



Australian Capital Territory

# Motor Accident Injuries Amendment Act 2023

A2023-30

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Australian Capital Territory

# Motor Accident Injuries Amendment Act 2023

A2023-30

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An Act to amend the *Motor Accident Injuries Act 2019*

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

**1 Name of Act**

This Act is the *Motor Accident Injuries Amendment Act 2023*.

**2 Commencement**

- (1) This Act (other than section 12) commences on the 7th day after its notification day.

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

- (2) Section 12 commences on the later of—
- (a) the 7th day after this Act’s notification day; and
  - (b) the commencement of the *Road Safety Legislation Amendment Act 2023*, section 17.

**3 Legislation amended**

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

**4 Meaning of *AWE indexed* for amount  
Section 18 (1), definition of *AWE indexed*, paragraph (c)**

*substitute*

- (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.



**5 Duty to act in good faith—applicants, claimants and insurers  
Section 20 (5)**

*after*

court

*insert*

or the ACAT

**6 Delegation by MAI commission  
Section 30 (1) (a)**

*omit*

**7 Definitions—div 2.2.2  
Section 42, new definition of *found guilty***

*insert*

*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).

**8 Section 42, definition of *non-conviction order***

*omit*

**9 Entitlement limited—single driving offence  
Section 44 (5)**

*omit*

**10 No entitlement—multiple driving offences  
Section 45 (5)**

*substitute*

- (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.

**11 No entitlement—serious offences  
Section 48 (5)**

*omit*

**12 Section 48 (7), definition of *serious offence*,  
paragraph (c) (i)**

*substitute*

- (i) section 5A (Races, attempts on speed records, speed trials etc), if the offence is an aggravated offence; or
- (ia) section 7 (Furious, reckless or dangerous driving), if the offence is an aggravated offence; or

**13 Section 50**

*substitute*

**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.

**14**      **When entitlement to certain benefits ends**  
**Section 51 (2), new note**

*insert*

*Note 1A* See also divs 2.6.2 and 2.6.3, which provide for when a quality of life benefits application is finally dealt with.

**15**      **Meaning of *authority to disclose personal health information***  
**Section 54 (1), definition of *authority to disclose personal health information*, paragraph (b) (i) (E)**

*omit*

independent health assessor

*substitute*

independent assessor

**16**      **Application for defined benefits—authority to disclose personal health information**  
**Section 57 (5), definition of *information disclosure content*, paragraph (a) (i) (E)**

*omit*

independent health assessor

*substitute*

independent assessor

**17**      **Dispute about liability for application**  
**Section 70 (5) (b)**

*substitute*

(b) any defined benefits already paid;

**18 Section 73**

*substitute*

**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)).

## **19 Meaning of *AWE adjusted*—div 2.4.3 Section 94 (4), example**

*substitute*

### **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.

**20**      **Notice required to reduce or stop income replacement benefit payments**  
**Section 107 (2) (b)**

*substitute*

- (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);

**21**      **Who is entitled to treatment and care benefits?**  
**Section 112 (2) (e)**

*omit*

applicant

*substitute*

claimant

**22 Assessment of injured person's injuries  
Section 121 (3)**

*substitute*

- (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.

**23 Section 121 (4) (b)**

*after*

the benefits

*insert*

or payments

**24 New section 124A**

*insert*

**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.

**25 Who is entitled to quality of life benefits?  
Section 132 (2) (g)**

*omit*

applicant

*substitute*

claimant

**26 Quality of life benefits application  
Section 137 (1)**

*substitute*

- (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.

**27 Section 137 (3) (a)**

*substitute*

- (a) request that the relevant insurer refer the injured person to an authorised IME provider for a WPI assessment; and

**28 New section 137 (4)**

*insert*

- (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).

**29 WPI assessment 4 years 6 months after motor accident  
Section 141 (1) (a)**

*substitute*

- (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

**30 Section 141 (4) (a)**

*substitute*

- (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

**31 WPI assessment—multiple body systems affected  
Section 151 (d)**

*substitute*

- (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.

**32 New section 151 (2)**

*insert*

(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).

**33 Section 154 heading**

*substitute*

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

**34 Section 154 (2) (b)**

*omit*

, taking into account each WPI report

**35 Section 154 (4)**

*substitute*

(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).

**36 Section 154 (6)**

*before*

the report

*insert*

the offer or

**37 Section 155 heading**

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

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

**Section 157 (8), definition of *due date*, new paragraph (c)**

*insert*

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

**39 Section 157 (8), new definition of *complying notice of claim***

*insert*

*complying notice of claim*—see section 257.

**40 Second WPI report—original WPI may be affirmed or increased**  
**Section 159 (1) (a)**

*substitute*

- (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

**41 Final offer WPI less than 5%  
New section 161 (1) (b) (iii)**

*insert*

- (iii) if separate WPI reports assess an injured person’s physical injuries and psychological injuries—how the final offer WPI was determined.

**42 Section 161 (1) (c)**

*omit*

**43 Section 161 (2)**

*substitute*

- (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.

**44 Final offer WPI 5% to 9%  
New section 162 (1) (b) (iii)**

*insert*

- (iii) if separate WPI reports assess an injured person's physical injuries and psychological injuries—how the final offer WPI was determined; and

**45 Section 162 (5), definition of *stated time***

*substitute*

*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.

**46 Final offer WPI 10% or more—injured person not entitled to make motor accident claim  
New section 163 (2) (b) (iii)**

*insert*

- (iii) if separate WPI reports assess an injured person’s physical injuries and psychological injuries—how the final offer WPI was determined; and

**47 Section 163 (6), definition of *stated time***

*substitute*

*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.

**48 Final offer WPI 10% or more—injured person entitled to make motor accident claim  
New section 164 (2) (b) (iii)**

*insert*

- (iii) if separate WPI reports assess an injured person's physical injuries and psychological injuries—how the final offer WPI was determined; and

**49 Section 164 (6)**

*substitute*

(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.

**50 WPI assessment—relevant insurer to pay  
Section 165 (2) and (3)**

*substitute*

- (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).

**51 Effect of certain WPI assessments on motor accident claim  
Section 166 (b)**

*omit*

section 157 (2)

*substitute*

section 157 (3)

**52 Section 206**

*substitute*

**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.

**53 Meaning of *SOI assessment* and *SOI report*  
Section 207 (1), definition of *SOI assessment***

*omit*

a health assessment

*substitute*

an assessment

**54 Section 207 (1), definition of *SOI report***

*omit*

independent health assessor

*substitute*

independent assessor

**55 Section 207 (2)**

*omit*

---

**56 SOI assessment guidelines  
Section 208 (2) (a)**

*substitute*

- (a) state procedures and principles to be followed in making an SOI assessment; and

**57 SOI assessment 4 years 6 months after motor accident  
Section 209 (1)**

*substitute*

- (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.

**58 Arrangement of SOI assessment  
Section 210 (2) (a)**

*omit*

independent health assessors

*substitute*

independent assessors

**59 Sections 211 (1) and 212 (1)**

*omit*

independent health assessor

*substitute*

independent assessor

**60 SOI report—injury has significant occupational impact  
Section 213 (1)**

*substitute*

- (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.

**61 Section 213 (3)**

*omit*

making

*substitute*

reviving

**62 SOI report—no significant occupational impact—ACAT review  
New section 215 (3)**

*insert*

- (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).

**63 ACAT review—decision  
Section 218 (2) and (3)**

*omit*

independent health assessor

*substitute*

independent assessor

**64 New section 218 (4A)**

*insert*

- (4A) 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.

**65 Future treatment payment—assessment and calculation  
Section 223 (d)**

*before*

give the applicant

*insert*

within 2 months after the day the application is made,

**66 New section 223 (d) (iv) (C)**

*insert*

- (C) an amount agreed to under this section (including a negotiated amount) applies only to future medical treatment.

**67 Section 238**

*substitute*

**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.

**68 Award of damages—requirements**  
**Section 239 (1) (a)**

*substitute*

- (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

**69 Section 239 (1) (d)**

*omit*

application

*substitute*

claim

**70 Section 239 (3)**

*substitute*

- (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)).

**71 Section 239 (4), definition of *successful application for workers compensation benefits***

*substitute*

***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.

**72 Application—pt 5.3  
Section 240 (1) (a) and (2)**

*omit*

application

*substitute*

claim

**73 Section 240 (3), definition of *successful application for workers compensation benefits***

*substitute*

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

**74 WPI assessment—application and assessment  
Section 241 (3) (c)**

*substitute*

- (c) a reference in section 137 (1) (Quality of life benefits application) to an insurer accepting liability were a reference to receiving an acknowledgement notice; and

**75 Section 241 (3) (e)**

*omit*

**76 Section 241 (4) (a)**

*substitute*

- (a) section 154 (2) (b) (WPI less than 5%—insurer may make offer);
- (aa) section 155 (3) (b), (5) and (7) (WPI 5% to 9%—insurer must make offer);

**77 New section 241 (4) (ca)**

*insert*

- (ca) section 161 (1) (c) (Final offer WPI less than 5%);

**78 New section 241 (5)**

*insert*

- (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.

**79 Establishment of nominal defendant fund  
Section 330 (2) (a)**

*substitute*

- (a) any penalties or penalty interest imposed under this Act, other than a penalty imposed under part 7.6A (Financial penalties);

**80 Compliance with certain provisions  
New section 365 (h)**

*insert*

- (h) section 412A (Notice of reportable conduct).

**81 New section 366A**

*insert*

**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).

**82 Suspended insurer selected after suspension  
Section 389 (1)**

*omit*

road transport authority

*substitute*

MAI commissioner

**83 Section 389 (4)**

*omit*

must allocate

*substitute*

must not allocate

**84 MAI commission may choose occupational discipline instead of prosecution  
Section 391**

*omit*

MAI insurer

*substitute*

MAI commission

**85 Occupational discipline orders  
Section 394 (2), except note**

*substitute*

- (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.

**86 New parts 7.6A and 7.6B***insert***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 (1) (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 (2) 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.

## **87 New section 412A**

*insert*

### **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.

**88 How MAI commission is to make request  
Section 464 (3), definition of *certificate of correctness*,  
new paragraph (d)**

*before the note, insert*

- (d) an executive officer of the licensed insurer.

**89 Internally reviewable decisions  
Schedule 1, part 1.1, new item 20A**

*insert*

|     |          |   |
|-----|----------|---|
| 20A | 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 |
|-----|----------|---|

**90 ACAT reviewable decisions  
Schedule 1, part 1.2, new item 25A***insert*

|     |          |   |
|-----|----------|---|
| 25A | 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 |
|-----|----------|---|

**91 Dictionary, new definitions of *financial penalty notice* and *ground for financial penalty****insert*

*financial penalty notice*, for part 7.6A (Financial penalties)—see section 394D (3).

*ground for financial penalty*, for part 7.6A (Financial penalties)—see section 394B.

**92 Dictionary, new definition of *independent assessor****insert*

*independent assessor*—see section 206.

**93 Dictionary, definition of *independent health assessor****omit***94 Dictionary, new definition of *minor contravention****insert*

*minor contravention*, for part 7.6A (Financial penalties)—see section 394A.

**95 Dictionary, definition of *non-conviction order***

*omit*

**96 Dictionary, definition of *serious contravention***

*insert*

*serious contravention*, for part 7.6A (Financial penalties)—see section 394A.

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 9 February 2023.

**2 Notification**

Notified under the [Legislation Act](#) on 7 July 2023.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Motor Accident Injuries Amendment Bill 2023, which was passed by the Legislative Assembly on 28 June 2023.

Acting Clerk of the Legislative Assembly

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