Legislation Amendment Act 2020 A2020-42 pt 24**

notified LR 27 August 2020

s 1, s 2 commenced 27 August 2020 (LA s 75 (1))

pt 24 commenced 28 August 2020 (s 2 (9))

#### **Road Transport Legislation Amendment Act 2022 A2022-3 sch 1 pt 1.1**

notified LR 30 March 2022

s 1, s 2 commenced 30 March 2022 (LA s 75 (1))

sch 1 pt 1.1 commenced 13 April 2022 (s 2)

#### **Road Transport Legislation Amendment Act 2022 (No 2) A2022-5 sch 1 pt 1.1**

notified LR 13 April 2022

s 1, s 2 commenced 13 April 2022 (LA s 75 (1))

sch 1 pt 1.1 commenced 11 May 2022 (s 2 (2))

## Endnotes

3 Legislation history

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**Motor Accident Injuries Amendment Act 2023 A2023-30**

notified LR 7 July 2023

s 1, s 2 commenced 7 July 2023 (LA s 75 (1))

s 12 commenced 14 July 2023 (s 2 (2) (a))

remainder commenced 14 July 2023 (s 2 (1))

**Road Safety Legislation Amendment Act 2024 A2024-20 sch 1 pt 1.2**

notified LR 24 May 2024

s 1, s 2 commenced 24 May 2024 (LA s 75 (1))

sch 1 pt 1.2 commenced 25 May 2024 (s 2 (1))

**Statute Law Amendment Act 2025 A2025-29 sch 4 pt 4.128**

notified LR 6 November 2025

s 1, s 2 commenced 6 November 2025 (LA s 75 (1))

sch 4 pt 4.128 commenced 26 December 2025 (s 2 (7))

## 4 Amendment history

### Commencement

s 2 om LA s 89 (4)

### Meaning of *AWE indexed for amount*

s 18 am [A2023-30](#) s 4

### Indexation of defined benefits and quality of life damages

s 19 am [A2025-29](#) amdt 4.129

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

s 20 am [A2023-30](#) s 5

### Delegation by MAI commission

s 30 am [A2023-30](#) s 6; pars renum R5 LA

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

s 37 om [A2019-42](#) amdt 3.77

### Meaning of *driving offence*

s 41 am [A2020-42](#) s 130; [A2022-3](#) amdt 1.1; [A2022-5](#) amdt 1.1, amdt 1.2; [A2024-20](#) amdt 1.2; pars renum R6 LA

### Definitions—div 2.2.2

s 42 def *found guilty* ins [A2023-30](#) s 7  
def *non-conviction order* om [A2023-30](#) s 8

### Entitlement limited—single driving offence

s 44 am [A2023-30](#) s 9; ss renum R5 LA

### No entitlement—multiple driving offences

s 45 am [A2023-30](#) s 10

### No entitlement—serious offences

s 48 am [A2020-42](#) s 131, s 132; [A2022-5](#) amdt 1.3, amdt 1.4; [A2023-30](#) s 11, s 12; ss, pars renum R5 LA; [A2024-20](#) amdt 1.3; pars renum R6 LA

### Entitlement limited—workers compensation claimant

s 50 sub [A2023-30](#) s 13

### When entitlement to certain benefits ends

s 51 am [A2023-30](#) s 14

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

s 54 am [A2023-30](#) s 15

### Application for defined benefits—authority to disclose personal health information

s 57 am [A2023-30](#) s 16

### Meaning of *allowable expenses—ch 2*

s 61 sub [A2019-42](#) amdt 3.78

## Endnotes

4 Amendment history

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**Dispute about liability for application**

s 70 am [A2023-30](#) s 17

**Application for defined benefits—notification of claim under workers compensation scheme**

s 73 sub [A2023-30](#) s 18

**Meaning of *gross income*—pt 2.4**

s 76 am [A2019-42](#) amdts 1.32-1.34

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

s 79 am [A2019-42](#) amdt 3.79

**Meaning of *pre-injury weekly income*—ongoing employee or fixed term contractor**

s 81 am [A2019-42](#) amdt 3.80, amdt 3.81

**Meaning of *pre-injury weekly income*—self-employed person**

s 82 am [A2019-42](#) amdt 3.82

**Meaning of *pre-injury weekly income*—person receiving workers compensation**

s 84 am [A2019-42](#) amdt 3.83

**Meaning of *AWE adjusted*—div 2.4.3**

s 94 am [A2023-30](#) s 19

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

s 96 am [A2019-42](#) amdts 1.35-1.37

**Adjustment of pre-injury income**

s 95 am [A2025-29](#) amdt 4.129

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

s 97 am [A2019-42](#) amdt 1.38, amdt 1.39

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

s 107 am [A2023-30](#) s 20

**Who is entitled to treatment and care benefits?**

s 112 am [A2023-30](#) s 21

**Assessment of injured person's injuries**

s 121 am [A2023-30](#) s 22, s 23

**Recovery plan—suspension of benefits**

s 124A ins [A2023-30](#) s 24

**Who is entitled to quality of life benefits?**

s 132 am [A2023-30](#) s 25

**Quality of life benefits application**

s 137 am [A2023-30](#) ss 26-28

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

s 141 am [A2023-30](#) s 29, s 30

**Meaning of *private medical examiner*—div 2.6.3**

s 145 am [A2019-42](#) amdt 1.40

**WPI assessment guidelines**

s 146 am [A2025-29](#) amdt 4.129

**WPI assessment—multiple body systems affected**

s 151 am [A2019-42](#) amdt 3.84; [A2023-30](#) s 31, s 32

**WPI less than 5%—insurer may make offer**

s 154 hdg sub [A2023-30](#) s 33

s 154 am [A2023-30](#) ss 34-36

**WPI 5% to 9%—insurer must make offer**

s 155 hdg sub [A2023-30](#) s 37

s 155 am [A2019-42](#) amdt 3.85; ss renum R1 LA

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

s 156 am [A2019-42](#) amdt 3.86; ss renum R1 LA

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

s 157 am [A2019-42](#) amdt 3.87; ss renum R1 LA; [A2023-30](#) s 38, s 39

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

s 159 am [A2023-30](#) s 40

**Final offer WPI less than 5%**

s 161 am [A2023-30](#) ss 41-43

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

s 162 am [A2023-30](#) s 44, s 45

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

s 163 am [A2023-30](#) s 46, s 47

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

s 164 am [A2023-30](#) s 48, s 49

**WPI assessment—relevant insurer to pay**

s 165 am [A2023-30](#) s 50

**Effect of certain WPI assessments on motor accident claim**

s 166 am [A2019-42](#) amdt 3.88; [A2023-30](#) s 51

**Meaning of *ACAT reviewable decision*—div 2.10.3**

s 192 hdg sub [A2019-42](#) amdt 3.89

s 192 am [A2019-42](#) amdt 3.90

## Endnotes

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

s 203 am [A2020-2](#) s 4

**Meaning of *independent assessor***

s 206 sub [A2023-30](#) s 52

**Meaning of *SOI assessment* and *SOI report***

s 207 am [A2023-30](#) ss 53-55

**SOI assessment guidelines**

s 208 am [A2023-30](#) s 56; [A2025-29](#) amdt 4.129

**SOI assessment 4 years 6 months after motor accident**

s 209 am [A2019-42](#) amdt 3.91; [A2023-30](#) s 57

**Arrangement of SOI assessment**

s 210 am [A2023-30](#) s 58

**SOI assessment—provision of information**

s 211 am [A2023-30](#) s 59

**SOI report to be prepared**

s 212 am [A2023-30](#) s 59

**SOI report—injury has significant occupational impact**

s 213 am [A2023-30](#) s 60, s 61

**SOI report—no significant occupational impact—ACAT review**

s 215 am [A2023-30](#) s 62

**ACAT review—decision**

s 218 am [A2023-30](#) s 63, s 64; ss renum R5 LA

**Future treatment payment—assessment and calculation**

s 223 am [A2023-30](#) s 65, s 66

**Motor accident claim—notification of claim made under workers compensation scheme**

s 238 sub [A2023-30](#) s 67

**Award of damages—requirements**

s 239 am [A2023-30](#) ss 68-71

**Application—pt 5.3**

s 240 am [A2023-30](#) s 72, s 73

**WPI assessment—application and assessment**

s 241 am [A2019-42](#) amdt 3.92; pars renum R1 LA; [A2023-30](#) ss 74-78; pars renum R5 LA

**Court orders in favour of claimant**

s 282 am [A2019-42](#) amdt 3.93

**Legal costs and fees payable by claimants and insurers**

s 284 am [A2020-2](#) s 5

**Offence—use uninsured motor vehicle on road or road related area**s 289 am [A2019-21](#) s 6**Establishment of nominal defendant fund**s 330 am [A2023-30](#) s 79**MAI insurer licence—application**s 362 am [A2025-29](#) amdt 4.129**Compliance with certain provisions**s 365 am [A2023-30](#) s 80**Compliance with directions and remediation plans**s 366A ins [A2023-30](#) s 81**Suspended insurer selected after suspension**s 389 am [A2023-30](#) s 82, s 83**MAI commission may choose occupational discipline instead of prosecution**s 391 am [A2023-30](#) s 84**Occupational discipline orders**s 394 am [A2023-30](#) s 85**Financial penalties**pt 7.6A hdg ins [A2023-30](#) s 86**Definitions—pt 7.6A**

s 394A ins [A2023-30](#) s 86  
 def *financial penalty notice* ins [A2023-30](#) s 86  
 def *ground for financial penalty* ins [A2023-30](#) s 86  
 def *minor contravention* ins [A2023-30](#) s 86  
 def *serious contravention* ins [A2023-30](#) s 86

**Meaning of ground for financial penalty—pt 7.6A**s 394B ins [A2023-30](#) s 86**Notice of proposed financial penalty**s 394C ins [A2023-30](#) s 86**Imposing financial penalties**s 394D ins [A2023-30](#) s 86**Mediation for serious contravention financial penalty notice**s 394E ins [A2023-30](#) s 86**Payment of financial penalty**s 394F ins [A2023-30](#) s 86**MAI insurer licences—directions to licensed insurers**pt 7.6B hdg ins [A2023-30](#) s 86**Directions to licensed insurers—general**s 394G ins [A2023-30](#) s 86

## Endnotes

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#### **Objection to direction**

s 394H ins [A2023-30](#) s 86

#### **Directions to licensed insurers—remediation plans**

s 394I ins [A2023-30](#) s 86

#### **Notice of reportable conduct**

s 412A ins [A2023-30](#) s 87

#### **Insolvent insurer declarations**

s 422 am [A2025-29](#) amdt 4.129

#### **How MAI commission is to make request**

s 464 am [A2023-30](#) s 88

#### **Internal review notices**

s 478 am [A2025-29](#) amdt 4.129

#### **Reviewable decision notices**

s 483 am [A2025-29](#) amdt 4.129

#### **Extraterritorial operation**

s 486 am [A2019-42](#) amdt 3.94; ss renum R1 LA

#### **MAI guidelines**

s 487 am [A2025-29](#) amdt 4.129

#### **Determination of fees**

s 489 am [A2025-29](#) amdt 4.129

#### **Determination of motor accident levy**

s 490 am [A2025-29](#) amdt 4.129

#### **Regulation-making power**

s 492 am [A2025-29](#) amdt 4.129

#### **Transitional**

ch 15 hdg exp 1 February 2025 (s 613)

#### **Definitions—ch 15**

s 600 exp 1 February 2025 (s 613)

#### **CTP premiums paid before commencement day**

s 601 exp 1 February 2025 (s 613)

#### **Motor accidents happening before commencement day**

s 602 exp 1 February 2025 (s 613)

#### **Existing claims under repealed Act**

s 603 exp 1 February 2025 (s 613)

#### **CTP policies under repealed Act**

s 604 exp 1 February 2025 (s 613)

**Licensed insurers**

s 605 exp 1 February 2025 (s 613)

**Former insurers**

s 606 exp 1 February 2025 (s 613)

**Powers of CTP regulator may be exercised by MAI commission**

s 607 exp 1 February 2025 (s 613)

**Information to be provided by licensed insurers under repealed Act**

s 608 exp 1 February 2025 (s 613)

**Powers of nominal defendant under repealed Act**

s 609 exp 1 February 2025 (s 613)

**Nominal defendant fund**

s 610 exp 1 February 2025 (s 613)

**Annual report**

s 611 exp 1 February 2025 (s 613)

**Transitional regulations**

s 612 exp 1 February 2025 (s 613)

**Expiry—ch 15**

s 613 exp 1 February 2025 (s 613)

**Repeals and consequential amendments**

ch 16 hdg om LA s 89 (3)

**Legislation amended—sch 3**

s 614 om LA s 89 (3)

**Legislation repealed**

s 615 om LA s 89 (3)

**Internally reviewable decisions**sch 1 pt 1.1 am [A2023-30](#) s 89; items renum R5 LA**ACAT reviewable decisions**sch 1 pt 1.2 am [A2023-30](#) s 90; items renum R5 LA**Consequential amendments**

sch 3 om LA s 89 (3)

**Dictionary**

dict

- def *financial penalty notice* ins [A2023-30](#) s 91
- def *ground for financial penalty* ins [A2023-30](#) s 91
- def *independent assessor* ins [A2023-30](#) s 92
- def *independent health assessor* om [A2023-30](#) s 93
- def *initial period* om [A2019-42](#) amdt 3.95
- def *minor contravention* ins [A2023-30](#) s 94
- def *non-conviction order* om [A2023-30](#) s 95
- def *private medical examiner* sub [A2019-42](#) amdt 3.96

## Endnotes

### 4 Amendment history

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def **road** sub [A2019-42](#) amdt 3.97  
def **serious contravention** ins [A2023-30](#) s 96

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Feb 2020	1 Feb 2020– 27 Aug 2020	<a href="#">A2019-42</a>	amendments by <a href="#">A2019-21</a> and <a href="#">A2019-42</a>
R1 (RI) 17 Feb 2020	1 Feb 2020– 27 Aug 2020	<a href="#">A2019-42</a>	reissued for retrospective amendments by <a href="#">A2020-2</a>
R2 28 Aug 2020	28 Aug 2020– 12 Apr 2022	<a href="#">A2020-42</a>	amendments by <a href="#">A2020-42</a>
R3 13 Apr 2022	13 Apr 2022– 10 May 2022	<a href="#">A2022-3</a>	amendments by <a href="#">A2022-3</a>
R4 11 May 2022	11 May 2022– 13 July 2023	<a href="#">A2022-5</a>	amendments by <a href="#">A2022-5</a>
R5 (RI) 12 Aug 2024	14 July 2023– 24 May 2024	<a href="#">A2023-30</a>	amendments by <a href="#">A2023-30</a> reissued for textual correction in s 394D, s 394E
R6 (RI) 25 May 2024	25 May 2024– 1 Feb 2025	<a href="#">A2024-20</a>	amendments by <a href="#">A2024-20</a> reissued for textual correction in s 394D, s 394E
R7 2 Feb 2025	2 Feb 2025– 25 Dec 2025	<a href="#">A2024-20</a>	expiry of transitional provisions (ch 15)

## Endnotes

6 Expired transitional or validating provisions

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### 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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