

2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Motor Accident Injuries Bill 2019

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2019

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Motor Accident Injuries Bill 2019

A Bill for

An Act about motor accident injuries, and for other purposes

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

Chapter 1 Preliminary

Part 1.1 Preliminary

1 Name of Act

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

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

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

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

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

Section 7

- 1 (f) keep the costs of motor accident injury insurance at an
2 affordable level; and
- 3 (g) provide frameworks that allow competition in setting premiums
4 for motor accident injury insurance policies; and
- 5 (h) provide for the licensing and supervision of insurers providing
6 motor accident injury insurance; and
- 7 (i) establish and keep a register of motor accident claims to help the
8 administration of the statutory insurance scheme and the
9 detection of fraud; and
- 10 (j) support and promote the prevention of motor accidents and the
11 safe use of motor vehicles.

12 **7 Application of Act**

- 13 (1) This Act applies to the death or injury of a person that results from a
14 motor accident if the motor accident—
- 15 (a) happened in the ACT on or after the day this Act commenced;
16 and
- 17 (b) at least 1 motor vehicle involved in the motor accident had MAI
18 cover under this Act at the time of the motor accident.
- 19 (2) For subsection (1) (b), a motor vehicle involved in a motor accident
20 is taken to have had MAI cover under this Act at the time of the motor
21 accident if—
- 22 (a) an MAI policy was in force for the motor vehicle at that time; or
- 23 (b) at that time, the motor vehicle was owned by—
- 24 (i) the Territory or a territory authority; or
- 25 (ii) the Commonwealth or a Commonwealth authority; or

26 *Note* See s 285 for motor vehicles owned by the Territory, a territory
27 authority, the Commonwealth or a Commonwealth authority.

- 1 (c) a compulsory third-party insurance policy was in force for the
2 motor vehicle under the law of a jurisdiction other than the ACT
3 at that time; or
- 4 (d) there is a right of action against the nominal defendant under this
5 Act in relation to the motor accident; or
- 6 (e) there would be a right of action against the nominal defendant
7 under this Act in relation to the motor accident if the cause of
8 the motor accident was the fault of the responsible person for, or
9 the driver of, the motor vehicle in the use or operation of the
10 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

- 1 (ii) someone or something collides with the motor vehicle; or
- 2 (iii) someone takes action to avoid colliding with the motor
- 3 vehicle; or
- 4 (iv) the motor vehicle runs out of control.

5 **11 Meaning of *use* motor vehicle**

6 (1) In this Act:

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

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

17 (2) Also, if a trailer towed by a motor vehicle becomes detached from the

18 vehicle and runs out of control, the *use* of the vehicle is taken to

19 include the trailer while it is running out of control.

20 **12 Meaning of *permanent impairment***

21 In this Act:

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

23 damage or malfunction of, any of the following:

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

- 1 **13 Meaning of *whole person impairment* (or *WPI*)**
- 2 In this Act:
- 3 *whole person impairment* (or *WPI*), of a person, means the degree of
- 4 permanent impairment of the whole person resulting from personal
- 5 injury sustained as a result of a motor accident, expressed as a whole
- 6 number percentage.
- 7 **14 Meaning of *independent medical examiner* (or *IME*)**
- 8 In this Act:
- 9 *independent medical examiner* (or *IME*) means a doctor who, under
- 10 an arrangement with an authorised IME provider, conducts—
- 11 (a) medical examinations for WPI assessments; and
- 12 (b) SOI assessments.
- 13 **15 Authorisation of IME providers**
- 14 (1) The MAI commission must authorise entities to be IME providers for
- 15 this Act (*authorised IME providers*).
- 16 (2) The MAI commission must not authorise an entity to be an
- 17 IME provider unless satisfied that the entity—
- 18 (a) has expertise in arranging—
- 19 (i) medical examinations for WPI assessments; and
- 20 (ii) SOI assessments; and
- 21 (b) has entered into a deed of services with the MAI commission;
- 22 and
- 23 (c) otherwise meets the criteria set out in the MAI guidelines for
- 24 authorising an entity to be an IME provider.
- 25 (3) The MAI guidelines may make provision for the following:
- 26 (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 whole \$10.

- 1 (2) However, if an amount to be AWE indexed would, if adjusted in line
2 with the adjustment (the *negative adjustment*) to the AWE, become
3 smaller, the amount is not reduced in line with the negative
4 adjustment.
- 5 (3) An amount that, in accordance with subsection (2), is not reduced
6 may be increased in line with an adjustment in the AWE that would
7 increase the amount only to the extent that the increase, or part of the
8 increase, is not one that would cancel out the effect of the negative
9 adjustment.
- 10 (4) Subsection (3) does not apply to a negative adjustment once the effect
11 of the negative adjustment has been offset against an increase in line
12 with an adjustment in the AWE.

13 **19 Indexation of defined benefits and quality of life damages**

- 14 (1) The MAI commission must, on or before each indexation day for an
15 amount that is AWE indexed, declare—
 - 16 (a) the AWE indexation factor for the amount; and
 - 17 (b) the amount as indexed; and
 - 18 (c) that the amount as indexed applies on the indexation day for the
19 amount.
- 20 (2) A declaration under subsection (1) is a notifiable instrument.
21 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 22 (3) In this section:
23 *AWE indexation factor*, for an amount, means the factor worked out
24 for the amount in the way prescribed by regulation.
25 *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
 - (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;

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

- 1 (d) a duty to take all reasonable steps to minimise the loss caused
2 by the applicant's or claimant's personal injury, including—
- 3 (i) undertaking reasonable and necessary treatment and care,
4 rehabilitation and vocational training; and
- 5 (ii) applying for treatment and care benefits as soon as
6 practicable after the motor accident or after the applicant
7 or claimant becomes aware of the personal injury; and
- 8 (iii) starting or returning to work as soon as practicable after a
9 health practitioner certifies that the applicant or claimant is
10 fit for starting or returning to work.
- 11 (4) The duty of a licensed insurer to act in good faith in relation to an
12 application for defined benefits or a motor accident claim includes the
13 following:
- 14 (a) a duty to disclose, as soon as practicable, all information that an
15 applicant or claimant may reasonably need to understand the
16 process for applying for defined benefits or making a motor
17 accident claim;
- 18 (b) a duty to give an applicant information about the applicant's
19 entitlements to defined benefits;
- 20 (c) a duty to keep an applicant or claimant informed at all times
21 about the status or progress of their application or claim;
- 22 (d) a duty to give the applicant or claimant written reasons for all
23 decisions having a material effect on an entitlement to defined
24 benefits or damages;
- 25 (e) a duty to tell an applicant or claimant about the applicant's or
26 claimant's right to review of a decision of the insurer;
- 27 (f) a duty to promptly pay any defined benefits to which a person is
28 entitled or damages agreed to in settlement of the motor accident
29 claim or ordered by a court.

(5) If a court 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 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 327).

(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;

- 1 (b) to ensure that premiums fully fund the present and likely future
2 liability under this Act but are not excessive;
- 3 (c) to keep the insurance industry deed under review and make
4 recommendations for its amendment;
- 5 (d) to monitor insurers' compliance with their obligations under this
6 Act;
- 7 *Note* A reference to an Act includes a reference to the statutory
8 instruments made or in force under the Act, including any
9 regulation (see [Legislation Act](#), s 104).
- 10 (e) to approve or reject MAI premiums and make guidelines in
11 relation to premiums under this Act;
- 12 (f) to provide, or facilitate or regulate the provision of, information
13 to the public about the motor accident injuries insurance scheme,
14 causes of motor vehicle accidents, the insurance business,
15 licensed insurers, defined benefits (including applications for
16 defined benefits) and motor accident claims, and dispute
17 resolution;
- 18 (g) to manage complaints about the market practices of licensed
19 insurers and the handling practices of insurers in relation to
20 applications for defined benefits and motor accident claims;
- 21 (h) to issue, monitor and review the MAI guidelines and other
22 statutory instruments under this Act;
- 23 (i) to monitor, and advise the Minister about, the administration,
24 efficiency and effectiveness of the motor accident injuries
25 insurance scheme;
- 26 (j) to investigate any issue affecting the viability of the motor
27 accident injuries insurance scheme;
- 28 (k) to support and promote safety in the use of motor vehicles and
29 the prevention of motor accidents;

1 (l) to develop and coordinate strategies to identify and combat
2 fraud in or related to applications for defined benefits and motor
3 accident claims;

4 (m) to keep the motor accident injuries insurance scheme generally
5 under review and make recommendations for its amendment;

6 (n) any other function given to the MAI commission under this Act
7 or another territory law.

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

11 **26 Functions of MAI commissioner**

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

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

17 **27 Meaning of staff of the MAI commission**

18 In this Act:

19 *staff of the MAI commission* means—

20 (a) staff employed under section 28; and

21 (b) consultants and contractors engaged under section 29.

22 **28 MAI commission employed staff**

23 (1) The MAI commission may employ staff on behalf of the Territory.

24 (2) The staff must be employed under the [Public Sector Management](#)
25 [Act 1994](#).

26 *Note* The [Public Sector Management Act 1994](#), div 8.2 applies to the
27 MAI commission in relation to the employment of staff (see [Public](#)
28 [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) the MAI commissioner; or
 - (b) a member of staff of the MAI commission; or
 - (c) a public employee; or
 - (d) 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) (c) or (d) 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

1 (c) a person prescribed by regulation.

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

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

5 **32 MAI commission arrangements for staff and facilities**

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

8 *Note* The head of service may delegate powers in relation to the management
9 of public servants to a public servant or another person (see [Public Sector](#)
10 [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 251.

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

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

- 5 (2) In this section:

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

7 (a) between licensed insurers and the nominal defendant for
8 determining the relevant insurer for a motor accident; and

9 (b) approved, in writing, by the MAI commission.

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

11 (a) for an insured motor vehicle—the MAI insurer for the motor
12 vehicle; or

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

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

16 (c) for an uninsured motor vehicle—the nominal defendant; or

17 (d) for an unidentified motor vehicle—the nominal defendant.

18 **35 Meaning of *full and satisfactory explanation* by**
19 **applicant—ch 2**

- 20 (1) For this chapter, a ***full and satisfactory explanation*** by an applicant
21 for a delay in applying for defined benefits is a full account of the
22 conduct, including the actions, knowledge and belief of the applicant,
23 from the date of the motor accident until the date of providing the
24 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).

1 **37** **Meaning of *private medical examiner*—ch 2**

2 In this chapter:

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

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

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.

- 1 (3) However, if the insurance policy of an interstate relevant insurer does
2 not provide benefits, on a no-fault basis, to an at-fault driver who
3 sustains a personal injury in the motor accident—
 - 4 (a) the nominal defendant is the relevant insurer for the motor
5 accident for an application for defined benefits made by the
6 at-fault driver; and
 - 7 (b) the interstate relevant insurer must give the nominal defendant
8 any information it has in relation to the at-fault driver's
9 application for defined benefits.
- 10 (4) If the interstate relevant insurer enters into an arrangement with the
11 nominal defendant under subsection (2) (c), the nominal defendant—
 - 12 (a) has complete authority to make decisions for the management
13 of the payment of the defined benefits; and
 - 14 (b) may request an advance from the nominal defendant fund to
15 fund the payment of the defined benefits; and
 - 16 (c) may charge the interstate relevant insurer a fee for managing the
17 payment of the defined benefits.
- 18 (5) The nominal defendant may recover as a debt from the interstate
19 relevant insurer any costs reasonably incurred by the nominal
20 defendant in relation to the management of the payment of the defined
21 benefits.
- 22 (6) The nominal defendant may bring a proceeding for recovery of costs
23 under this section before the costs have been actually paid in full and,
24 in that case, a judgment for recovery of costs may provide that, as far
25 as the costs have not been actually paid, the right to recover the costs
26 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 327).

(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 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

- 1 (B) a copy of a certificate or statement under that [Act](#),
2 section 41 (1) (a), (c) or (g) (Evidentiary certificate—
3 alcohol-related tests) or section 41AB (Evidentiary
4 certificate—analysis of oral fluid sample) that is
5 admitted in evidence in a proceeding in relation to the
6 offence shows that the concentration of alcohol in the
7 person’s blood or breath was equivalent to level 3; or
- 8 (iii) section 24A (Driver etc intoxicated), if a copy of a
9 certificate or statement under that [Act](#), section 41 (1) (a),
10 (c) or (g) or section 41AB that is admitted in evidence in a
11 proceeding in relation to the offence shows that the
12 concentration of alcohol in the person’s blood or breath
13 was equivalent to level 3;
- 14 (d) the [Road Transport \(Safety and Traffic Management\)](#)
15 [Act 1999](#)—
- 16 (i) section 5A (Races, attempts on speed records, speed trials
17 etc); or
- 18 (ii) section 5B (Improper use of motor vehicle); or
- 19 (iii) section 5C (Failing to stop motor vehicle for police); or
- 20 (iv) section 6 (1) (a) or (b) (Negligent driving); or
- 21 (v) section 7 (Furious, reckless or dangerous driving);
- 22 (e) a provision prescribed by regulation.

23 **42 Definitions—div 2.2.2**

24 In this division:

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

27 *non-conviction order*—see the [Crimes \(Sentencing\) Act 2005](#),
28 dictionary.

29 *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.

- 1 **44 Entitlement limited—single driving offence**
- 2 (1) This section applies if a person injured in a motor accident is charged
- 3 with a driving offence in relation to the motor accident.
- 4 (2) If the injured person has applied for quality of life benefits, the
- 5 application is suspended for the period the charge is outstanding.
- 6 (3) Any entitlement to income replacement benefits or quality of life
- 7 benefits by the injured person ends—
- 8 (a) if the injured person is convicted or found guilty of the driving
- 9 offence—
- 10 (i) if the injured person does not appeal the conviction or
- 11 finding of guilt—at the end of the appeal period for the
- 12 offence; or
- 13 (ii) if the injured person appeals the conviction or finding of
- 14 guilt—when the appeal is finalised and the conviction or
- 15 finding of guilt is upheld; or
- 16 (b) if the injured person is entitled to immunity under the
- 17 *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the
- 18 MAI commission makes a declaration under subsection (4)—
- 19 (i) if the injured person does not apply for review of the MAI
- 20 commission’s decision to make the declaration—at the end
- 21 of the time allowed under section 476 (3) to apply for
- 22 review; or
- 23 (ii) if the injured person applies for review of the MAI
- 24 commission’s decision to make the declaration—when the
- 25 review and any subsequent review or appeal of the review
- 26 decision is finalised, and the decision to make the
- 27 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 1).

- (5) Subsection (3) does not apply if the court makes a non-conviction order for the injured person in relation to the driving offence.

- (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.

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

- 1 (b) if the injured person is entitled to immunity under the
 2 *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the
 3 MAI commission makes a declaration under subsection (4)—
- 4 (i) if the injured person does not apply for review of the MAI
 5 commission's decision to make the declaration—at the end
 6 of the time allowed under section 476 (3) to apply for
 7 review; or
- 8 (ii) if the injured person applies for review of the MAI
 9 commission's decision to make the declaration—when the
 10 review and any subsequent review or appeal of the review
 11 decision is finalised, and the decision to make the
 12 declaration is upheld.
- 13 (4) The MAI commission may, on request by the relevant insurer for the
 14 motor accident, declare that, having taken into consideration the
 15 police accident report for the motor accident and any other evidence
 16 provided by the police, the injured person is not entitled to the defined
 17 benefits mentioned in subsection (3).
- 18 *Note* A decision to declare that an injured person is not entitled to the defined
 19 benefits mentioned in s (3) is a reviewable decision (see ch 10 and sch 1).
- 20 (5) Subsection (3) does not apply if the court makes a non-conviction
 21 order for the injured person in relation to 1 or more of the driving
 22 offences.
- 23 (6) The relevant insurer is not entitled to recover any amount of defined
 24 benefits paid to the injured person before the day the injured person's
 25 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.

- 1 (3) Any entitlement to income replacement benefits, treatment and care
- 2 benefits or quality of life benefits by the injured person ends—
- 3 (a) if the injured person is convicted or found guilty of the serious
- 4 offence—
- 5 (i) if the injured person does not appeal the conviction or
- 6 finding of guilt—at the end of the appeal period for the
- 7 offence; or
- 8 (ii) if the injured person appeals the conviction or finding of
- 9 guilt—when the appeal is finalised and the conviction or
- 10 finding of guilt is upheld; or
- 11 (b) if the injured person is entitled to immunity under the
- 12 *Diplomatic Privileges and Immunities Act 1967* (Cwlth) and the
- 13 MAI commission makes a declaration under subsection (4)—
- 14 (i) if the injured person does not apply for review of the MAI
- 15 commission’s decision to make the declaration—at the end
- 16 of the time allowed under section 476 (3) to apply for
- 17 review; or
- 18 (ii) if the injured person applies for review of the MAI
- 19 commission’s decision to make the declaration—when the
- 20 review and any subsequent review or appeal of the review
- 21 decision is finalised, and the decision to make the
- 22 declaration is upheld.
- 23 (4) The MAI commission may, on request by the relevant insurer for the
- 24 motor accident, declare that, having taken into consideration the
- 25 police accident report for the motor accident and any other evidence
- 26 provided by the police, the injured person is not entitled to the defined
- 27 benefits mentioned in subsection (3).
- 28 *Note* A decision to declare that an injured person is not entitled to the defined
- 29 benefits mentioned in s (3) is a reviewable decision (see ch 10 and sch 1).
- 30 (5) Subsection (3) does not apply if the court makes a non-conviction
- 31 order for the injured person in relation to the serious offence.

-
- 1 (6) The relevant insurer is not entitled to recover any amount of defined
2 benefits paid to the injured person before the day the injured person's
3 entitlement to defined benefits ends.
- 4 (7) In this section:
- 5 *serious offence* means an offence against any of the following
6 provisions:
- 7 (a) the *Crimes Act 1900*—
- 8 (i) section 12 (Murder); or
- 9 (ii) section 15 (Manslaughter); or
- 10 (iii) section 19 (Intentionally inflicting grievous bodily harm);
11 or
- 12 (iv) section 21 (Wounding); or
- 13 (v) section 29 (Culpable driving of motor vehicle);
- 14 (b) the *Road Transport (Alcohol and Drugs) Act 1977*—
- 15 (i) section 19 (Prescribed concentration of alcohol in blood or
16 breath), if the convicting court finds that the concentration
17 of alcohol in the person's blood or breath was at level 4; or
- 18 (ii) section 22 (Refusing to provide breath sample); or
- 19 (iii) section 22A (Refusing to provide oral fluid sample); or
- 20 (iv) section 22B (Failing to stay for screening test); or
- 21 (v) section 22C (Refusing to undergo screening test); or
- 22 (vi) section 23 (Refusing blood test etc); or
- 23 (vii) section 24 (Driving under the influence of intoxicating
24 liquor or a drug), if—
- 25 (A) the offence relates to driving under the influence of
26 intoxicating liquor; and

- 1 (B) a copy of a certificate or statement under that [Act](#),
2 section 41 (1) (a), (c) or (g) (Evidentiary certificate—
3 alcohol-related tests) or section 41AB (Evidentiary
4 certificate—analysis of oral fluid sample) that is
5 admitted in evidence in a proceeding in relation to the
6 offence shows that the concentration of alcohol in the
7 person’s blood or breath was equivalent to level 4; or
 - 8 (viii) section 24, if the offence relates to driving under the
9 influence of a drug; or
 - 10 (ix) section 24A (Driver etc intoxicated), if a copy of a
11 certificate or statement under that [Act](#), section 41 (1) (a),
12 (c) or (g) or section 41AB that is admitted in evidence in a
13 proceeding in relation to the offence shows that the
14 concentration of alcohol in the person’s blood or breath
15 was equivalent to level 4;
 - 16 (c) the *Road Transport (Safety and Traffic Management)*
17 *Act 1999*—
 - 18 (i) section 7A (Aggravated offence—furious, reckless or
19 dangerous driving); or
 - 20 (ii) section 8 (Menacing driving);
 - 21 (d) a provision prescribed by regulation.
- 22 **49 No entitlement—act of terrorism**
- 23 (1) If the MAI commission notifies, in writing, the relevant insurer for a
24 motor accident that the motor accident was caused by, or attributable
25 to, an act of terrorism—
 - 26 (a) a person injured in the motor accident is not entitled to defined
27 benefits in relation to the injury; and

- 1 (b) the personal representative, or the person who paid or is liable
2 to pay the funeral expenses, of a person who died as a result of
3 the motor accident is not entitled to funeral benefits in relation
4 to the person's death; and
- 5 (c) the dependants of a person who died as a result of the motor
6 accident are not entitled to quality of life benefits or death
7 benefits in relation to the person's death.
- 8 (2) In this section:
- 9 *act of terrorism*—
- 10 (a) means an act that—
- 11 (i) causes or threatens to cause death, personal injury or
12 damage to property; and
- 13 (ii) is designed to influence a government or intimidate the
14 public or a section of the public; and
- 15 (iii) is carried out for the purpose of advancing a political,
16 religious, ideological, ethnic or similar cause; but
- 17 (b) does not include a lawful activity or industrial action.

18 **50 Entitlement limited—workers compensation applicant**

- 19 (1) This section applies if a person—
- 20 (a) is injured in a motor accident; and
- 21 (b) is entitled to defined benefits; and
- 22 (c) applies for compensation under a workers compensation scheme
23 in relation to the injury.
- 24 (2) If the person's application for workers compensation is accepted, the
25 person's entitlement to the following defined benefits ends on the day
26 the application is accepted by the insurer for the application:
- 27 (a) income replacement benefits;

- 1 (b) treatment and care benefits;
2 (c) quality of life benefits.
3 (3) However, the person's entitlement to defined benefits is revived if the
4 person's application for workers compensation is—
5 (a) withdrawn within 13 weeks after the date of the motor accident;
6 or
7 (b) denied.
8 (4) Defined benefits are not payable in relation to any benefits paid and
9 not recovered under the workers compensation scheme before the
10 application was withdrawn or denied.

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

12 **51 When entitlement to certain benefits ends**

- 13 (1) This section applies if a person injured in a motor accident is entitled
14 to—
15 (a) income replacement benefits; or
16 (b) treatment and care benefits.
17 (2) The person's entitlement ends on the first occurring of the following:
18 (a) the person dies;
19 (b) for income replacement benefits—
20 (i) the person reaches the pension age plus 2 years; or
21 (ii) if, on the date of the motor accident, the person has reached
22 the pension age and is in paid work—2 years after the date
23 of the motor accident;
24 (c) a motor accident claim for the motor accident is finalised;
25 (d) the person obtains a judgment or an agreement for damages in
26 relation to the person's injury independently of this Act;

1 (e) 5 years after the date of the motor accident.

2 *Note 1* See also s 181, which provides that a foreign national's entitlement to
3 defined benefits ends in certain circumstances.

4 *Note 2* *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

-
- 1 (c) the information that must be given with a receipt notice for an
2 application for treatment and care benefits and income
3 replacement benefits, including information about allowable
4 expenses for treatment and care;
- 5 *Note* See s 60 for when a receipt notice is given.
- 6 (d) the information that must be given in relation to an application
7 for treatment and care benefits and income replacement benefits
8 for which the relevant insurer has accepted liability, including
9 the following:
- 10 (i) the procedure for obtaining approval for treatment and
11 care;
- 12 (ii) the procedure for reimbursement of treatment and care
13 expenses, domestic services expenses and travel expenses;
- 14 (iii) the evidence the applicant must give the insurer about the
15 applicant's fitness for work, how often the evidence must
16 be given to the insurer and how the applicant must tell the
17 insurer about any change in the applicant's work
18 arrangements;
- 19 (e) information to be given to a person injured in a motor accident
20 to help the person decide whether the person is eligible for a
21 quality of life payment, including information about the
22 following:
- 23 (i) the WPI needed to be eligible for a quality of life benefit
24 or to make a motor accident claim;
- 25 (ii) the procedure for applying for a WPI assessment;
- 26 (iii) the time limits and conditions applying to the making of an
27 application for quality of life benefits;

- 1 (f) information to be given to a person who is taken, under
2 section 133 (WPI taken to be 10% in certain circumstances), to
3 have a WPI of 10%, including the following information:
- 4 (i) the time limits for making a motor accident claim;
- 5 (ii) seeking legal advice about whether to make a motor
6 accident claim;
- 7 (g) information to be given to a person who receives a WPI report
8 under section 155 (WPI 10% or more—injured person entitled
9 to make motor accident claim) or section 162 (Final offer
10 WPI 10% or more—injured person entitled to make motor
11 accident claim) stating that the person's WPI is at least 10%,
12 including the following information:
- 13 (i) the consequences of accepting a quality of life benefit;
- 14 (ii) the time limits for making a motor accident claim;
- 15 (iii) seeking legal advice about whether to make a motor
16 accident claim;
- 17 (h) information to be given to a person injured in a motor accident
18 who receives a notice under section 210 (SOI report—injury has
19 significant occupational impact) stating that the person is
20 entitled to make a motor accident claim in relation to the motor
21 accident, including the following information:
- 22 (i) the time limits for making a motor accident claim;
- 23 (ii) seeking legal advice about whether to make a motor
24 accident claim.
- 25 (3) The MAI guidelines may make provision for when and how a
26 relevant insurer for a motor accident must give the information
27 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 142.

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

-
- 1 (ii) to a stated insurer; and
- 2 (iii) for processing the injured person's application for defined
- 3 benefits or assessing or otherwise managing the injured
- 4 person's entitlement to defined benefits; and
- 5 (c) stating that the injured person consents to the disclosure of
- 6 personal health information about the injured person—
- 7 (i) by the stated insurer; and
- 8 (ii) to any of the people mentioned in paragraph (b) (i); and
- 9 (iii) for processing the injured person's application for defined
- 10 benefits or assessing or otherwise managing the injured
- 11 person's entitlement to defined benefits; and
- 12 (d) stating that the consents operate until the injured person either—
- 13 (i) revokes the authority by notice, in writing, to the stated
- 14 insurer; or
- 15 (ii) is no longer entitled to defined benefits in relation to the
- 16 motor accident.
- 17 (2) In this section:
- 18 *treating health service provider*—see the *Health Records (Privacy*
- 19 *and Access) Act 1997*, dictionary.
- 20 *treating team*—see the *Health Records (Privacy and Access)*
- 21 *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 166).

- (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 175).

- (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.

- 1 **56 Application for defined benefits—contents**
- 2 (1) An application for defined benefits must be made in accordance with
- 3 the MAI guidelines.
- 4 *Note* The MAI guidelines are made under s 484.
- 5 (2) The MAI guidelines may make provision for applications, including
- 6 provision for—
- 7 (a) making an application; and
- 8 (b) to whom an application must be given; and
- 9 (c) the form and contents of an application; and
- 10 (d) the information that must be included with an application; and
- 11 (e) the treatment expenses incurred by an applicant before making
- 12 an application for which the applicant may be reimbursed.
- 13 (3) The MAI guidelines may require the applicant to do 1 or more of the
- 14 following:
- 15 (a) provide a police accident notification number or police accident
- 16 report for the motor accident with the application;
- 17 (b) provide a medical certificate with the application;
- 18 (c) authorise the relevant insurer to obtain information and
- 19 documents relevant to the application from stated people;
- 20 (d) authorise the relevant insurer to provide the information and
- 21 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;

- 1 (C) a health practitioner who conducts an assessment of
2 the injured person's needs for treatment and care,
3 including a medical or other examination;
- 4 (D) an authorised IME provider and an independent
5 medical examiner who conducts a WPI assessment of
6 the person;
- 7 *Note* **WPI assessment**—see s 142.
- 8 (E) an authorised IME provider and an independent
9 medical examiner or independent health assessor who
10 conducts an SOI assessment of the person; and
- 11 (ii) to a stated insurer; and
- 12 (iii) for processing the injured person's application for defined
13 benefits or assessing or otherwise managing the injured
14 person's entitlement to defined benefits;
- 15 (b) a consent, signed by or on behalf of the injured person, to the
16 disclosure of personal health information about the injured
17 person—
- 18 (i) by the stated insurer; and
- 19 (ii) to any of the people mentioned in paragraph (a) (i); and
- 20 (iii) for processing the injured person's application for defined
21 benefits or assessing or otherwise managing the injured
22 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 175).

- (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 166).

1 **59 Application for defined benefits—must be made within**
2 **application period**

- 3 (1) An application for defined benefits in relation to a motor accident
4 must be made within the application period.
- 5 (2) The relevant insurer for a motor accident may accept an application
6 for defined benefits made after the application period
7 (a *late application*) if—
- 8 (a) the application is made—
- 9 (i) for income replacement benefits or treatment and care
10 benefits, or both—within 2 years after the date of the motor
11 accident; or
- 12 (ii) for death benefits and funeral benefits—within 1 year after
13 the date of the injured person's death; and
- 14 (b) the relevant insurer is satisfied the applicant has a full and
15 satisfactory explanation for the late application.
- 16 *Note Full and satisfactory explanation—see s 35.*
- 17 (3) The relevant insurer—
- 18 (a) may ask the applicant for additional information in relation to
19 the application; and
- 20 (b) need not make a decision about accepting the application until
21 the insurer receives the additional information.
- 22 (4) However, if the relevant insurer does not respond to the applicant
23 about the applicant's explanation for the late application within
24 28 days after receiving it, the relevant insurer is taken to have
25 accepted the application.
- 26 (5) The relevant insurer need not accept an application if the application
27 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* and *initial period*—ch 2

In this chapter:

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

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

- (a) beginning on the date of the receipt notice; 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; or
 - (iii) if there is a dispute between insurers about liability under section 72—4 weeks after the date of the receipt notice.

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;

- 1 (b) if the relevant insurer rejects liability for the defined benefits
2 because the application was based on false or misleading
3 information, the insurer may recover the amount of allowable
4 expenses paid as a debt from the applicant.

5 **Division 2.3.4 Accepting or rejecting liability for**
6 **defined benefits**

7 **65 Relevant insurer must decide liability for defined benefits**

- 8 (1) If a relevant insurer for a motor accident receives an application for
9 defined benefits, the relevant insurer must, within 28 days after the
10 date of the receipt notice given to the applicant—
11 (a) decide whether the relevant insurer accepts or rejects liability
12 for the defined benefits; and
13 (b) give the applicant a notice about the decision.
14 (2) If the relevant insurer accepts liability for the defined benefits, the
15 relevant insurer must give the applicant a written notice (*a defined*
16 *benefits notice*)—
17 (a) stating that the insurer accepts liability for the defined benefits;
18 and
19 (b) including any information required under the MAI guidelines.
20 (3) If the relevant insurer does not accept liability for the defined benefits,
21 the relevant insurer must give the applicant either—
22 (a) a written notice (*a transfer notice*) stating—
23 (i) that the insurer does not accept liability for the defined
24 benefits because another insurer is liable; and
25 (ii) that the application has been given to another insurer; and
26 (iii) the name and contact details of the other insurer; or

27 *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 173).

(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.

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

7 **Division 2.3.5 Transfer of application to another**
8 **insurer**

9 **69 Transferring application to another insurer**

- 10 (1) This section applies if the relevant insurer for a motor accident (the
11 *first insurer*) intends to reject liability for defined benefits because
12 another insurer (the *second insurer*) appears to be liable for the
13 application.
- 14 (2) Before the first insurer gives the applicant a transfer notice under
15 section 65 (Relevant insurer must decide liability for defined
16 benefits), the first insurer must give the second insurer the applicant's
17 application for defined benefits, and any information the applicant
18 gave the first insurer in relation to the application.
- 19 (3) The application is taken to have been given to the second insurer on
20 the date it was given to the first insurer.
- 21 (4) If, after assessing the application, the second insurer decides to accept
22 liability for the application, as soon as practicable, but not later than
23 28 days after the date of the receipt notice given to the applicant by
24 the first insurer—
- 25 (a) the first insurer must give the applicant the transfer notice; and
26 (b) the second insurer must tell the applicant—
- 27 (i) about the decision to accept liability for the application;
28 and

- 1 (ii) that the applicant must give the second insurer an authority
2 to disclose personal health information.

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

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

12 **70 Dispute about liability for application**

- 13 (1) This section applies if—
14 (a) the relevant insurer for a motor accident (the *first insurer*)
15 intends to reject liability for the application because another
16 insurer (the *second insurer*) appears to be the relevant insurer
17 for the motor accident; and
18 (b) the second insurer disputes its liability for the application.
19 (2) The first insurer—
20 (a) must not give the applicant a transfer notice; and
21 (b) must give the MAI commission written notice of the dispute.
22 (3) If the first insurer gives the MAI commission a notice under
23 subsection (2) (b)—
24 (a) section 65 (Relevant insurer must decide liability for defined
25 benefits) does not apply in relation to the application until the
26 dispute is resolved; and

- 1 (b) the first insurer must notify the applicant—
2 (i) about the dispute; and
3 (ii) that the first insurer continues to be liable for the
4 applicant's allowable expenses; and
5 (iii) that the first insurer is liable for the applicant's treatment
6 and care benefits, income replacement benefits and funeral
7 benefits in accordance with this chapter until the dispute is
8 resolved.
- 9 (4) The dispute must be dealt with in accordance with the insurance
10 industry deed.
- 11 (5) If the second insurer is found to be liable for the application, the first
12 insurer may recover the following amounts as a debt from the second
13 insurer:
- 14 (a) any amounts of the applicant's allowable expenses already paid;
15 (b) any amounts of the applicant's treatment and care benefits,
16 income replacement benefits and funeral benefits already paid;
17 (c) the cost of managing and disputing the application.
- 18 (6) If the second insurer is found to be liable for the application, the
19 second insurer must not dispute a decision the first insurer made in
20 relation to any amounts paid to the applicant by the first insurer.

21 **Division 2.3.6 Miscellaneous—pt 2.3**

22 **71 Fraudulent applications or requests**

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

- 1 (b) a request for reimbursement of expenses for treatment and care
2 for an applicant that are incurred before the application is made
3 or while the application is being considered; or
- 4 (c) a request from a provider of treatment and care for payment of
5 treatment and care provided to an applicant.
- 6 (2) If the relevant insurer suspects that information in the application or
7 request is false or misleading, the relevant insurer may refuse to—
- 8 (a) accept liability for the application; or
9 (b) reimburse the applicant; or
10 (c) pay the provider.
- 11 *Note 1* It is an offence to make a false or misleading statement, give false or
12 misleading information or produce a false or misleading document (see
13 [Criminal Code](#), pt 3.4).
- 14 *Note 2* The insurer may recover from the applicant any costs reasonably incurred
15 because of the applicant's fraudulent conduct (see s 346).
- 16 (3) However, if the relevant insurer later establishes that the information
17 in the application or request is not false or misleading, the relevant
18 insurer must—
- 19 (a) reimburse the applicant for the expenses incurred; or
20 (b) pay the provider for the treatment and care.
- 21 (4) Despite subsection (2), if the relevant insurer has not made a decision
22 to accept or reject liability for the application, the relevant insurer
23 must pay the applicant's allowable expenses.

24 **72 Recovery of amounts paid for defined benefits**

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

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

9 **73 Application for defined benefits—notification of**
10 **application under workers compensation scheme**

- 11 (1) This section applies if—
- 12 (a) an application for defined benefits (the *defined benefits*
13 *application*) is made under this part—
- 14 (i) by a person injured in a motor accident; or
- 15 (ii) in relation to the injured person; and
- 16 (b) an application for compensation under a workers compensation
17 scheme (the *workers compensation application*) is made in
18 relation to the injury.
- 19 (2) The applicant in relation to the workers compensation application
20 must, in writing, notify the following to the relevant insurer:
- 21 (a) that the workers compensation application has been made;
- 22 (b) whether liability for the workers compensation application has
23 been accepted or denied;
- 24 (c) any amounts paid to or on behalf of the applicant under the
25 workers compensation application.
- 26 (3) The notice must be given to the relevant insurer—
- 27 (a) if the workers compensation application is made before the
28 defined benefits application—when the defined benefits
29 application is made; or

- 1 (b) if the workers compensation application is made after the
2 defined benefits application—within 3 business days after the
3 workers compensation application is made.
- 4 (4) However, if the person withdraws the workers compensation
5 application within 13 weeks after the date of the motor accident, the
6 person must give the relevant insurer for the motor accident written
7 notice of the withdrawal—
- 8 (a) if the workers compensation application is withdrawn before the
9 defined benefits application is made—when the defined benefits
10 application is made; or
- 11 (b) if the workers compensation application is withdrawn after the
12 defined benefits application is made—within 3 business days
13 after the workers compensation application is withdrawn.
- 14 (5) If a relevant insurer receives a notice under subsection (2) or (4), the
15 relevant insurer may get information about the workers compensation
16 application from the insurer for a workers compensation application.

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 before the date of the motor accident; or

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

- 1 (b) the person is receiving a weekly payment or other payment in
2 relation to loss of income under this Act or the *Workers*
3 *Compensation Act 1951* (or a corresponding law of a State or
4 another Territory); or
- 5 *Note* The person's pre-injury weekly income is worked out under s 84.
- 6 (c) the person—
- 7 (i) was on unpaid leave from paid work immediately before
8 the date of the motor accident; and
- 9 (ii) anticipated returning to paid work on a date after the motor
10 accident; or
- 11 *Note* The person's pre-injury earning capacity is worked out under s 85.
- 12 (d) the person has entered into an arrangement with an employer or
13 other person to undertake employment or to start business as a
14 self-employed person on the date of the motor accident or a
15 stated date after the date of the motor accident; or
- 16 *Note* The person's pre-injury earning capacity is worked out under s 86.
- 17 (e) the person—
- 18 (i) is at least 15 years old; and
- 19 (ii) is enrolled in a course of studies as a full-time student; and
- 20 (iii) expects to be in paid work after completing—
- 21 (A) the course; or
- 22 (B) if the person was in secondary school—the final year
23 of secondary school.
- 24 *Note* The person's pre-injury earning capacity is worked out under s 87.
- 25 (2) The MAI guidelines may make provision in relation to the matters to
26 be taken into account for determining whether an injured person is
27 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 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 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:

- (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.

1 **84 Meaning of *pre-injury weekly income*—person receiving**
2 **workers compensation**

3 (1) In this Act:

4 *pre-injury weekly income*, for a person receiving workers
5 compensation, means the average weekly amount of the sum of the
6 following amounts from all paid work undertaken by the person in
7 the 52 weeks before the date of the motor accident:

8 (a) the person's gross income as an employee;

9 (b) the person's net income as a self-employed person.

10 *Note* The MAI guidelines may make provision in relation to the matters to be
11 taken into account to determine an injured person's pre-injury weekly
12 income or pre-injury earning capacity (see s 88).

13 (2) In this section:

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

18 **85 Meaning of *pre-injury earning capacity*—person on**
19 **unpaid leave**

20 (1) In this Act:

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

24 (a) in the 52 weeks immediately before the person started the
25 unpaid leave; or

26 (b) if the person had a significant change in circumstances in
27 relation to their paid work in the 52 weeks immediately before
28 the person started the unpaid leave—for the period—

29 (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.

- 1 (2) In this section:
- 2 *person with a new work arrangement* means a person injured in a
- 3 motor accident who, on the date of the motor accident—
- 4 (a) has an arrangement—
- 5 (i) with an employer or other person to undertake
- 6 employment; or
- 7 (ii) to start business as a self-employed person on or after the
- 8 date of the motor accident; but
- 9 (b) is not any of the following:
- 10 (i) an ongoing employee mentioned in section 81;
- 11 (ii) a self-employed person mentioned in section 82;
- 12 (iii) a casual worker mentioned in section 83;
- 13 (iv) an apprentice, trainee or young person mentioned in
- 14 section 99;
- 15 (v) a person mentioned in section 84 receiving workers
- 16 compensation;
- 17 (vi) a person mentioned section 85 on unpaid leave;
- 18 (vii) a full-time student mentioned in section 87.

19 **87 Meaning of *pre-injury earning capacity*—full-time student**

- 20 (1) In this Act:
- 21 *pre-injury earning capacity*, for a full-time student, means the
- 22 weekly amount the student would have received if—
- 23 (a) the student had been employed in the occupation for which the
- 24 student would be qualified on completion of the course of
- 25 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

- 1 (ii) capable of being in paid work.
- 2 *Note 1* **Paid work** includes paid leave from paid work—see s 78.
- 3 *Note 2* An injured person who is self-employed when the motor accident
- 4 happened is in paid work—see s 78.
- 5 (2) The MAI guidelines may make provision in relation to entitlement to
- 6 income replacement benefits.
- 7 (3) This section is subject to the following:
- 8 (a) division 2.2.2 (Limitations and exceptions to entitlement);
- 9 (b) section 90 (Limited entitlement to income replacement
- 10 benefits—pension-aged injured person);
- 11 (c) section 91 (No entitlement to income replacement benefits—
- 12 death of injured person);
- 13 (d) section 92 (No entitlement to income replacement benefits—
- 14 damages already paid).
- 15 **90 Limited entitlement to income replacement benefits—**
- 16 **pension-aged injured person**
- 17 (1) This section applies to a person injured in a motor accident if, on the
- 18 date of the accident, the person was the pension age, or older.
- 19 (2) The injured person is entitled to income replacement benefits only if,
- 20 on the date of the motor accident, the person was in paid work.
- 21 *Note 1* See s 101 for the period for which income replacement benefits are
- 22 payable for the injured person.
- 23 *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 is receiving an income replacement benefit payment of \$1 500 a week. Penny's entitlement to income replacement benefits started on 15 June 2020.

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

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

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

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

$$\$1\,500 \times (1812.80 \div 1718.1) = \$1\,526.70$$

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

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.

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

(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

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 less than \$800 AWE indexed—1.0; or

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

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.

97 Amount of income replacement benefits—second payment period

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 less than \$800 AWE indexed—1.0; or

(b) if *P* is at least \$800 AWE indexed and not more than \$1 000 AWE indexed—0.95; or

(c) if *P* is more than \$1 000 AWE indexed—0.8.

Note *AWE indexed*, 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.

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;

- 1 (iii) under the person's conditions of employment, the person's
2 pre-injury weekly income would have increased if the
3 person had continued in that employment because the
4 person—
5 (A) attained a particular age; or
6 (B) completed a particular period of service or course of
7 training.
- 8 (2) For any week after the date of the motor accident in relation to which
9 the person is entitled to an income replacement benefit payment, the
10 payment must be calculated on the basis that the person's pre-injury
11 weekly income is the weekly income the person is likely to have been
12 entitled to for that week.
- 13 (3) The MAI guidelines may make provision in relation to the matters to
14 be taken into account for determining the weekly income the person
15 is likely to have been entitled to had the motor accident not happened
16 and had the person continued in the employment.
- 17 (4) In this section:
18 *conditions of employment*, for an injured person, includes conditions
19 applying to the person's employment under an award or industrial
20 agreement.
- 21 **100 Injured person's post-injury earning capacity**
- 22 (1) The relevant insurer for a motor accident may make a decision about
23 an injured person's post-injury earning capacity, including for the
24 purpose of assessing the person's fitness for work as a result of the
25 person's injury.
- 26 (2) An injured person's fitness for work must be determined having
27 regard to the following:
- 28 (a) the nature of the person's injury and the likely process of
29 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.

- 1 (3) The **start date** for an ongoing employee or fixed term contractor,
2 self-employed person, casual worker or person receiving workers
3 compensation is—
- 4 (a) for an application made during the application period—the date
5 of the motor accident; or
- 6 (b) for a late application—
- 7 (i) 28 days before the date of the late application; or
- 8 (ii) if the insurer is satisfied on reasonable grounds that there
9 are exceptional circumstances justifying earlier payment—
10 the date of the motor accident.
- 11 (4) The **start date** for a person on unpaid leave is—
- 12 (a) for an application made during the application period—the date
13 the person anticipated returning to paid work; or
- 14 (b) for a late application—
- 15 (i) the later of the following:
- 16 (A) the date the person anticipated returning to paid work;
- 17 (B) 28 days before the date of the late application; or
- 18 (ii) if the insurer is satisfied on reasonable grounds that there
19 are exceptional circumstances justifying earlier payment—
20 the date the person anticipated returning to paid work.
- 21 (5) The **start date** for a person with a new work arrangement or a
22 full-time student is—
- 23 (a) for an application made during the application period—the date
24 the person anticipated starting work with an employer or starting
25 business as a self-employed person; or

- 1 (b) for a late application—
2 (i) the later of the following:
3 (A) the date the person anticipated starting work with an
4 employer or starting business as a self-employed
5 person;
6 (B) 28 days before the date of the late application; or
7 (ii) if the insurer is satisfied on reasonable grounds that there
8 are exceptional circumstances justifying earlier payment—
9 the date the person anticipated starting work with an
10 employer or starting business as a self-employed person.
11 (6) The MAI guidelines may make provision for the kinds of
12 circumstances that may be exceptional circumstances for
13 subsections (3) to (5).
14 (7) In this section:
15 *casual worker*—see section 83 (2).
16 *full-time student*—see section 87 (2).
17 *ongoing employee or fixed term contractor*—see section 81 (2).
18 *person on unpaid leave*—see section 85 (2).
19 *person receiving workers compensation*—see section 84 (2).
20 *person with a new work arrangement*—see section 86 (2).
21 *self-employed person*—see section 82 (3).
22 **102 Income replacement benefits—payable fortnightly**
23 (1) Income replacement benefit payments are payable to an injured
24 person every 14 days after the start date for the injured person.
25 (2) In this section:
26 *start date*, for an injured person, means the start date for the person
27 worked out under section 101.

- 1 **103 Income replacement benefits—interim weekly payments**
- 2 (1) This section applies if—
- 3 (a) a person injured in a motor accident is entitled to be paid income
- 4 replacement benefits; and
- 5 (b) the relevant insurer for the motor accident has asked the injured
- 6 person for additional information to decide the amount of the
- 7 income replacement benefit payment to which the person is
- 8 entitled.
- 9 (2) The relevant insurer may pay the injured person an amount
- 10 (an *interim weekly payment*) until whichever of the following
- 11 happens first:
- 12 (a) the person gives the insurer the additional information;
- 13 (b) 28 days after the day the insurer asks for the additional
- 14 information;
- 15 (c) 13 weeks after the date of the motor accident.
- 16 (3) The amount of the interim weekly payment is the percentage of
- 17 \$2 250 AWE indexed prescribed by regulation.
- 18 *Note AWE indexed*, for an amount—see s 18.
- 19 (4) On request by the injured person, the relevant insurer may, but need
- 20 not, pay the person a lower interim weekly payment.
- 21 (5) An interim weekly payment is payable every 14 days after the start
- 22 date for the injured person.
- 23 (6) The MAI guidelines may make provision in relation to interim
- 24 weekly payments.
- 25 (7) In this section:
- 26 *start date*, for an injured person, means the start date for the injured
- 27 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 to 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;

- 1 (e) the consequences of failing to give an insurer a fitness for work
2 certificate or work declaration.

3 **105 Suspension of benefit payments—failure to comply with**
4 **request for assessment**

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

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

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

- 14 (3) If the relevant insurer decides to suspend the injured person's benefit
15 payments, the insurer must give the injured person written notice
16 (a *suspension notice*) stating—

- 17 (a) the reasons for the suspension; and
18 (b) the actions the injured person may take to avoid the benefit
19 payments being suspended; and
20 (c) the date the suspension takes effect; and
21 (d) that the injured person may seek internal review of the
22 suspension under part 2.10 (Defined benefits—dispute
23 resolution).

- 24 (4) A suspension notice must be given at least 2 weeks before the date
25 the suspension takes effect.

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 327).

(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 section 105 (Suspension of benefit payments—failure to comply with request for assessment) or section 121 (3) (Assessment of injured person's injuries);
- (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.

- 1 (5) If the insurer fails to give the injured person written notice of a
2 decision to which this section applies in the way required by this
3 section, the person may recover from the insurer the amount of any
4 income replacement benefit payments not received as a result of the
5 insurer's decision.

6 **Division 2.4.5 Income replacement benefits—**
7 **miscellaneous**

8 **108 Income replacement benefits not commutable to lump**
9 **sum**

- 10 (1) The relevant insurer for a motor accident must not commute income
11 replacement benefits to which an injured person is, or may be, entitled
12 to a lump sum payment.
- 13 (2) This section is subject to section 181 (Lump sum payment of certain
14 defined benefits—foreign nationals).

15 **109 Employer reimbursement for paid leave**

- 16 (1) An injured person entitled to income replacement benefits may ask
17 the relevant insurer for the motor accident to reimburse the person's
18 employer for the cost of leave payments made to the person for leave
19 taken as a result of the person's injury.
- 20 (2) The amount reimbursed under subsection (1) must not be more than
21 the amount of the income replacement benefit payments to which the
22 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 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.

1 (2) In this section:

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

5 **Examples**

- 6 • domestic services
7 • home maintenance
8 • nursing
9 • personal assistance

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

12 **111 Meaning of rehabilitation**

13 In this Act:

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

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

20 **Division 2.5.2 Treatment and care benefits—**
21 **entitlement**

22 **112 Who is entitled to treatment and care benefits?**

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

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

- 1 (c) travel expenses.
- 2 (2) This section is subject to the following sections:
- 3 (a) section 45 (No entitlement—multiple driving offences);
- 4 (b) section 47 (Entitlement limited—detainees and young
- 5 detainees);
- 6 (c) section 48 (No entitlement—serious offences);
- 7 (d) section 49 (No entitlement—act of terrorism);
- 8 (e) section 50 (Entitlement limited—workers compensation
- 9 applicant);
- 10 (f) section 116 (No entitlement to treatment and care benefits—
- 11 allowable expenses already paid);
- 12 (g) section 117 (No entitlement to treatment and care benefits—
- 13 damages already paid);
- 14 (h) section 118 (No entitlement to treatment and care benefits—
- 15 LTCS scheme participant);
- 16 (i) section 119 (Treatment and care benefits not payable in certain
- 17 circumstances).

113 **Meaning of *treatment and care expenses*—ch 2**

19 In this chapter:

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

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

26 *Note* Section 120 deals with deciding whether treatment and care
 27 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—subpar (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;

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

9 **115 Meaning of *travel expenses*—pt 2.5**

10 In this part:

11 *travel expenses*, for a person injured in a motor accident, means the

12 reasonable and necessary travel and accommodation expenses

13 incurred by the injured person and a parent or other carer

14 accompanying the injured person in relation to travel undertaken to

15 undergo treatment and care.

16 **116 No entitlement to treatment and care benefits—allowable**

17 **expenses already paid**

18 A person injured in a motor accident is not entitled to treatment and

19 care benefits for allowable expenses if an insurer has already paid for

20 the allowable expenses.

21 **117 No entitlement to treatment and care benefits—damages**

22 **already paid**

23 A person injured in a motor accident is not entitled to treatment and

24 care benefits for the following expenses if an insurer has already paid

25 for the expenses under a motor accident claim for the motor accident:

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

1 (c) travel expenses.

2 **118 No entitlement to treatment and care benefits—**
3 **LTCS scheme participant**

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

7 *Note 1* Also, common law damages for treatment and care are not available for
8 LTCS scheme participants (see s 247).

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

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

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

12 **119 Treatment and care benefits not payable in certain**
13 **circumstances**

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

16 (a) treatment and care that an insurer has paid for under an
17 arrangement for direct payment with the provider of the
18 treatment and care;

19 (b) ambulance transportation, if the injured person is not liable for
20 the cost of the transportation.

21 **120 Deciding whether treatment and care is reasonable and**
22 **necessary**

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

26 (a) whether the treatment and care is reasonable and necessary in
27 the circumstances;

- 1 (b) whether the treatment and care—
- 2 (i) is directly related to the person’s injury; and
- 3 (ii) is appropriate for the injury; and
- 4 (iii) will benefit the person;
- 5 (c) the appropriateness of a provider of the treatment and care;
- 6 (d) whether the treatment and care is cost effective;
- 7 (e) the MAI guidelines.

Division 2.5.3 Treatment and care benefits— assessment

121 Assessment of injured person’s injuries

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

15 *Note 1* An injured person must include an authority to disclose personal health
16 information with the person’s application—see s 57.

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

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

- 19 (2) The injured person must comply with any reasonable request made
- 20 by the relevant insurer in relation to the assessment.
- 21 (3) If the injured person fails without reasonable excuse to comply with
- 22 the relevant insurer’s reasonable request, the insurer may suspend the
- 23 injured person’s treatment and care benefits and income replacement
- 24 benefits until the person complies with the request.

-
- (4) The MAI guidelines may make provision in relation to—
- (a) the conduct of assessments under this section; and
 - (b) the suspension of treatment and care benefits and income replacement benefits under this section.

Division 2.5.4 Treatment and care benefits— recovery plans

122 Meaning of *recovery plan*—pt 2.5

In this part:

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

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

123 Treatment and care benefits—recovery plan

- (1) This section applies if—
- (a) the relevant insurer for a motor accident is satisfied a person injured in the motor accident is entitled to treatment and care benefits; and
 - (b) because of 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.

- 1 (3) The relevant insurer must—
- 2 (a) give the injured person and the injured person’s doctor a draft of
- 3 a recovery plan proposed for the injured person; and
- 4 (b) allow the injured person and the injured person’s doctor a
- 5 reasonable opportunity to consider the draft.
- 6 (4) The relevant insurer must give the injured person and the injured
- 7 person’s doctor a final version of the recovery plan within 28 days (or
- 8 any longer time stated in the MAI guidelines) after the day—
- 9 (a) the relevant insurer gives the injured person a receipt notice or
- 10 late receipt notice for the person’s application for defined
- 11 benefits; or
- 12 (b) if the injured person is admitted to hospital within 2 days after
- 13 the motor accident happened and remains in hospital for a
- 14 continuous period of at least 3 weeks—the person is discharged
- 15 from hospital.

16 **124 Recovery plan—content**

- 17 A recovery plan for a person injured in a motor accident must—
- 18 (a) state the treatment and care approved by the relevant insurer as
 - 19 reasonable and necessary treatment and care for the injured
 - 20 person; and
 - 21 (b) include a statement to the effect that the injured person’s
 - 22 entitlement to the following may be suspended if the injured
 - 23 person unreasonably fails to undergo the treatment and care
 - 24 stated in the recovery plan:
 - 25 (i) treatment and care benefits;
 - 26 (ii) income replacement benefits.

1 **125 Recovery plan—MAI guidelines**

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

- 4 (a) the time within which a recovery plan must be given to an
5 injured person and the injured person's doctor;
- 6 (b) approval of treatment and care, and treatment and care expenses,
7 under a recovery plan;
- 8 (c) information to be considered by the relevant insurer for a motor
9 accident when developing a recovery plan for an injured person;
- 10 (d) the minimum requirements for a recovery plan;
- 11 (e) the obligations an injured person has under a recovery plan;
- 12 (f) the obligations the relevant insurer for a motor accident has
13 under a recovery plan.

14 **126 Recovery plan—treatment and care not in recovery plan**

15 (1) If the relevant insurer for a motor accident gives a person injured in
16 the motor accident a recovery plan—

- 17 (a) the injured person must apply to the relevant insurer for approval
18 to undergo treatment and care that is not mentioned in the
19 recovery plan; and
- 20 (b) the relevant insurer is not liable for treatment and care expenses
21 incurred in relation to treatment and care the injured person
22 undergoes without the relevant insurer's approval.

23 (2) The relevant insurer may approve treatment and care that is not
24 mentioned in the recovery plan if the relevant insurer is satisfied on
25 reasonable grounds that the treatment and care—

- 26 (a) is reasonable and necessary in the circumstances; and
- 27 (b) will assist with the injured person's recovery or management of
28 the person's injury.

127 Recovery plan—review

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

Division 2.5.5 Treatment and care benefits—payment

128 Treatment and care benefits—period payable

- (1) This section applies if a relevant insurer accepts liability under section 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

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

8 **129 Payment of treatment and care benefits**

- 9 (1) The relevant insurer for a motor accident must pay the treatment and
10 care expenses, domestic services expenses and travel expenses of an
11 injured person entitled to treatment and care benefits.

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

13 *Note 2 Travel expenses*—see s 115.

- 14 (2) The MAI guidelines may make provision in relation to verifying the
15 injured person's treatment and care expenses, domestic services
16 expenses and travel expenses, including verifying that—
17 (a) the expenses were incurred; and
18 (b) the treatment and care for which the expenses were incurred was
19 given; and
20 (c) the injury for which the treatment and care was given resulted
21 from the motor accident.
22 (3) The MAI guidelines may make provision in relation to the
23 circumstances in which the relevant insurer may make a payment
24 under this section for treatment and care benefits before the expense
25 for the benefit is incurred.

- 1 (4) In this section:
- 2 *treatment and care expenses*, of person injured in a motor accident,
- 3 means the expenses incurred by the person that are—
- 4 (a) approved by the relevant insurer for the motor accident; or
- 5 (b) set out in the person’s recovery plan.

6 **130 Treatment and care benefits not commutable to lump**
7 **sum**

- 8 (1) The relevant insurer for a motor accident must not commute treatment
- 9 and care benefits to which an injured person is, or may be, entitled to
- 10 a lump sum payment.
- 11 (2) This section is subject to section 181 (Lump sum payment of certain
- 12 defined benefits—foreign nationals).

13 **131 Treatment and care benefits—MAI guidelines**

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

- 15 (a) treatment and care that is considered reasonable and necessary
- 16 for a person injured in a motor accident;
- 17 (b) the maximum amount of defined benefits payable for stated
- 18 treatment and care;
- 19 (c) verifying that the treatment and care a person injured in a motor
- 20 accident receives is reasonable and necessary;
- 21 (d) verifying that the costs of treatment and care a person injured in
- 22 a motor accident receives is reasonable and necessary;
- 23 (e) the information a health practitioner may ask a person injured in
- 24 a motor accident for in relation to an assessment of the person
- 25 by the health practitioner under section 121 (Assessment of
- 26 injured person’s injuries);

- 1 (f) the information a health practitioner may ask the relevant insurer
2 for a motor accident for in relation to an assessment of a person
3 injured in the motor accident by the health practitioner under
4 section 121;
- 5 (g) the circumstances in which the relevant insurer for a motor
6 accident may ask for a medical assessment of a person injured
7 in the motor accident under section 121;
- 8 (h) payment of expenses in relation to reasonable and necessary
9 treatment and care provided by any of the following:
- 10 (i) a public hospital;
- 11 (ii) an ambulance service;
- 12 (iii) a provider of a service relating to treatment and care that
13 bulk bills for the service;
- 14 (i) the principles to be followed by health practitioners in relation
15 to the provision of treatment and care for people injured in motor
16 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 applicant);
 - (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.

1 **135 No entitlement to quality of life benefits—benefits already**
2 **paid**

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

6 **136 No entitlement to quality of life benefits—damages**
7 **already paid**

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

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

13 **137 Quality of life benefits application**

14 (1) A person who has received a receipt notice, or late receipt notice,
15 under section 60 (Application for defined benefits—action following
16 receipt) may apply to the relevant insurer for the motor accident for
17 quality of life benefits (a *quality of life benefits application*).

18 (2) The quality of life benefits application must be made—

19 (a) not earlier than 26 weeks after the date of the motor accident;
20 and

21 (b) not later than 4 years and 6 months after the date of the motor
22 accident.

23 (3) A quality of life benefits application must—

24 (a) request a WPI assessment of the injured person; and

25 (b) include the details required by the MAI guidelines; and

26 (c) be accompanied by the documents required by the
27 MAI guidelines.

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

- 1 (c) that the insurer will not refer the person for a WPI assessment
- 2 unless the person—
- 3 (i) confirms the request for the assessment; and
- 4 (ii) pays an excess payment to the insurer for the assessment.
- 5 (3) If the injured person confirms the request for a WPI assessment, in
- 6 writing, and pays the excess payment, the relevant insurer must refer
- 7 the person to an authorised IME provider for a WPI assessment.
- 8 (4) If the injured person's WPI is greater than 0%, the relevant insurer
- 9 must reimburse the person for the amount of the excess payment.
- 10 (5) The excess payment is the higher of—
- 11 (a) \$500 AWE indexed; and
- 12 (b) 25% of the fee payable for the WPI assessment.
- 13 *Note AWE indexed*, for an amount—see s 18.
- 14 **140 Insurer believes injuries not stabilised—up to 4 years**
- 15 **6 months after motor accident**
- 16 (1) This section applies if the relevant insurer for a motor accident—
- 17 (a) receives a quality of life benefits application from a person
- 18 injured in the accident; and
- 19 (b) reasonably believes that the person's injuries have not stabilised;
- 20 and
- 21 (c) it is less than 4 years and 6 months after the date of the motor
- 22 accident.
- 23 (2) The relevant insurer must give the injured person a written notice
- 24 telling the person—
- 25 (a) that the insurer believes the person's injuries have not stabilised;
- 26 and
- 27 (b) the reasons for the belief; and

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

10 **141 WPI assessment 4 years 6 months after motor accident**

- 11 (1) This section applies if—
- 12 (a) either of the following applies:
- 13 (i) the relevant insurer for a motor accident has received a
14 quality of life benefits application under section 138
15 (Insurer believes injuries stable and permanent
16 impairment) or section 140 from a person injured in the
17 accident;
- 18 (ii) the relevant insurer for a motor accident has received a
19 quality of life benefits application from a person injured in
20 the accident—
- 21 (A) who is receiving income replacement benefits or,
22 because of the circumstances prescribed by
23 regulation, would have been eligible to receive
24 income replacement benefits; and
- 25 (B) whose injuries may have a significant occupational
26 impact on the person's ability to undertake
27 employment; and
- 28 (b) either—
- 29 (i) the person has not had a WPI assessment in relation to the
30 injuries; or

- 1 (ii) a WPI assessment has confirmed that the person's injuries
2 have not stabilised; and
- 3 (c) it is 4 years and 6 months after the date of the motor accident.
- 4 (2) The relevant insurer must refer the injured person to an authorised
5 IME provider for a WPI assessment.
- 6 (3) If the WPI assessment states that the injured person's injuries have
7 not stabilised—
- 8 (a) the assessment must estimate the person's WPI; and
9 (b) the estimated WPI is taken to be the person's WPI.
- 10 *Note* If more than 1 WPI assessment is carried out in relation to the injured
11 person, payment of the assessments must be in accordance with the MAI
12 guidelines (see s 146 (3)).
- 13 (4) If the injured person refuses to have a WPI assessment, the person's
14 quality of life benefits application is taken to have been finally dealt
15 with.

16 **Division 2.6.3 Quality of life benefits—**
17 **WPI assessment**

18 **142 Meaning of *WPI assessment***

19 In this Act:

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

143 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.

144 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 or experience relevant to the nature of the injured person's injuries.

145 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

- 1 (c) may apply, adopt or incorporate a law of another jurisdiction or
 2 instrument as in force from time to time.

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

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

8 *Note* A law or instrument applied, adopted or incorporated under s (2) (c) does
 9 not need to be notified under the [Legislation Act](#) because s 47 (6) does
 10 not apply (see [Legislation Act](#), s 47 (7)).

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

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

14 **146 Arrangement of WPI assessment**

- 15 (1) This section applies if an injured person is referred to an authorised
 16 IME provider for a WPI assessment under—

17 (a) section 138 (Insurer believes injuries stable and permanent
 18 impairment); or

19 (b) section 139 (Insurer believes injuries stable but no permanent
 20 impairment); or

21 (c) section 140 (Insurer believes injuries not stabilised—up to
 22 4 years 6 months after motor accident); or

23 (d) section 141 (WPI assessment 4 years 6 months after motor
 24 accident).

- 25 (2) The IME provider must arrange for 1 or more independent medical
 26 examiners to carry out a WPI assessment of the injured person.

- 27 (3) The MAI guidelines may make provision in relation to the procedure
 28 for arranging a WPI assessment of an injured person, including—

29 (a) selecting an IME provider; and

- 1 (b) the time within which the assessment must be arranged; and
2 (c) arrangements for payment of the assessment.

3 **147 WPI assessment—provision of information**

- 4 (1) This section applies if an authorised IME provider arranges for an
5 independent medical examiner to carry out a WPI assessment of an
6 injured person.
- 7 (2) The injured person must give the authorised IME provider and
8 independent medical examiner—
- 9 (a) all information in the injured person's possession that is relevant
10 to the WPI assessment; and
- 11 (b) any other information the authorised IME provider or
12 independent medical examiner reasonably requires for the
13 WPI assessment.
- 14 (3) The relevant insurer for the motor accident must give the authorised
15 IME provider and independent medical examiner—
- 16 (a) all information in the insurer's possession that is relevant to the
17 WPI assessment; and
- 18 (b) any other information the authorised IME provider or
19 independent medical examiner reasonably requires for the
20 WPI assessment.
- 21 (4) The information must be given to the authorised IME provider and
22 independent medical examiner at least 10 days before the day the
23 independent medical examiner is to carry out the WPI assessment.
- 24 (5) The independent medical examiner may decline to carry out the
25 WPI assessment if the injured person or the insurer fails to give any
26 information reasonably required by the authorised IME provider or
27 independent medical examiner.

148 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.

149 WPI assessment—both physical and psychological injuries

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

(5) In this section:

psychological injury, resulting from a motor accident—

(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 the 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

Example—psychological injury that results from physical injury

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

150 WPI assessment—multiple body systems affected

(1) If an injured person has injuries to more than 1 body system—

(a) a WPI assessment of each affected body system may be made; and

(b) each WPI assessment may be carried out by a different independent medical examiner; and

(c) the WPI assessments may be combined in accordance with the WPI assessment guidelines to decide the injured person's WPI.

(2) However, in carrying out a WPI assessment of an injured person, the independent medical examiner must only assess—

(a) if the injured person nominates physical injuries under section 149 (2)—physical injuries; or

(b) if the injured person nominates psychological injuries under section 149 (2)—psychological injuries.

- 1 **151 WPI report to be prepared**
- 2 (1) An independent medical examiner who carries out a WPI assessment
- 3 of an injured person must give a WPI report about the assessment to
- 4 the IME provider who arranged the assessment.
- 5 (2) The IME provider must give the WPI report to the relevant insurer
- 6 for the motor accident.
- 7 (3) The WPI assessment guidelines may make provision for the
- 8 requirements for a WPI report, including the time within which a
- 9 WPI report must be given.
- 10 **152 WPI less than 5%**
- 11 (1) If a WPI report from an independent medical examiner assesses an
- 12 injured person's WPI as less than 5%, the relevant insurer for the
- 13 motor accident must, within 14 days after receiving the report, give
- 14 the injured person a written notice—
- 15 (a) including a copy of the report; and
- 16 (b) telling the person that the person must, within 26 weeks after
- 17 receiving the notice—
- 18 (i) notify the insurer, in writing, whether they accept or
- 19 disagree with the report; and
- 20 (ii) if the person disagrees with the report and wishes to have
- 21 a second WPI assessment carried out—
- 22 (A) arrange a second WPI assessment at their own
- 23 expense; and
- 24 (B) give the insurer the second WPI report.
- 25 (2) If the injured person does not notify the insurer, and give the insurer
- 26 the second WPI report, within the 26 weeks, the person is taken to
- 27 have accepted the report.

- 1 (3) If the injured person accepts (or is taken to accept) the report, the
2 person's application for quality of life benefits is taken to have been
3 finally dealt with.

4 **153 WPI 5% to 9%**

- 5 (1) If a WPI report from an independent medical examiner assesses an
6 injured person's WPI as at least 5% but not more than 9%, the
7 relevant insurer for the motor accident must, within 14 days after
8 receiving the report, give the injured person a written notice—

- 9 (a) including a copy of the report; and
10 (b) offering the person the amount of quality of life benefits payable
11 for their WPI under division 2.6.4 (Quality of life benefits—
12 amount payable); and

- 13 (c) telling the person that the person must, within 26 weeks after
14 receiving the notice—

- 15 (i) notify the insurer, in writing, whether they accept or
16 disagree with the report; and

- 17 (ii) if the person disagrees with the report and wishes to have
18 a second WPI assessment carried out—

- 19 (A) arrange a second WPI assessment at their own
20 expense; and

- 21 (B) give the insurer the second WPI report.

- 22 (2) If the injured person does not notify the insurer, and give the insurer
23 the second WPI report, within the 26 weeks, the person is taken to
24 have accepted the offer.

- 25 (3) If the injured person accepts (or is taken to accept) the offer—

- 26 (a) the person's application for quality of life benefits is taken to
27 have been finally dealt with; and

- 1 (b) the amount of quality of life benefits payable for their
2 WPI under division 2.6.4 must be paid by the relevant insurer to
3 the person.
- 4 **154 WPI 10% or more—injured person not entitled to make**
5 **motor accident claim**
- 6 (1) This section applies if—
 - 7 (a) a WPI report from an independent medical examiner assesses an
8 injured person’s WPI as at least 10%; but
 - 9 (b) the injured person is not entitled to make a motor accident claim
10 in relation to the motor accident.
 - 11 (2) The relevant insurer for the motor accident must, within 14 days after
12 receiving the report, give the injured person a written notice—
 - 13 (a) including a copy of the report; and
 - 14 (b) offering the person the amount of quality of life benefits payable
15 for their WPI under division 2.6.4 (Quality of life benefits—
16 amount payable); and
 - 17 (c) telling the person that the person must, within 26 weeks after
18 receiving the notice—
 - 19 (i) notify the insurer, in writing, whether they accept or
20 disagree with the report; and
 - 21 (ii) if the person disagrees with the report and wishes to have
22 a second WPI assessment carried out—
 - 23 (A) arrange a second WPI assessment at their own
24 expense; and
 - 25 (B) give the insurer the second WPI report.
 - 26 (3) If the injured person does not notify the insurer, and give the insurer
27 the second WPI report, within the 26 weeks, the person is taken to
28 have accepted the offer.

-
- 1 (4) If the injured person accepts (or is taken to accept) the offer—
- 2 (a) the person's application for quality of life benefits is taken to
- 3 have been finally dealt with; and
- 4 (b) the amount of quality of life benefits payable for their
- 5 WPI under division 2.6.4 must be paid by the relevant insurer to
- 6 the person.
- 7 **155 WPI 10% or more—injured person entitled to make motor**
- 8 **accident claim**
- 9 (1) This section applies if—
- 10 (a) a WPI report from an independent medical examiner assesses an
- 11 injured person's WPI as at least 10%; and
- 12 (b) the injured person is entitled to make a motor accident claim in
- 13 relation to the motor accident.
- 14 (2) The relevant insurer for the motor accident must, within 14 days after
- 15 receiving the report, give the injured person a written notice—
- 16 (a) including a copy of the report; and
- 17 (b) offering the person the amount of quality of life benefits payable
- 18 for their WPI under division 2.6.4 (Quality of life benefits—
- 19 amount payable); and
- 20 (c) explaining the consequences of accepting the offer, including—
- 21 (i) that the person is entitled to make a motor accident claim
- 22 in relation to the motor accident; and
- 23 (ii) that if the person accepts the offer and makes a motor
- 24 accident claim, the person is not entitled to damages for
- 25 loss of quality of life under chapter 5; and
- 26 (d) telling the person that the person must, by the due date—
- 27 (i) notify the insurer, in writing, whether they accept or
- 28 disagree with the report; and

- (ii) if the person disagrees with the report and wishes to have a second WPI assessment carried out—
 - (A) arrange a second WPI assessment at their own expense; and
 - (B) give the insurer the second WPI report.
 - (3) If the injured person accepts the offer—
 - (a) the injured person’s application for quality of life benefits is taken to have been finally dealt with; and
 - (b) the relevant insurer must pay to the injured person the amount of quality of life benefits payable for their WPI under division 2.6.4.
 - (4) If the injured person does not notify the insurer, and give the insurer the second WPI report, by the due date, the injured person’s—
 - (a) application for quality of life benefits is taken to have been finally dealt with; and
 - (b) entitlement to quality of life benefits in relation to the motor accident ends.
 - (5) In this section:

due date means the later of—

 - (a) 5 years after the date of the motor accident; and
 - (b) 26 weeks after the person receives the notice.

156 Second WPI report

- (1) This section applies if an injured person notifies the relevant insurer for the motor accident under section 152, section 153, section 154 or section 155 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.

- 1 (3) The private medical examiner must carry out the second
2 WPI assessment in accordance with the WPI assessment guidelines.
- 3 (4) The private medical examiner must prepare a WPI report about the
4 second WPI assessment (the *second WPI report*) and give it to the
5 injured person.
- 6 (5) The injured person may give a copy of the second WPI report to the
7 relevant insurer.
- 8 (6) The MAI guidelines may make provision in relation to the following:
9 (a) the relevant insurer's responsibilities in relation to the second
10 WPI report;
11 (b) the time limits that apply to an offer of quality of life benefits
12 made in response to the second WPI report.

13 **157 Second WPI report—original WPI may be affirmed or**
14 **increased**

- 15 (1) This section applies if—
16 (a) the relevant insurer for a motor accident receives a second
17 WPI report about an injured person; and
18 (b) the assessment of WPI in the second WPI report is higher than
19 in the first WPI report.
- 20 (2) The relevant insurer may—
21 (a) give a copy of the second WPI report to the IME provider that
22 arranged the first WPI report and the independent medical
23 examiner who carried out the WPI assessment to which the first
24 WPI report relates; and
25 (b) request the IME provider to arrange a review of the
26 first WPI report.
- 27 (3) The MAI guidelines may make provision in relation to the time limit
28 for giving the second WPI report to the IME provider and the
29 independent medical examiner.

- 1 (4) An independent medical examiner may, in response to the second
2 WPI report—
3 (a) affirm the original assessment of the injured person’s WPI; or
4 (b) increase the assessment of the injured person’s WPI.
5 (5) The IME provider must give the relevant insurer written notice of the
6 affirmation or increase (a *notice of affirmation or increase*).
7 (6) If the independent medical examiner increases the assessment of the
8 injured person’s WPI, the relevant insurer is bound by the increased
9 assessment.

10 **158 Final offer WPI**

- 11 (1) This section applies if the relevant insurer for a motor accident
12 receives a second WPI report about an injured person.
13 (2) The relevant insurer must decide a WPI to determine the final offer
14 to make to the injured person (the *final offer WPI*).
15 (3) The final offer WPI must be—
16 (a) not less than—
17 (i) if the insurer has not requested the IME provider to arrange
18 a review of the first WPI report under section 157—the
19 WPI assessed in the first WPI report; or
20 (ii) if the insurer has requested the IME provider to arrange a
21 review of the first WPI report under section 157—the
22 affirmed or increased assessment of WPI stated in the
23 notice of affirmation or increase; and
24 (b) not more than the WPI assessed in the second WPI report.

-
- 1 **159 Final offer WPI less than 5%**
- 2 (1) If the relevant insurer for a motor accident decides an injured person's
- 3 final offer WPI is less than 5%, the relevant insurer must, within the
- 4 stated time, give the person a written notice—
- 5 (a) if the insurer requested the IME provider to arrange a review of
- 6 the first WPI report under section 157—including a copy of the
- 7 IME provider's notice of affirmation or increase; and
- 8 (b) telling the person—
- 9 (i) their final offer WPI; and
- 10 (ii) they are not entitled to quality of life benefits; and
- 11 (iii) how they may apply to the ACAT for review of the final
- 12 offer WPI decision.
- 13 (2) In this section:
- 14 *stated time* means—
- 15 (a) if the insurer requested the IME provider to arrange a review of
- 16 the first WPI report under section 157—14 days after receiving
- 17 the IME provider's notice of affirmation or increase; or
- 18 (b) if the insurer did not request the IME provider to arrange a
- 19 review of the first WPI report under section 157—28 days after
- 20 the insurer received the second WPI report.
- 21 **160 Final offer WPI 5% to 9%**
- 22 (1) If the relevant insurer for a motor accident decides an injured person's
- 23 final offer WPI is at least 5% but not more than 9%, the relevant
- 24 insurer must, within the stated time, give the person a written notice—
- 25 (a) if the insurer requested the IME provider to arrange a review of
- 26 the first WPI report under section 157—including a copy of the
- 27 IME provider's notice of affirmation or increase; and

- 1 (b) telling the person—
 - 2 (i) their final offer WPI; and
 - 3 (ii) how they may apply to the ACAT for review of the final
 - 4 offer WPI decision; and
 - 5 (c) offering the person the amount of quality of life benefits payable
 - 6 for their final offer WPI under division 2.6.4 (Quality of life
 - 7 benefits—amount payable); and
 - 8 (d) telling the person that the person must, within 28 days after
 - 9 receiving the notice, notify the insurer, in writing, whether
 - 10 they—
 - 11 (i) accept the offer; or
 - 12 (ii) have applied to the ACAT for review of the final offer
 - 13 WPI decision.
 - 14 (2) If the injured person does not notify the relevant insurer within the
 - 15 28 days, the person is taken to have accepted the offer.
 - 16 (3) If the injured person accepts (or is taken to accept) the offer—
 - 17 (a) the person’s application for quality of life benefits is taken to
 - 18 have been finally dealt with; and
 - 19 (b) the relevant insurer must pay to the injured person the amount
 - 20 of quality of life benefits payable for their final offer WPI under
 - 21 division 2.6.4.
 - 22 (4) In this section:

23 ***stated time*** means—

 - 24 (a) if the insurer requested the IME provider to arrange a review of
 - 25 the first WPI report under section 157—14 days after receiving
 - 26 the IME provider’s notice of affirmation or increase; or
 - 27 (b) if the insurer did not request the IME provider to arrange a
 - 28 review of the first WPI report under section 157—28 days after
 - 29 the insurer received the second WPI report.

161 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 157—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
 - (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.

- 1 (4) If the injured person accepts (or is taken to accept) the offer—
 - 2 (a) the person’s application for quality of life benefits is taken to
 - 3 have been finally dealt with; and
 - 4 (b) the relevant insurer must pay to the injured person the amount
 - 5 of quality of life benefits payable for their final offer WPI under
 - 6 division 2.6.4.
 - 7 (5) In this section:
 - 8 *stated time* means—
 - 9 (a) if the insurer requested the IME provider to arrange a review of
 - 10 the first WPI report under section 157—14 days after receiving
 - 11 the IME provider’s notice of affirmation or increase; or
 - 12 (b) if the insurer did not request the IME provider to arrange a
 - 13 review of the first WPI report under section 157—28 days after
 - 14 the insurer received the second WPI report.
- 15 **162 Final offer WPI 10% or more—injured person entitled to**
- 16 **make motor accident claim**
- 17 (1) This section applies if—
 - 18 (a) the relevant insurer for a motor accident decides an injured
 - 19 person’s final offer WPI is at least 10%; and
 - 20 (b) the injured person is entitled to make a motor accident claim in
 - 21 relation to the motor accident.
 - 22 (2) The relevant insurer must, within the stated time, give the person a
 - 23 written notice—
 - 24 (a) if the insurer requested the IME provider to arrange a review of
 - 25 the first WPI report under section 157—including a copy of the
 - 26 IME provider’s notice of affirmation or increase; and
 - 27 (b) telling the injured person—
 - 28 (i) their final offer WPI; and

-
- 1 (ii) how they may apply to the ACAT for review of the final
2 offer WPI decision; and
- 3 (c) offering the person the amount of quality of life benefits payable
4 for their final offer WPI under division 2.6.4 (Quality of life
5 benefits—amount payable); and
- 6 (d) explaining the consequences of accepting the offer, including—
- 7 (i) that the person is entitled to make a motor accident claim
8 in relation to the motor accident; and
- 9 (ii) that if the person accepts the offer and makes a motor
10 accident claim, the person is not entitled to damages for
11 loss of quality of life under chapter 5; and
- 12 (e) telling the person that the person must notify the insurer, in
13 writing, by the due date, whether they—
- 14 (i) accept the offer; or
- 15 (ii) have applied to the ACAT for review of the final offer
16 WPI decision.
- 17 (3) If the injured person accepts the offer—
- 18 (a) the person's application for quality of life benefits is taken to
19 have been finally dealt with; and
- 20 (b) the relevant insurer must pay to the injured person the amount
21 of quality of life benefits payable for their final offer WPI under
22 division 2.6.4.
- 23 (4) If the injured person does not notify the insurer by the due date, the
24 injured person's—
- 25 (a) application for quality of life benefits is taken to have been
26 finally dealt with; and
- 27 (b) entitlement to quality of life benefits in relation to the motor
28 accident ends.

- 1 (5) In this section:
- 2 *due date* means the later of—
- 3 (a) 5 years after the date of the motor accident; and
- 4 (b) 26 weeks after the person receives the notice.
- 5 *stated time* means—
- 6 (a) if the insurer requested the IME provider to arrange a review of
- 7 the first WPI report under section 157—14 days after receiving
- 8 the IME provider’s notice of affirmation or increase; or
- 9 (b) if the insurer did not request the IME provider to arrange a
- 10 review of the first WPI report under section 157—28 days after
- 11 the insurer received the second WPI report.
- 12 **163 WPI assessment—relevant insurer to pay**
- 13 (1) The relevant insurer for a motor accident is liable for the costs of a
- 14 WPI assessment, unless otherwise provided in this part.
- 15 (2) However, the relevant insurer is liable for the costs of only
- 16 1 WPI assessment for an injured person unless the person has injuries
- 17 to more than 1 body system.
- 18 (3) If the injured person has injuries to more than 1 body system, the
- 19 relevant insurer is liable for the costs of only 1 WPI assessment for
- 20 each affected body system for the injured person.

Division 2.6.4 Quality of life benefits—amount payable

164 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 164—
- (a) as at the date of the WPI report; or
- (b) if the WPI report is reviewed under section 157 (4) (Second WPI report—original WPI may be affirmed or increased)—as at the date of the notice of affirmation or increase.

Table 164 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 $\text{WPI}/100\% \times 100$.

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

165 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

166 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 167 (No entitlement to death benefits—death of foreign national outside Australia);
- (d) section 168 (No entitlement to death benefits—conduct making up offence);
- (e) section 169 (No entitlement to death benefits—quality of life benefits or damages already paid);
- (f) section 170 (No entitlement to death benefits—death benefits paid under workers compensation scheme).

167 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.

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

3 **168 No entitlement to death benefits—conduct making up**
4 **offence**

- 5 (1) This section applies if—
6 (a) a person dies as a result of a motor accident; and
7 (b) a coroner establishes that conduct the person engaged in, in
8 relation to the motor accident, made up the physical elements
9 consisting of conduct of—
10 (i) 2 or more driving offences; or
11 (ii) a serious offence.
12 (2) A dependant of the person is not entitled to death benefits in relation
13 to the person's death.
14 (3) In this section:
15 *serious offence*—see section 48 (7).

16 **169 No entitlement to death benefits—quality of life benefits**
17 **or damages already paid**

- 18 A dependant of a person who died as a result of a motor accident is
19 not entitled to death benefits in relation to the person's death if the
20 person received—
21 (a) quality of life benefits in relation to the motor accident; or
22 (b) quality of life damages in relation to the motor accident.

170 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

171 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.

- 1 **172** **Death benefits—income replacement benefits and**
2 **treatment and care benefits still payable**
- 3 (1) This section applies if—
- 4 (a) the relevant insurer for a motor accident accepts liability for an
5 application for death benefits in relation to a dead person for the
6 motor accident; and
- 7 (b) before the person died, the person was entitled to—
- 8 (i) income replacement benefits; or
- 9 (ii) treatment and care benefits.
- 10 (2) The relevant insurer—
- 11 (a) is not entitled to recover any amount of income replacement
12 benefits or treatment and care benefits already paid to the
13 person; and
- 14 (b) must pay to the person's estate any amount of income
15 replacement benefits or treatment and care benefits to which the
16 person was entitled and had not received when the person died.

17 **Division 2.7.4 Death benefits—payment**

- 18 **173 Payment of death benefits—application to ACAT**
- 19 (1) This section applies if the relevant insurer for a motor accident
20 receives an application for death benefits from—
- 21 (a) the dependant of a person who died as a result of the motor
22 accident; or
- 23 (b) if the dependant is a person with a legal disability—the
24 dependant's guardian; or
- 25 (c) the personal representative of a person who died as a result of
26 the motor accident.

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

15 **174 Payment of death benefits—ACAT orders**

- 16 (1) On application under section 173, the ACAT must decide—
- 17 (a) whether to make an order for payment of death benefits; and
- 18 (b) if the ACAT makes an order under paragraph (a)—
- 19 (i) the amount of death benefits the ACAT considers
20 appropriate for each dependant; and
- 21 (ii) any other matter the ACAT considers relevant for the
22 making of the order.
- 23 (2) However, the order must not be for more than an amount stated in
24 section 171 (Amount of death benefits payable).

- 1 (3) In considering an application under section 173, the ACAT may—
2 (a) consider any relevant matter; and
3 (b) ask for additional information in relation to the application.

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

7 *Note 2* See s 367 for when a licensed insurer must comply with an order of the
8 ACAT.

Part 2.8 Defined benefits—funeral benefits

175 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 176 (No entitlement to funeral benefits—death of foreign national outside Australia); and
- (c) section 177 (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.

176 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.

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

3 **177 No entitlement to funeral benefits—funeral expenses paid**
4 **under workers compensation scheme**

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

17 **178 Funeral benefits—maximum amount payable**

18 The maximum amount of funeral benefits payable is
19 \$15 000 AWE indexed.

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

21 **179 Funeral benefits—MAI guidelines**

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

Part 2.9 Defined benefits—Australians living overseas and foreign nationals

180 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.

- 1 (6) In this section:
- 2 *Australian living overseas* means a person injured in a motor
- 3 accident who—
- 4 (a) is an Australian citizen or permanent resident of Australia; and
- 5 (b) lives outside Australia; and
- 6 (c) has lived outside Australia for at least the eligibility period (if
- 7 any); and
- 8 (d) intends to live outside Australia permanently or for an extended
- 9 time.
- 10 **181 Lump sum payment of certain defined benefits—foreign**
- 11 **nationals**
- 12 (1) This section applies if—
- 13 (a) an insurer must pay treatment and care benefits or income
- 14 replacement benefits to a person injured in a motor accident; and
- 15 (b) the injured person is a foreign national; and
- 16 (c) the injured person intends to leave Australia permanently before
- 17 the end of the period for which the benefits are payable.
- 18 (2) Before the injured person leaves Australia permanently, the injured
- 19 person—
- 20 (a) must notify the insurer that the person intends to leave Australia
- 21 permanently; and
- 22 (b) may apply to the insurer for the payment of a lump sum (a ***lump***
- 23 ***sum payment***) to cover the person's future entitlement to
- 24 defined benefits.
- 25 (3) The insurer must continue to pay the injured person the defined
- 26 benefits to which the person is entitled until the day the person leaves
- 27 Australia permanently.

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

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

Part 2.10 Defined benefits—dispute resolution

Division 2.10.1 Preliminary

182 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 188 (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

183 Definitions—div 2.10.2

In this division:

internally reviewable decision means a decision of an insurer 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.

- 1 **184 Internal review—application**
- 2 (1) The following people may apply to an insurer for internal review of
- 3 an internally reviewable decision the insurer has made about an
- 4 application for defined benefits:
- 5 (a) an applicant for defined benefits;
- 6 (b) if an applicant for defined benefits is a person with a legal
- 7 disability—the applicant's guardian;
- 8 (c) if the dependant of a person who died as a result of the motor
- 9 accident is a person with a legal disability—the dependant's
- 10 guardian;
- 11 (d) the personal representative of a person who died as a result of
- 12 the motor accident.
- 13 (2) An application for internal review must be made within 28 days
- 14 after—
- 15 (a) the date of the internally reviewable decision; or
- 16 (b) if the insurer has not made the internally reviewable decision
- 17 within the time required under this Act—the end of the time
- 18 required for making the decision.
- 19 (3) However, an application for internal review may be made after the
- 20 28 days (a *late application*) if—
- 21 (a) the applicant satisfies the insurer that they have a full and
- 22 satisfactory explanation for the delay; and
- 23 (b) the MAI guidelines provide for a late application to be made
- 24 within a longer period; and
- 25 (c) the late application is made within the longer period.

- 1 (4) For subsection (3) (a), a *full and satisfactory explanation* by an
2 applicant for a delay is a full account of the conduct, including the
3 actions, knowledge and belief of the applicant, beginning on the date
4 of the internally reviewable decision until the date of providing the
5 explanation.
- 6 (5) The explanation is not a satisfactory explanation unless a reasonable
7 person in the circumstances explained by the applicant would have
8 been justified in delaying the application.

9 **185 Conduct of internal review—MAI guidelines**

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

15 **186 Internal review—application does not stay decision**

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

19 **187 Internal review—information to be considered**

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

24 **188 Internal review—decision**

- 25 (1) An insurer must, within 10 business days after receiving an
26 application for internal review of an internally reviewable decision—
27 (a) decide to—
28 (i) affirm the decision; or

- 1 (ii) amend the decision; or
2 (iii) set aside the decision and make a substitute decision; and
3 (b) give the applicant written notice of the decision (an *internal*
4 *review notice*) that includes the following:
5 (i) the reasons for the decision;
6 (ii) information about how the applicant may apply for
7 external review of the decision.
8 (2) However, the MAI guidelines may provide for particular
9 circumstances in which the 10 business days may be extended.
10 (3) A regulation may prescribe—
11 (a) additional information an internal review notice may or must
12 contain; and
13 (b) any document or thing that must accompany a notice; and
14 (c) anything else in relation to a notice.

15 Division 2.10.3 ACAT review of insurer's decisions

16 189 Meaning of *ACAT reviewable decision*

17 In this Act:

18 *ACAT reviewable decision* means a decision of an insurer prescribed
19 by regulation.

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

190 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.

- 1 **191 Time for making application when no decision made**
2 **under s 188**
- 3 (1) This section applies if—
- 4 (a) an insurer is required to make a decision under section 188
5 (Internal review—decision) (a *section 188 decision*) in relation
6 to an application for internal review of an internally reviewable
7 decision; and
- 8 (b) the insurer has not made the section 188 decision within the time
9 required under section 188 (1), or any further time allowed
10 under the MAI guidelines; and
- 11 (c) the applicant for internal review may apply to the ACAT for
12 review of the internally reviewable decision.
- 13 (2) An application for review of the internally reviewable decision may
14 be made within 28 days after the end of the period mentioned in
15 subsection (1) (b).
- 16 **192 External review—ACAT to notify insurer etc**
- 17 As soon as practicable after receiving an application for external
18 review of an ACAT reviewable decision, the ACAT must give written
19 notice of the application to—
- 20 (a) if the applicant is an applicant for defined benefits—the insurer
21 who made the decision; or
- 22 (b) if the applicant is the insurer of a motor vehicle involved in the
23 motor accident—
- 24 (i) the applicant for defined benefits; and
25 (ii) the insurer who made the decision.

- 1 **193 External review—application does not stay decision**
- 2 An application for external review of an ACAT reviewable decision
- 3 does not operate to stay the decision or otherwise prevent action being
- 4 taken based on the decision.
- 5 *Note* The ACAT may order a stay of the ACAT reviewable decision (see *ACT*
- 6 *Civil and Administrative Tribunal Act 2008*, s 53).
- 7 **194 External review—decision**
- 8 (1) In deciding an application for external review of an ACAT
- 9 reviewable decision, the ACAT must, by order—
- 10 (a) affirm the decision; or
- 11 (b) amend the decision; or
- 12 (c) set aside the decision and—
- 13 (i) make a substitute decision; or
- 14 (ii) remit the matter for reconsideration by the insurer that
- 15 made the decision (the *decision-maker*) in accordance with
- 16 any direction of the ACAT.
- 17 (2) In deciding the application for external review, the ACAT must only
- 18 consider the information that was available to the decision-maker
- 19 when the decision was made.
- 20 (3) However, the ACAT may, on application by a party, give the party
- 21 leave to present information or evidence that was not reasonably
- 22 available to the decision-maker when the decision was made.
- 23 **Example**
- 24 a medical report for an examination undertaken, but not reported on, when the
- 25 decision was made
- 26 (4) A regulation may prescribe conditions for allowing additional
- 27 information or evidence to be presented under subsection (3).

- 1 **195 External review—costs of proceedings**
- 2 (1) The ACAT may order a party to pay the costs of the other party
- 3 arising from an application for external review of an ACAT
- 4 reviewable decision.
- 5 (2) A regulation may prescribe the following:
- 6 (a) when an order under subsection (1) may be made;
- 7 (b) what may be considered to be a disbursement;
- 8 (c) the maximum amount that can be awarded for particular costs;
- 9 (d) the maximum amount of costs that can be awarded in relation to
- 10 an application for external review of an ACAT reviewable
- 11 decision.
- 12 *Note* Power to make a statutory instrument (including a regulation) includes
- 13 power to make different provision in relation to different matters or
- 14 different classes of matters, and to make an instrument that applies
- 15 differently by reference to stated exceptions or factors (see [Legislation](#)
- 16 [Act](#), s 48).
- 17 (3) In this section:
- 18 *costs* include disbursements.
- 19 **196 External review—effect of decision**
- 20 (1) This section applies if the ACAT makes an order under section 194
- 21 (External review—decision) in relation to an ACAT reviewable
- 22 decision (other than an order under section 194 (1) (c) (ii)).
- 23 (2) The order—
- 24 (a) is taken to be the decision of the decision-maker who made the
- 25 ACAT reviewable decision; and
- 26 (b) takes effect on the date the ACAT makes the order, unless the
- 27 ACAT otherwise orders.

- 1 (3) If the ACAT orders the payment of a defined benefit to an applicant
2 for defined benefits, the relevant insurer for the application must pay
3 the applicant the amount of defined benefits owing to the applicant.

4 **197 External review—time for appeal**

- 5 (1) This section applies to an application for external review of an ACAT
6 reviewable decision under the *ACT Civil and Administrative Tribunal*
7 *Act 2008*, section 79 (Appeals within tribunal) to appeal the ACAT's
8 decision under section 194 (External review—decision).
9 (2) The application must be made within 28 days after the date of the
10 ACAT reviewable decision.

11 **198 No monetary limit on jurisdiction of ACAT**

- 12 (1) The ACAT is not, in exercising jurisdiction conferred on it by this
13 part, limited in the amount of money that it may order to be paid.
14 (2) This section is subject to—
15 (a) section 195 (External review—costs of proceedings); and
16 (b) any other provision under this Act relating to an amount payable
17 in relation to a defined benefit.

18 **199 Inconsistency between Act and ACAT Act, pt 4A**

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

Part 2.11 Defined benefits—miscellaneous

200 Legal costs and fees payable by applicants and insurers

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

201 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.

1 **Chapter 3** **Motor accident injuries—**
2 **significant occupational impact**

3 **Part 3.1** **Significant occupational impact**
4 **of injuries—important concepts**

5 **202** **Meaning of *significant occupational impact***

6 In this Act:

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

12 (a) either—

13 (i) is prevented from performing the work the person
14 performed before the motor accident; or

15 (ii) has reduced capacity to perform the work the person
16 performed before the motor accident; and

17 (b) either—

18 (i) is unable, or has limited ability, to undertake training in
19 another area of work; or

20 (ii) cannot undertake appropriate alternative employment.

1 **203 Meaning of *independent health assessor***

2 In this Act:

3 *independent health assessor*—

- 4 (a) means a health practitioner who, under an arrangement with an
5 authorised IME provider, conducts SOI assessments; but
6 (b) does not include a health practitioner prescribed by regulation.

7 **204 Meaning of *SOI assessment* and *SOI report***

8 (1) In this Act:

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

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

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

19 (2) In this section:

20 *health assessment*—see the [Health Practitioner Regulation National](#)
21 [Law \(ACT\)](#), section 5.

205 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, including assessing whether a person's injuries are likely to have a significant occupational impact on the person's ability to return to work or undertake training in another area of employment; 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.

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

Part 3.2 SOI assessments

206 SOI assessment 4 years 6 months after motor accident

- (1) This section applies if—
 - (a) a person injured in a motor accident—
 - (i) is receiving income replacement benefits; or
 - (ii) because of the circumstances prescribed by regulation, would have been eligible to receive income replacement benefits; and
 - (b) the person's WPI is less than 10%; and
 - (c) the person has not had an SOI assessment in relation to the injuries; and
 - (d) 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 an SOI assessment.

207 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 206.
- (2) The IME provider must arrange for the SOI assessment to be carried out—
 - (a) by 1 or more independent medical examiners or independent health 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

- 1 (b) the time within which the assessment must be arranged; and
2 (c) arrangements for payment of the assessment.

3 **208 SOI assessment—provision of information**

- 4 (1) This section applies if an authorised IME provider arranges for an
5 independent medical examiner or independent health assessor to
6 carry out an SOI assessment of an injured person.
- 7 (2) The injured person must give the authorised IME provider and the
8 person carrying out the assessment (the *assessor*)—
- 9 (a) all information in the injured person's possession that is relevant
10 to the SOI assessment; and
- 11 (b) any other information the authorised IME provider or assessor
12 reasonably requires for the SOI assessment.
- 13 (3) The relevant insurer for the motor accident must give the authorised
14 IME provider and the assessor—
- 15 (a) all information in the insurer's possession that is relevant to the
16 SOI assessment; and
- 17 (b) a copy of any WPI reports in the insurer's possession; and
- 18 (c) any other information the authorised IME provider or assessor
19 reasonably requires for the SOI assessment.
- 20 (4) The information must be given to the authorised IME provider and
21 the assessor at least 10 days before the day the assessor is to carry out
22 the SOI assessment.
- 23 (5) The assessor may decline to carry out the SOI assessment if the
24 injured person or the insurer fails to give any information reasonably
25 required by the authorised IME provider or assessor.

- 1 **209 SOI report to be prepared**
- 2 (1) An independent medical examiner or independent health assessor
- 3 who carries out an SOI assessment of an injured person must give an
- 4 SOI report about the assessment to the IME provider who arranged
- 5 the assessment.
- 6 (2) The IME provider must give the SOI report to the relevant insurer for
- 7 the motor accident.
- 8 (3) The SOI assessment guidelines may make provision for the
- 9 requirements for an SOI report, including the time within which an
- 10 SOI report must be given.
- 11 **210 SOI report—injury has significant occupational impact**
- 12 (1) This section applies if an SOI report from an independent medical
- 13 examiner or independent health assessor confirms that the injured
- 14 person’s injury has had a significant occupational impact on the
- 15 person’s ability to undertake employment.
- 16 (2) The injured person—
- 17 (a) is taken to have a WPI of 10% for this Act; and
- 18 (b) is entitled to make a motor accident claim in relation to the
- 19 motor accident.
- 20 (3) Subsection (2) does not prevent a person mentioned in that subsection
- 21 from making a quality of life benefits application.
- 22 (4) The relevant insurer for the motor accident must, within 14 days after
- 23 receiving the SOI report, give the injured person a written notice—
- 24 (a) including a copy of the report and the WPI report, if any; and
- 25 (b) stating that—
- 26 (i) the person is taken to have a WPI of 10% for this Act; and
- 27 (ii) the person is entitled to make a motor accident claim in
- 28 relation to the motor accident.

- 1 **211 SOI report—no significant occupational impact**
- 2 (1) This section applies if an SOI report of an injured person confirms
- 3 that the injured person’s injury has not had a significant occupational
- 4 impact on the person’s ability to undertake employment.
- 5 (2) The relevant insurer for the motor accident must, within 14 days after
- 6 receiving the SOI report, give the injured person a written notice—
- 7 (a) including a copy of the report; and
- 8 (b) stating that the person may apply to the ACAT for a review of
- 9 the SOI report.

Part 3.3 SOI reports—ACAT review

212 SOI report—no significant occupational impact—ACAT review

- (1) If an injured person receives a notice under section 211 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.

213 Review of SOI report—ACAT to notify insurer etc

- (1) As soon as practicable after receiving an application for review of an SOI report under section 212, 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.

214 Review of SOI report—IME provider to give ACAT information

- (1) This section applies if an IME provider receives a notice under section 213 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.

215 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

- 1 (b) set aside the SOI report and make an order confirming that the
2 injured person's injury has had a significant occupational impact
3 on the person's ability to undertake employment.
- 4 (2) In deciding the application for review, the ACAT must only consider
5 the information that was available to the independent medical
6 examiner or independent health assessor when the SOI assessment to
7 which the SOI report relates was carried out.
- 8 (3) However, the ACAT may, on application by a party, give the party
9 leave to present information or evidence that was not reasonably
10 available to the independent medical examiner or independent health
11 assessor when the SOI assessment was carried out.
- 12 **Example**
13 a medical report for an examination undertaken, but not reported on, when the SOI
14 assessment was carried out
- 15 (4) If the ACAT makes an order under subsection (1), the order takes
16 effect on the date the ACAT makes the order, unless the ACAT
17 otherwise orders.
- 18 (5) A regulation may prescribe conditions for allowing additional
19 information or evidence to be presented under subsection (3).

20 **216 Effect of ACAT order affirming SOI report**

- 21 (1) This section applies if the ACAT makes an order under
22 section 215 (1) (a) affirming an SOI report in relation to a person
23 injured in a motor accident.
- 24 (2) The relevant insurer for the motor accident must pay the injured
25 person the amount of quality of life benefits payable to the person
26 under section 164 (Amount of quality of life benefits payable).
- 27 *Note* The amount of quality of life benefits payable under s 164 depends on the
28 injured person's WPI, as assessed under s 141 or div 2.6.3.

**Part 3.4 Significant occupational impact
 of injuries—miscellaneous**

217 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 210 (4) (SOI report—injury has significant occupational impact)—the date of the notice;
- (b) if the ACAT makes an order under section 215 (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

218 Definitions—ch 4

In this chapter:

future treatment payment—see section 219 (2).

medical treatment means medical treatment prescribed by regulation.

219 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.

- 1 (4) In this section:
- 2 *approved medical treatment*, for a person injured in a motor accident,
- 3 means medical treatment that is of the same kind that—
- 4 (a) the person received in the 6-month period following the
- 5 4th anniversary of the motor accident; and
- 6 (b) the relevant insurer for the motor accident has paid or agreed to
- 7 pay.
- 8 *continuous*—an injured person is receiving medical treatment
- 9 continuously if the injured person is receiving medical treatment at
- 10 least monthly.
- 11 *expenses*, of an injured person, does not include expenses for medical
- 12 treatment—
- 13 (a) received before the date of the application; or
- 14 (b) for which the relevant insurer has previously refused to pay.
- 15 **Example—par (b)**
- 16 the medical treatment was not reasonable and necessary in the circumstances
- 17 *relevant date*, for a motor accident, means the date that is 4 years and
- 18 6 months after the date of the motor accident.

19 **220 Future treatment payment—assessment and calculation**

- 20 If the relevant insurer for a motor accident receives an application
- 21 under section 219, the insurer must—
- 22 (a) assess—
- 23 (i) whether the applicant's approved medical treatment, and
- 24 the costs of the medical treatment, are reasonable and
- 25 necessary; and
- 26 (ii) the period for which the applicant will need the approved
- 27 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) 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

- 1 (B) if the applicant negotiates with the insurer for a
2 different amount—the applicant may rely on medical
3 information the applicant sought for the purposes of
4 the negotiation.

5 **221 No agreement on future treatment payment—application**
6 **to ACAT**

- 7 (1) If the relevant insurer for a motor accident and an injured person who
8 receives a notice under section 220 are unable to agree on the future
9 treatment payment, the insurer or injured person may apply to the
10 ACAT for—
11 (a) a determination of the future treatment payment; and
12 (b) an order for payment of the future treatment payment.
13 (2) The MAI guidelines may make provision in relation to the
14 information to be given to the ACAT with an application under
15 subsection (1).

16 **222 Decision about future treatment payment—ACAT orders**

- 17 (1) On application under section 221, the ACAT must—
18 (a) decide the future treatment payment the ACAT considers
19 appropriate for the injured person; and
20 (b) order the relevant insurer to pay the future treatment payment to
21 the injured person.
22 (2) In deciding the future treatment payment, the ACAT—
23 (a) must consider—
24 (i) evidence about the injured person's medical treatment; and
25 (ii) the opportunities available to the injured person for
26 investing the payment; and

1 (b) may—

2 (i) consider any other relevant matter; and

3 (ii) ask for additional information in relation to the application.

4 **223 Future treatment payment—costs of proceedings**

5 (1) The ACAT may order a party to pay the costs of the other party
6 arising from an application under section 221.

7 (2) A regulation may prescribe the following:

8 (a) when an order under subsection (1) may be made;

9 (b) what may be considered a disbursement;

10 (c) the maximum amount that can be awarded for particular costs;

11 (d) the maximum amount of costs that can be awarded in relation to
12 an application under section 221.

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

18 (3) In this section:

19 *costs* include disbursements.

20 **224 Future treatment payment—no monetary limit on**
21 **jurisdiction of ACAT**

22 (1) The ACAT is not, in exercising jurisdiction conferred on it by this
23 chapter, limited in the amount of the future treatment payment it may
24 order to be paid.

25 (2) This section is subject to section 223.

Chapter 5 Motor accident injuries— common law damages

Part 5.1 Preliminary

225 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.

226 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.

227 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).

228 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 323 (Nominal defendant liable—uninsured motor vehicle).

229 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.

- 1 **230** **Defined benefit payment etc—no effect on liability under**
2 **motor accident claim**
- 3 The acceptance, or deemed acceptance, of liability for an application
4 for defined benefits, or payment of defined benefits, by an insurer in
5 relation to a motor accident—
- 6 (a) is not an admission of liability in relation to the motor accident;
7 and
- 8 (b) does not in any way prejudice or affect a claim or proceeding
9 arising out of the motor accident.
- 10 **231** **Insured person not to admit liability, settle or make**
11 **payments**
- 12 (1) An insured person must not, without the written agreement of the
13 person's insurer—
- 14 (a) admit liability in relation to a motor accident claim; or
- 15 (b) settle, or offer to settle, a motor accident claim; or
- 16 (c) make a payment, or offer or promise to make a payment, in
17 relation to a motor accident claim.
- 18 (2) A contract, offer or promise made in contravention of this section
19 does not bind the insurer.
- 20 (3) This section does not prevent an insured person from providing a
21 police officer with information reasonably required to prepare a
22 report about a motor accident.
- 23 (4) An insured person who contravenes this section does not incur civil
24 liability to an insurer.

232 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.

233 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.

1 **234 Insurer may intervene in proceeding**

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

7 **235 Motor accident claim—notification of application made**
8 **under workers compensation scheme**

9 (1) This section applies if—

10 (a) a claimant makes a motor accident claim in relation to a motor
11 accident; and

12 (b) the claimant has made an application for compensation under a
13 workers compensation scheme (the *workers compensation*
14 *application*) in relation to personal injury or death caused by the
15 motor accident.

16 (2) The claimant must notify the insurer for the motor accident claim that
17 the workers compensation application has been made when the motor
18 accident claim is made.

19 (3) The claimant must notify the following to the insurer for the motor
20 accident claim:

21 (a) the name and address of the insurer for the workers
22 compensation application;

23 (b) whether liability for the workers compensation application has
24 been accepted or denied;

25 (c) any amounts paid to or on behalf of the claimant under the
26 workers compensation application.

27 (4) If the insurer for the motor accident claim receives a notice under
28 subsection (3), the insurer may get information about the workers
29 compensation application from the insurer for the workers
30 compensation application.

Part 5.2 Threshold for damages

236 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 been assessed as having a WPI of at least 10% as a result of the accident; or

(b) is a foreign national who has—

(i) received a lump sum payment under a lump sum agreement under section 181 (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 210 (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).

- 1 (d) has made a successful application for workers compensation
2 benefits in relation to the injury and either—
3 (i) been assessed as having a WPI of at least 10% as a result
4 of the motor accident; or
5 (ii) is taken, under section 210 (2) (a), to have a WPI of 10%
6 as a result of the accident; or
7 (e) has died as a result of the accident.
8 *Note Person who died as a result of a motor accident—see s 36.*
9 (2) Subsection (1) does not prevent a motor accident claim from being
10 settled at any time.
11 (3) In this section:
12 *private medical examiner—see section 144.*
13 *successful application for workers compensation benefits*, by an
14 injured person in relation to an injury, means an application by the
15 person for workers compensation benefits that—
16 (a) has been made at least 26 weeks before the date—
17 (i) the person gives a notice of claim to the insurer for the
18 motor accident claim; or
19 (ii) a WPI assessment is carried out on the person; and
20 (b) has been accepted by the insurer for the application; and
21 (c) has not been withdrawn by the injured person.

Part 5.3 WPI assessment—claimant receiving workers compensation

237 Application—pt 5.3

(1) This part applies to a person injured in a motor accident if the person—

(a) has made a successful application 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 application 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 144.

successful application for workers compensation benefits, by a person in relation to an injury—see section 236 (3).

238 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 *acknowledgement 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 receiving a receipt notice were a reference to an acknowledgement 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; and
 - (e) a reference in section 149 (1) (WPI assessment—both physical and psychological injuries) to quality of life benefits were a reference to quality of life damages; and
 - (f) a reference in section 206 (1) (a) (SOI 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.

- 1 (4) However, the following provisions do not apply:
- 2 (a) section 153 (1) (b), (2) and (3) (WPI 5% to 9%);
- 3 (b) section 154 (2) (b), (3) and (4) (WPI 10% or more—injured
- 4 person not entitled to make motor accident claim);
- 5 (c) section 155 (2) (b), (c), (3) and (4) (WPI 10% or more—injured
- 6 person entitled to make motor accident claim);
- 7 (d) section 160 (1) (c), (d) (i), (2) and (3) (Final offer WPI 5% to
- 8 9%);
- 9 (e) section 161 (2) (c), (d) (i), (3) and (4) (Final offer WPI 10% or
- 10 more—injured person not entitled to make motor accident
- 11 claim);
- 12 (f) section 162 (2) (c), (d), (e) (i), (3) and (4) (Final offer WPI 10%
- 13 or more—injured person entitled to make motor accident claim).
- 14 *Note* An injured person to whom this part applies is not entitled to receive
- 15 income replacement benefits, treatment and care benefits or quality of life
- 16 benefits (see s 50).

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*.

239 Quality of life damages—general

(1) A claimant for a motor accident claim who is the injured person to whom the claim relates—

(a) may be awarded damages for loss of quality of life (*quality of life damages*) under—

(i) if the claimant was a child on the date of the motor accident—section 241; or

(ii) in any other case—section 240; and

(b) may not be awarded any other damages for non-economic loss.

(2) In this section:

non-economic loss includes the following:

- (a) pain and suffering;
- (b) loss of amenities of life;

(c) loss of expectation of life;

(d) disfigurement.

240 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 the amount stated in table 240—

(a) as at the date of the WPI report for the claimant; or

(b) if the WPI report is reviewed under section 157 (4) (Second WPI report—original WPI may be affirmed or increased)—as at the date of the notice of affirmation or increase.

Table 240 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) If the court considers that the claimant's WPI assessment did not take into account a particular injury, or a particular effect on the claimant's quality of life, the court may award the claimant an amount of additional damages that is not more than 20% of the amount the claimant is awarded under subsection (1).

(3) However, the court must not award an amount of additional damages under subsection (2) 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.

1 (4) The maximum amount that may be awarded to the claimant for
2 quality of life damages and additional damages is \$600 000 AWE
3 indexed.

4 (5) In this section:

5 *W* means $\text{WPI}/100\% \times 100$.

6 **Example**

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

8 **241 Quality of life damages—amount that may be awarded for**
9 **children**

10 (1) This section applies to a claimant who was a child on the date of the
11 motor accident in which the claimant was injured.

12 (2) The maximum amount that may be awarded to the claimant for
13 quality of life damages is \$600 000 AWE indexed.

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

15 **242 Quality of life damages—none if quality of life benefits**
16 **received**

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

20 **243 Damages for loss of earnings—none in first year**

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

23 *Note* Damages for loss of earnings are also limited under the *Civil Law*
24 (*Wrongs*) *Act 2002*, s 98.

244 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 243).

(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 250).

(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 339).

245 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

- 1 (b) is awarded damages in a motor accident claim in relation to the
2 person's injuries or death; and
- 3 (c) because of the award of damages, is liable to repay the
4 compensation received.
- 5 (2) The award of damages must include damages equal to the amount of
6 compensation received by the person under the workers
7 compensation scheme.

8 **246 Gratuitous care—no damages**

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

12 **Example**

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

14 **247 Treatment and care—damages not available for**
15 **LTCS participants**

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

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

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

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

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

25 (b) arise while the person is a participant in the LTCS scheme.

26 *Note* **Treatment and care needs**, of a participant in the LTCS scheme—see the
27 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.

248 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

- 1 (b) either—
2 (i) arose while the person was a participant in the
3 LTCS scheme; or
4 (ii) arise after the person receives the lump sum under the lump
5 sum agreement.

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

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

16 *Note* **LTCS Act**—see the dictionary.
17 **LTCS commissioner**—see the dictionary.

- 18 (4) In this section:
19 **excluded treatment and care**—see the [LTCS Act](#), section 9.
20 **foreign national participant**, in the LTCS scheme—see the
21 [LTCS Act](#), section 30B (5).
22 **lump sum agreement**—see the [LTCS Act](#), section 30B (1).

23 **249 Wrongful death claims**

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

Part 5.5 Damages independently of Act

250 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

251 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

252 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.

253 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

1 (b) if the motor accident was a multiple vehicle accident—the driver
2 of the motor vehicle whose act or omission caused the accident
3 is taken—

4 (i) to be the driver at fault; and

5 (ii) to have breached their duty of care to the injured person.

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

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

8 *Note* ***Single vehicle accident*** and ***multiple vehicle accident***—see the
9 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

254 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

255 Compulsory conference

- (1) Before a claimant for a motor accident claim brings a court proceeding based on the claim, the parties to the claim must have a conference (the *compulsory conference*).
- (2) Any party may call the compulsory conference—
 - (a) at a time and place agreed by each party; or
 - (b) if more than 6 months has passed since the respondent received, or is taken to have received, the claimant's complying notice of claim—at a reasonable time and place nominated by the party calling the conference.

- 1 (3) On application by a party, the court may decide the time and place for
2 the compulsory conference and make any other orders the court
3 considers appropriate.
- 4 (4) The parties may, by agreement, change the time or place for holding
5 the compulsory conference or adjourn the conference from time to
6 time and from place to place.
- 7 (5) The compulsory conference may be conducted, if the parties agree,
8 by telephone or another form of communication allowing
9 contemporaneous and continuous communication between the
10 parties.

11 **256 Compulsory conference may be dispensed with**

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

19 **257 Compulsory conference with mediator**

- 20 (1) A compulsory conference may be held with a mediator if—
21 (a) each party for the motor accident claim agrees; and
22 (b) each party for the motor accident claim agrees, in writing, about
23 how costs of the mediation are to be apportioned between the
24 parties.
- 25 (2) The mediator must be a person who is independent of the parties.
- 26 (3) The mediator must be decided by agreement by each party.

- 1 (4) However, if the parties are unable to agree on a mediator not later
2 than 30 days after the date for the compulsory conference is decided,
3 any party may apply to the registrar of the court for the registrar to
4 decide the mediator.

5 **258 Procedures before compulsory conference**

- 6 (1) At least 7 days before the compulsory conference is to be held, each
7 party for the motor accident claim must give each other party—
8 (a) a copy of each document that is relevant to the claim that has not
9 yet been given to the other party; and
10 (b) a statement verifying that all relevant documents in the
11 possession of the party or the party's lawyer have been given as
12 required; and
13 (c) details of the party's legal representation; and
14 (d) if the party has legal representation—a certificate of readiness
15 signed by the party's lawyer.
16 (2) However, on application by a party, the court may exempt the party
17 from an obligation to give material to another party before trial if
18 satisfied that—
19 (a) giving the material would alert a person reasonably suspected of
20 fraud to the suspicion; or
21 (b) there is some other good reason why the material should not be
22 given.
23 (3) In this section:
24 *certificate of readiness*, by a party to a motor accident claim, means
25 a certificate stating that—
26 (a) the party is in all respects ready for the compulsory conference;
27 and

-
- 1 (b) the party has obtained all investigative material required for the
2 trial, including witness statements from each person (other than
3 expert witnesses) the party intends to call as a witness at the trial;
4 and
- 5 (c) the party has obtained medical or other expert reports from each
6 person the party proposes to call as an expert witness at the trial;
7 and
- 8 (d) the party has fully complied with the party's obligations to give
9 the other parties material relevant to the claim; and
- 10 (e) the party's lawyer has given the party a costs statement.
- 11 ***costs statement***, by a party's lawyer, means a statement containing—
- 12 (a) details of the legal costs (clearly identifying costs that are legal
13 fees and costs that are disbursements) payable by the party to the
14 party's lawyer up to the completion of the compulsory
15 conference; and
- 16 (b) an estimate of the party's likely legal costs (clearly identifying
17 costs that are legal fees and costs that are disbursements) if the
18 claim proceeds to trial and is decided by the court; and
- 19 (c) a statement of the consequences to the party, in terms of costs,
20 in each of the following cases:
- 21 (i) if the amount of the damages awarded by the court is equal
22 to, or more than, the claimant's mandatory final offer;
- 23 (ii) if the amount of the damages awarded by the court is less
24 than the claimant's mandatory final offer but equal to, or
25 more than, the respondent's mandatory final offer;
- 26 (iii) if the amount of the damages awarded by the court is equal
27 to, or less than, the respondent's mandatory final offer.

259 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

260 Mandatory final offers—requirement

(1) This section applies if, for a motor accident claim—

(a) the compulsory conference has been dispensed with under section 256; 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.

261 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.

262 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.

263 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.

1 (4) In this section:

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

3 (a) a current health care card issued under the *Social Security*
4 *Act 1991* (Cwlth);

5 (b) a current pensioner concession card issued under the *Social*
6 *Security Act 1991* (Cwlth);

7 (c) a current pensioner concession card issued in relation to a
8 pension under the *Veterans' Entitlements Act 1986* (Cwlth) or
9 the *Military Rehabilitation and Compensation Act 2004*
10 (Cwlth);

11 (d) a current gold card;

12 (e) a card prescribed by regulation.

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

18 **264 Court proceedings not to begin if mandatory final offer**
19 **open**

20 (1) A claimant for a motor accident claim must not begin a court
21 proceeding based on the claim if a mandatory final offer for the claim
22 remains open.

23 (2) If a claimant brings a court proceeding based on a motor accident
24 claim, the claimant must, at the beginning of the proceeding, file in
25 the court a sealed envelope containing a copy of the claimant's
26 mandatory final offer.

27 (3) The respondent must, before or at the time of filing a defence, file in
28 the court a sealed envelope containing a copy of the respondent's
29 mandatory final offer.

1 (4) The court must not read the mandatory final offers until the court has
2 decided the claim.

3 (5) However, the court must have regard to the mandatory final offers if
4 making a decision about interest or costs.

5 **Division 5.7.4 Court proceedings**

6 **265 Time limit for beginning proceeding—general**

7 (1) This section applies if a claimant for a motor accident claim does not
8 begin a court proceeding based on the claim in accordance with the
9 time limits in—

10 (a) section 266 (Time limit—compulsory conference); or

11 (b) section 267 (Time limit—no compulsory conference); or

12 (c) section 268 (Time limit—no mandatory final offers).

13 (2) The claimant may still begin the proceeding but the court may order
14 the claimant to pay the respondent's costs caused by the delay.

15 *Note* Legal costs and fees may be prescribed under s 281 (1).

16 (3) The respondent may apply to the court for an order deciding a time
17 by which the claimant must begin the proceeding.

18 (4) If the claimant does not begin a proceeding in accordance with an
19 order made under subsection (3), the motor accident claim is barred.

20 **266 Time limit—compulsory conference**

21 (1) This section applies if—

22 (a) the parties to a motor accident claim have had a compulsory
23 conference; and

24 (b) the obligation to exchange mandatory final offers has not been
25 dispensed with.

- 1 (2) The claimant may begin a court proceeding based on the motor
2 accident claim not later than—
3 (a) 60 days after the end of the compulsory conference; or
4 (b) a later day—
5 (i) agreed by the parties not later than 60 days after the end of
6 the compulsory conference; or
7 (ii) decided by the court on application by the claimant not
8 later than 60 days after the end of the compulsory
9 conference.

10 **267 Time limit—no compulsory conference**

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

268 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.

269 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

- 1 (b) the insured person is in breach of a contractual or statutory
2 obligation.

3 **270 Procedure if respondent is insurer**

- 4 (1) This section applies if—
5 (a) a claimant brings a court proceeding based on a motor accident
6 claim; and
7 (b) the respondent is an insured person or an insurer.
8 (2) If the motor accident claim lies against 2 or more insurers, all insurers
9 become defendants to the proceeding, but the respondents' claim
10 manager continues to represent all insurers in the proceeding unless
11 the court gives leave allowing 1 or more of the insurers to be
12 separately represented.
13 (3) If a motor accident claim lies against 2 or more insurers, and a legal
14 document related to a proceeding based on the motor accident claim
15 is given to the respondents' claim manager, all insurers are taken to
16 have been given the legal document.
17 (4) If a legal document related to a proceeding based on a motor accident
18 claim is given to the insurer, the insured person is also taken to have
19 been given the legal document.
20 (5) In this section:
21 *respondents' claim manager*—see the *Civil Law (Wrongs) Act 2002*,
22 section 56.

23 **271 Exclusion of summary judgment on the basis of**
24 **admissions**

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

272 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.

273 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

274 Definitions—div 5.7.5

In this division:

compliance notice—see section 275.

enforcing party—see section 275.

late party—see section 275.

relevant notice claim—see section 276.

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

275 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 261; or

(ii) the time for exchanging mandatory final offers under section 262 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.

- 1 (3) Another party to the motor accident claim (the *enforcing party*) may
2 give the late party a notice (the *compliance notice*) requiring the late
3 party to do the required thing not later than 7 days after the day the
4 late party receives the compliance notice.

5 **276 Thing not done within 7-day period—claimant as**
6 **enforcing party**

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

21 **277 Thing not done within 7-day period—respondent as**
22 **enforcing party**

- 23 (1) This section applies if—
24 (a) an enforcing party has given a late party a compliance notice;
25 and
26 (b) the late party does not do the required thing within the 7-day
27 period in the notice; and
28 (c) the enforcing party is the respondent to the relevant notice claim.

- 1 (2) The enforcing party may, not later than 14 days after the day the 7-day
2 period ends, apply to the court for an order—
- 3 (a) if the claimant has not started a proceeding based on the relevant
4 notice claim—that the claimant is barred from beginning the
5 proceeding; or
- 6 (b) giving judgment in the proceeding in favour of the respondent
7 against the claimant.

8 **278 Thing not done within 7-day period—court may make**
9 **orders**

- 10 (1) On application for judgment under section 276 or section 277, the
11 court may make the orders sought.
- 12 (2) In considering the application, the court must not make an order
13 against the late party if the party establishes that the party had a
14 reasonable excuse for failing to do the required thing within the 7-day
15 period.

16 **279 Court orders in favour of claimant**

- 17 (1) This section applies if the court makes an order giving judgment in
18 favour of the claimant against the respondent under section 276.
- 19 (2) The court must order—
- 20 (a) if the claimant and respondent have each made a written offer to
21 the other party—damages worked out by adding the claimant's
22 last written offer to the respondent's last written offer and
23 dividing the total by 2; or
- 24 (b) if 1 of the parties has not made a written offer—damages to be
25 assessed by the court.
- 26 (3) The court must order the respondent to pay the claimant's costs on an
27 indemnity basis from the day the complying claim was received by
28 the respondent's insurer.

29 *Note* Legal costs and fees may be prescribed under s 281 (1).

1 **280 Court orders in favour of respondent**

2 (1) This section applies if the court makes an order giving judgment in
3 favour of the respondent against the claimant under section 277.

4 (2) Unless the court otherwise orders, the claimant must pay the
5 respondent's costs of the proceeding including the costs of the
6 application.

7 *Note* Legal costs and fees may be prescribed under s 281 (1).

Part 5.8 Other matters

281 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) A lawyer is not entitled to be paid, or to recover, any legal costs or fees for services provided to a claimant or insurer in relation to a motor accident claim, other than the prescribed costs and fees.

282 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

283 Definitions—Act

In this Act:

insurance industry deed—see section 356.

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 287.

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 288.

MAI insurer—see section 284.

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

284 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 295 (Selecting for registered vehicle—first registration); or

- 1 (B) section 296 (Selecting for registered vehicle—
2 renewal of registration); or
- 3 (ii) has a valid trader's plate attached—the insurer selected
4 under section 297 (Selecting for motor vehicle with
5 trader's plate) as the MAI insurer for a motor vehicle to
6 which the trader's plate may be attached; or
- 7 (iii) is a light rail vehicle—the insurer selected as the
8 MAI insurer for the light rail vehicle under section 298
9 (Selecting for light rail vehicle); or
- 10 (b) for a trailer or other thing that is—
- 11 (i) mentioned in section 287 (d) (Vehicles and other things
12 insured under MAI policy)—the insurer for the motor
13 vehicle to which the trailer or thing is attached or becomes
14 detached; or
- 15 (ii) prescribed by regulation under section 287 (e)—the entity
16 prescribed by regulation; or
- 17 (c) for an MAI insured person—the MAI insurer for the
18 MAI policy under which the person is insured; or
- 19 (d) for an MAI policy—the MAI insurer that issued the policy.

20 **285 Application to Territory and Commonwealth motor**
21 **vehicles**

- 22 (1) A requirement under this Act for an MAI policy does not apply in
23 relation to a motor vehicle owned by—
- 24 (a) the Territory or a territory authority; or
- 25 (b) the Commonwealth or a Commonwealth authority.

- 1 (2) However, the Territory, territory authority, Commonwealth or
2 Commonwealth authority is, for a motor vehicle for which an
3 MAI policy is not in force—
- 4 (a) under the same liabilities as a licensed insurer would be under if
5 the insurer had issued an MAI policy for the vehicle; and
- 6 (b) under the same obligation as a licensed insurer would be under
7 in relation to providing benefits, on a no-fault basis, to people
8 who sustain personal injury caused by a motor accident if the
9 insurer had issued an MAI policy for the vehicle; and
- 10 (c) has the same rights as a licensed insurer would have if the
11 insurer had issued an MAI policy for the vehicle.

Part 6.2 Compulsory motor accident injuries insurance

286 Offence—use uninsured motor vehicle on road or road related area

(1) A person commits an offence if—

- (a) the person uses a motor vehicle on a road or road related area;
and
- (b) the vehicle is not an insured motor vehicle.

Maximum penalty: 50 penalty units.

Note 1 **Road** and **road related area** are defined in the dictionary.

Use, a vehicle, is defined in s 11 and includes provisions about trailers.

Note 2 Penalties imposed under this Act must be paid into the nominal defendant
fund (see s 327).

(2) This section does not apply to a person who uses a motor vehicle on
a road or road related area if—

- (a) there is an unregistered vehicle permit in force for the vehicle;
or
- (b) the registration provisions do not apply to the vehicle because of
the *Road Transport (Vehicle Registration) Regulation 2000*,
part 2.2 (Vehicles not subject to registration provisions); or
- (c) the vehicle is exempted from this section by regulation; or
- (d) the motor vehicle is owned by—
 - (i) the Territory or a territory authority; or
 - (ii) the Commonwealth or a Commonwealth authority.

Note See s 285 for motor vehicles owned by the Territory, a territory
authority, the Commonwealth or a Commonwealth authority.

- 1 (3) It is a defence to a prosecution for an offence against this section if
2 the defendant establishes that, at the time the motor vehicle was used
3 on the road or road related area, the defendant believed on reasonable
4 grounds that the vehicle was an insured motor vehicle.

5 *Note* A trailer does not need to be separately insured (see s 287 and ss 322
6 to 325).

Part 6.3 Motor accident injuries policies

287 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.

288 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.

289 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).

290 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.

- 1 (h) any other liability prescribed by regulation.
- 2 (2) To remove any doubt, an MAI policy does not insure the responsible
3 person for, or the driver of, a motor vehicle if—
- 4 (a) the motor vehicle is in an area that is subject to a declaration
5 under the *Road Transport (General) Act 1999*, section 12
6 (Power to include or exclude areas in road transport legislation)
7 that has the effect of disapplying this Act; or
- 8 (b) the motor vehicle is subject to a declaration under the *Road*
9 *Transport (General) Act 1999*, section 13 (Power to exclude
10 vehicles, persons or animals from road transport legislation) that
11 has the effect of disapplying this Act; or
- 12 (c) the responsible person or driver is subject to a declaration under
13 the *Road Transport (General) Act 1999*, section 13 that has the
14 effect of disapplying this Act.
- 15 (3) In this section:
- 16 *act of terrorism*—
- 17 (a) means an act that—
- 18 (i) causes or threatens to cause death, personal injury or
19 damage to property; and
- 20 (ii) is designed to influence a government or intimidate the
21 public or a section of the public; and
- 22 (iii) is carried out for the purpose of advancing a political,
23 religious, ideological, ethnic or similar cause; but
- 24 (b) does not include a lawful activity or industrial action.

25 **291 Licensed insurer not to decline etc to issue MAI policy**
26 A licensed insurer cannot repudiate, or decline to issue or renew, an
27 MAI policy.

292 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 290 (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).

293 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.

- 1 (4) If the road transport authority becomes aware of any of the following
2 changes in relation to an insured motor vehicle, the road transport
3 authority must tell the MAI insurer for the motor vehicle about the
4 change:
- 5 (a) a change in who is the responsible person for the vehicle;
6 (b) a change in registration details of the vehicle;
7 (c) a change of person to whom a valid trader's plate is issued.
- 8 **294 MAI policy not affected by errors etc**
- 9 (1) The validity of an MAI policy is not affected by an error of the road
10 transport authority, or an error of a licensed insurer, in relation to the
11 policy.
- 12 (2) The validity of an MAI policy is not affected by payment of an
13 incorrect MAI premium for the policy.
- 14 (3) A licensed insurer who has been paid an incorrect MAI premium may
15 recover any outstanding amount as a debt owing to the insurer.

Part 6.4 Selecting an MAI insurer

295 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.

296 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.

297 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

- 1 (b) pay to the road transport authority the MAI premium for the
2 MAI policy for the period for which the trader's plate is issued.

3 *Note 1* Trader's plates are issued under the [Road Transport \(Vehicle](#)
4 [Registration\) Regulation 2000](#), s 88.

5 *Note 2* MAI premiums are decided under pt 6.7.

6 **298 Selecting for light rail vehicle**

- 7 (1) Before each insurance period for which a rail transport operator for a
8 light rail vehicle intends to use the vehicle on a road or road related
9 area, the operator must—

- 10 (a) tell the road transport authority about—

11 (i) the intention; and

12 (ii) if there is no MAI policy in force for the light rail vehicle—
13 the unique identification number displayed on the light rail
14 vehicle by the rail transport operator; and

15 (b) select, in a way approved by the road transport authority, a
16 licensed insurer to be the MAI insurer for an MAI policy for the
17 light rail vehicle for the insurance period; and

18 (c) pay to the road transport authority the MAI premium for the
19 MAI policy for the insurance period.

20 *Note* MAI premiums are decided under pt 6.7.

- 21 (2) In this section:

22 ***insurance period***, for a light rail vehicle, means—

23 (a) a period of 12 months beginning on 1 November; or

24 (b) if the light rail vehicle is to start operating on a road or road
25 related area on a day other than 1 November in a calendar year—
26 a period of less than 12 months beginning on the day after the
27 MAI premium is paid and ending on 31 October.

Part 6.5 Length of MAI policy

299 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.

300 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 301 (Insurer on risk—period of registration); or
- (b) section 302 (Insurer on risk—period of grace).

301 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 308.

1 **302 Insurer on risk—period of grace**

2 (1) If the registration of a motor vehicle is renewed during the period of
3 grace—

4 (a) the old insurer is on risk until midnight on the day the
5 registration is renewed; and

6 (b) the new insurer comes on risk immediately after midnight on the
7 day the registration is renewed and is on risk for the period of
8 renewed registration.

9 (2) If the registration is renewed after the period of grace ends—

10 (a) the new insurer comes on risk at the time the renewal of
11 registration is effected; and

12 (b) the motor vehicle is not an insured motor vehicle from the end
13 of the previous period of registration until the renewal of
14 registration takes effect.

15 (3) An MAI insurer ceases to be on risk if the MAI policy is cancelled.

16 *Note* Cancellation of MAI policies for a registered motor vehicle is dealt with
17 in s 308.

18 (4) In this section:

19 *period of grace* means the 14 days after the registration, or renewal
20 of registration, of a motor vehicle ends.

21 *Note* There is no period of grace following the cancellation or surrender of
22 registration or a renewal of registration of a motor vehicle.

23 **303 When MAI policy takes effect—trader's plates**

24 If the road transport authority issues a trader's plate to a person, an
25 MAI policy comes into force for a motor vehicle to which the trader's
26 plate is attached—

27 (a) when the trader's plate is attached to the motor vehicle; and

28 (b) only if the trader's plate is a valid trader's plate.

304 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 309.

305 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.

306 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.

Chapter 6
Part 6.5

Motor accident injuries insurance
Length of MAI policy

Section 306

- 1 (3) The MAI insurer ceases to be on risk if the MAI policy is cancelled.
- 2 *Note* Cancellation of MAI policies for a light rail vehicle is dealt with in s 310.
- 3 (4) In this section:
- 4 *insurance period*—see section 298 (2).

Part 6.6 Cancellation of MAI policies

307 MAI insurer cannot cancel MAI policy

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

308 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.

309 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).

- 1 **310 MAI policy cancellation—light rail vehicles**
- 2 (1) An MAI policy for a light rail vehicle is cancelled if the accreditation
- 3 of the rail transport operator for the light rail vehicle is cancelled or
- 4 surrendered.
- 5 *Note* A rail transport operator’s accreditation may be cancelled or surrendered
- 6 under the *Rail Safety National Law (ACT)*, s 73 or s 75.
- 7 (2) In this section:
- 8 ***accreditation***, of a rail transport operator, means accreditation by the
- 9 Office of the National Rail Safety Regulator under the *Rail Safety*
- 10 *National Law (ACT)*.

Part 6.7 MAI premiums

311 Meaning of *MAI premium*

In this Act:

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

- (a) section 316 (MAI commission to approve or reject premiums); or
- (b) section 317 (MAI commission may reconsider rejected premiums); or
- (c) section 318 (Mediation of rejected premiums); or
- (d) section 319 (Arbitration of unresolved premiums).

312 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.

313 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 484.

Note 2 It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 363).

314 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 313).

Note 2 It is a condition of an MAI insurer licence that the licensed insurer must comply with the MAI guidelines (see s 363).

- (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.

315 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 314 (Licensed insurer to apply for approval of premiums); or
 - (b) section 317 (MAI commission may reconsider rejected premiums); or
 - (c) section 318 (Mediation of rejected premiums); or
 - (d) section 319 (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

- 1 (ii) motor accident claims plus motor accident claim
2 settlement expenses (in inflated dollars) at the assumed
3 date of settlement; and
- 4 (c) to provide a profit margin in excess of all applications for
5 defined benefits and motor accident claims, costs and expenses
6 that represents an adequate return on capital invested and
7 compensation for the risk taken; and
- 8 (d) to provide for other matters that a prudent insurer should, in all
9 the circumstances, make provision for.
- 10 (4) For subsection (3) (b) and (c), the cost of motor accident claims does
11 not include the treatment, care and support costs of a participant in
12 the LTCS scheme.
- 13 *Note* **LTCS Act**—see the dictionary.
14 **LTCS scheme**—see the dictionary.
15 **Participant**, in the LTCS scheme—see the dictionary.

16 **316 MAI commission to approve or reject premiums**

- 17 If a licensed insurer applies to the MAI commission for approval of a
18 premium for an MAI policy, the MAI commission must, within
19 6 weeks after receiving the application from the licensed insurer—
- 20 (a) approve or reject the premium; and
- 21 (b) tell the licensed insurer—
- 22 (i) about the decision; and
- 23 (ii) the reasons for the decision.
- 24 *Note* For what must be included in a statement of reasons, see the
25 [Legislation Act](#), s 179.

317 MAI commission may reconsider rejected premiums

- (1) If the MAI commission rejects a premium for an MAI policy (the *original decision*), the licensed insurer may ask the MAI commission to reconsider the rejected premium.
- (2) Until the rejected premium is reconsidered, the MAI commission may ask an actuary to decide a provisional premium for the MAI policy.
- (3) A provisional premium has effect, until the MAI commission makes a decision under subsection (4) in relation to the original decision, as if the provisional premium were an MAI premium.
- (4) The MAI commission must, within 28 days after receiving the request for reconsideration—
- (a) reconsider the original decision; and
 - (b) approve or reject the premium; and

Note Criteria for approving or rejecting the premium are in s 315.

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

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

318 Mediation of rejected premiums

- (1) If the MAI commission rejects a premium for an MAI policy under section 317, 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.

- 1 (4) The fees and expenses of the mediator must be paid—
2 (a) as agreed between the MAI commission and the licensed
3 insurer; or
4 (b) if there is no agreement, by each of them in equal proportions.
5 (5) If, as a result of the mediation, the MAI commission and the licensed
6 insurer reach an agreement in relation to the premium, the
7 MAI commission must, in writing to the mediator and the insurer,
8 approve or reject the premium in accordance with the agreement.
9 *Note* Criteria for approving or rejecting the premium are in s 315.
10 (6) In this section:
11 *accredited mediator* means a person who is entered as a mediator in
12 the register of nationally accredited mediators maintained by the
13 Mediator Standards Board.
14 *Mediator Standards Board* means the incorporated body registered
15 under the [Corporations Act](#) as the Mediator Standards Board Limited
16 ACN 145 829 812.
- 17 **319 Arbitration of unresolved premiums**
- 18 (1) If the MAI commission rejects a premium for an MAI policy under
19 section 318, the matter must be arbitrated under this section.
20 (2) The [Commercial Arbitration Act 2017](#) applies to the arbitration,
21 subject to this Act.
22 (3) The arbitral tribunal for the matter is—
23 (a) if the MAI commission and the licensed insurer agree on an
24 arbitrator—the agreed arbitrator; or
25 (b) if the MAI commission and the licensed insurer do not agree on
26 an arbitrator—the arbitrator worked out under the [Commercial](#)
27 [Arbitration Act 2017](#).

- 1 (4) However, if the matter has been arbitrated by an agreed arbitrator for
2 7 days and the parties cannot reach agreement, an arbitrator appointed
3 under the *Commercial Arbitration Act 2017* must arbitrate the matter.
- 4 (5) The arbitral tribunal may approve a premium for an MAI policy only
5 if the premium is, in the arbitral tribunal's opinion, sufficient to fully
6 fund the present and likely future liability under this Act of the
7 licensed insurer and is not excessive.
- 8 *Note* Criteria for deciding whether an MAI premium will fully fund the present
9 and likely future liability under this Act of a licensed insurer are in s 315.
- 10 (6) A regulation may provide for the arbitration of matters.
- 11 (7) In this section:
- 12 *arbitral tribunal*—see the *Commercial Arbitration Act 2017*,
13 dictionary.

14 **320 Licensed insurer to report on profit margins**

- 15 (1) A licensed insurer must tell the MAI commission—
- 16 (a) the profit margin on which each MAI premium charged by the
17 licensed insurer is based; and
- 18 (b) the actuarial basis for working out the profit margin.
- 19 (2) The MAI commission must assess—
- 20 (a) the profit margin; and
- 21 (b) the actuarial basis on which the profit margin is worked out.

Part 6.8 Nominal defendant's liabilities

321 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 285 for motor vehicles owned by the Territory, a territory authority, the Commonwealth or a Commonwealth authority.

1 (c) at the time the motor accident happened—

2 (i) the motor vehicle was registered under—

3 (A) the law of a State other than the ACT; or

4 (B) a law of the Commonwealth; and

5 (ii) the motor vehicle was—

6 (A) covered under a policy of motor accident injury
7 insurance; or

8 (B) subject to coverage under a compulsory motor vehicle
9 or trailer accident compensation scheme of that State
10 or of the Commonwealth; or

11 (d) a regulation prescribes that, in the circumstances, the nominal
12 defendant is not liable in relation to the personal injury.

13 *Note* The nominal defendant is also not liable for the risks mentioned in s 290.

14 **322 Meaning of *uninsured motor vehicle***

15 (1) For this Act:

16 ***uninsured motor vehicle***—

17 (a) means a motor vehicle for which there is no MAI policy in force;
18 and

19 (b) includes a trailer that—

20 (i) is attached to an uninsured motor vehicle; or

21 (ii) runs out of control after becoming accidentally detached
22 from an uninsured motor vehicle; and

23 (c) includes anything else prescribed by regulation; but

24 (d) does not include—

25 (i) a motor vehicle for which an unregistered vehicle permit is
26 in force; or

- 1 (ii) an unregistered, uninsured motor vehicle that is designed
2 to be driven for recreational purposes on an area that is not
3 a road or road related area.

4 **Example—subpar (ii)**
5 a quad bike

- 6 (2) To remove any doubt, it does not matter whether a trailer mentioned
7 in subsection (1), definition of *uninsured motor vehicle*,
8 paragraph (b) is registered.

9 **323 Nominal defendant liable—uninsured motor vehicle**

- 10 (1) This section applies if—
11 (a) a personal injury is caused by a motor accident; and
12 (b) at the time of the motor accident, the motor vehicle involved in
13 the motor accident—
14 (i) had a sufficient connection with the ACT; and
15 (ii) was an uninsured motor vehicle; and
16 (c) the motor accident happened anywhere in Australia.

17 *Note* The circumstances in which a motor vehicle has a sufficient connection
18 with the ACT may be prescribed by regulation (see s (4)).

- 19 (2) The nominal defendant is liable in relation to the personal injury as
20 if—
21 (a) an MAI policy were in force for the motor vehicle; and
22 (b) the nominal defendant were the MAI insurer for the MAI policy.
23 (3) However, the nominal defendant is not liable in relation to the
24 personal injury if—
25 (a) at the time the motor accident happened—
26 (i) the land on which the motor accident happened was an area
27 that was not a road but was open to or used by the public
28 for driving, riding or parking vehicles; and

- 1 (ii) the person injured was a trespasser on the land; or
- 2 *Note* The area described in subpar (i) is a road related area (see dict,
3 def **road related area**, par (a) (iv)).
- 4 (b) the uninsured motor vehicle is owned by—
- 5 (i) the Territory or a territory authority; or
- 6 (ii) the Commonwealth or a Commonwealth authority; or
- 7 *Note* See s 285 for motor vehicles owned by the Territory, a territory
8 authority, the Commonwealth or a Commonwealth authority.
- 9 (c) at the time the motor accident happened—
- 10 (i) the uninsured motor vehicle was registered under—
- 11 (A) the law of a State other than the ACT; or
- 12 (B) a law of the Commonwealth; and
- 13 (ii) the uninsured motor vehicle was—
- 14 (A) covered under a policy of motor accident injury
15 insurance; or
- 16 (B) subject to coverage under a compulsory motor vehicle
17 or trailer accident compensation scheme of that State
18 or of the Commonwealth; or
- 19 (d) a regulation prescribes that, in the circumstances, the nominal
20 defendant is not liable in relation to the personal injury.
- 21 *Note* The nominal defendant is also not liable for the risks mentioned in s 290.
- 22 (4) A regulation may prescribe the circumstances in which a motor
23 vehicle has a sufficient connection with the ACT.

- 1 (5) In this section:
- 2 *motor vehicle* means a motor vehicle that—
- 3 (a) is exempt from registration; or
- 4 (b) if not exempt from registration—must be registered to allow its
- 5 lawful use or operation on a road or road related area in the ACT
- 6 and—
- 7 (i) was at the time of manufacture capable of registration; or
- 8 (ii) was at the time of manufacture, with minor adjustments,
- 9 capable of registration; or
- 10 (iii) was previously capable of registration but is no longer
- 11 capable of registration because the motor vehicle is in
- 12 disrepair.

13 **324 Meaning of *unidentified motor vehicle***

- 14 (1) In this Act:
- 15 *unidentified motor vehicle*—
- 16 (a) means a motor vehicle that cannot be identified after reasonable
- 17 inquiry and search; and
- 18 (b) includes a trailer that—
- 19 (i) is attached to an unidentified motor vehicle; or
- 20 (ii) runs out of control after becoming accidentally detached
- 21 from an unidentified motor vehicle; and
- 22 (c) includes anything else prescribed by regulation; but

- 1 (d) does not include a motor vehicle that is designed to be driven for
2 recreational purposes on an area that is not a road or road related
3 area.

4 **Example—par (d)**
5 a quad bike

- 6 (2) To remove any doubt, it does not matter whether a trailer mentioned
7 in subsection (1), definition of *unidentified motor vehicle*,
8 paragraph (b) is registered.

- 9 (3) The inquiry or search may be proved orally or by affidavit of the
10 person who made the inquiry or search.

11 **325 Nominal defendant liable—unidentified motor vehicle**

- 12 (1) This section applies if—

- 13 (a) a personal injury is caused by a motor accident; and
14 (b) the motor vehicle involved in the motor accident is an
15 unidentified motor vehicle; and
16 (c) the motor accident happened in the ACT.

- 17 (2) The nominal defendant is liable in relation to the personal injury as
18 if—

- 19 (a) an MAI policy were in force for the motor vehicle; and
20 (b) the nominal defendant were the MAI insurer for the MAI policy.

- 1 (3) However, the nominal defendant is not liable in relation to the
2 personal injury if, at the time the motor accident happened—
- 3 (a) the land on which the motor accident happened was an area that
4 was not a road but was open to or used by the public for driving,
5 riding or parking vehicles; and
- 6 (b) the person injured was a trespasser on the land.
- 7 *Note 1* The area described in par (a) is a road related area (see dict, def ***road***
8 ***related area***, par (a) (iv)).
- 9 *Note 2* The nominal defendant is also not liable for the risks mentioned in s 290.

Part 6.9 Nominal defendant fund

326 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 321 (Nominal defendant liable—unregistered vehicle permits); or

(ii) section 323 (Nominal defendant liable—uninsured motor vehicle); or

(iii) section 325 (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).

327 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;
- (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 345 (Insurer may recover costs if motor vehicle defective);
- (b) s 346 (Insurer may recover costs if fraud);
- (c) s 347 (Nominal defendant may recover costs from responsible person or driver at fault);
- (d) s 421 (Nominal defendant may recover from insolvent insurer).

- (c) amounts collected under section 328;
- (d) UVP liability contributions paid under section 330;
- (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 326;
- (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.

- 1 (4) The MAI commission may invest money in the nominal defendant
2 fund which is not immediately required for the fund—
3 (a) in any way that the Treasurer is authorised to invest money
4 under the *Financial Management Act 1996*; or
5 (b) in any other way approved by the Minister and the Treasurer.

6 **328 Collections for nominal defendant fund**

- 7 (1) The MAI commission must, each financial year, collect an amount
8 for the nominal defendant fund—
9 (a) from the people and funds prescribed by regulation; and
10 (b) in accordance with the arrangements prescribed by regulation.
11 (2) The MAI commission may decide the amount to be collected for a
12 financial year.
13 (3) The MAI commission must not decide an amount for a financial year
14 if the MAI commission considers that satisfactory arrangements have
15 been made for that year (under the insurance industry deed or
16 otherwise) by licensed insurers to meet—
17 (a) applications for defined benefits; and
18 (b) motor accident claims made against the nominal defendant.

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

20 **329 MAI commission must decide UVP liability contribution**

- 21 (1) The MAI commission must decide an amount (the *UVP liability*
22 *contribution*) to be paid to fund the present and likely future liability
23 under this Act of the nominal defendant for—
24 (a) claims in relation to unregistered vehicle permits; and
25 (b) applications for defined benefits in relation to unregistered
26 vehicle permits.

- 1 (2) The MAI guidelines may make provision in relation to UVP liability
2 contributions, including provision for the following:
- 3 (a) how UVP liability contributions are to be worked out;
- 4 (b) the factors to be taken into account in working out UVP liability
5 contributions.

6 **330 UVP liability contribution to be paid with unregistered**
7 **vehicle permit**

8 If a person applies to the road transport authority for an unregistered
9 vehicle permit for a motor vehicle, the person must also pay to the
10 road transport authority the UVP liability contribution for the period
11 of the permit.

12 *Note 1* Unregistered vehicle permits are issued under the *Road Transport*
13 *(Vehicle Registration) Act 1999*, s 7.

14 *Note 2* UVP liability contributions paid to the road transport authority under this
15 section must be paid into the nominal defendant fund (see s 327).

16 **331 Accounts for nominal defendant fund**

- 17 (1) The nominal defendant must keep a separate account in the nominal
18 defendant fund for meeting the liabilities of the nominal defendant.

19 *Note* The nominal defendant is liable for uninsured or unidentified motor
20 vehicles (see pt 6.8) and for insolvent insurers (see pt 7.10).

- 21 (2) The nominal defendant must keep accounts for—
- 22 (a) amounts paid into the nominal defendant fund under
23 section 327; and
- 24 (b) amounts withdrawn from the nominal defendant fund.
- 25 (3) Accounts kept of amounts withdrawn from the nominal defendant
26 fund must show the reason why each amount is withdrawn.

332 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.

333 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.

1 **334 Nominal defendant may engage consultants including**
2 **claims manager**

- 3 (1) The nominal defendant may engage consultants.
- 4 (2) Without limiting subsection (1), the nominal defendant may engage
5 an entity (a *claims manager*) to manage personal injuries in relation
6 to which—
- 7 (a) applications may be, or have been, made to the nominal
8 defendant under chapter 2 (Motor accident injuries—defined
9 benefits); or
- 10 (b) claims may be, or have been, made against the nominal
11 defendant fund under chapter 6 (Motor accident injuries
12 insurance).
- 13 (3) To remove any doubt, the nominal defendant may engage a claims
14 manager who is a claims manager for another fund managed by the
15 ACTIA.

16 **Example**

17 an entity engaged as a claims manager for the default insurance fund under the
18 [*Workers Compensation Act 1951*](#)

19 *Note* **ACTIA**—see the dictionary.

- 20 (4) However, the nominal defendant must not engage an entity under
21 subsection (2) unless satisfied that the entity has the experience and
22 expertise necessary to exercise the functions of a claims manager.
- 23 (5) The conditions of a consultant's engagement are the conditions
24 agreed between the nominal defendant and the consultant.
- 25 (6) To remove any doubt, this section does not give the nominal
26 defendant the power to enter into a contract of employment.

335 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

1 (b) recover an amount owed to a licensed insurer against whom a
2 claim is made under this Act.

3 (5) A claims manager may also exercise any other function given to the
4 claims manager under this Act or any other territory law.

5 *Note 1* A reference to an Act includes a reference to the statutory instruments
6 made or in force under the Act, including any regulation (see [Legislation](#)
7 [Act](#), s 104).

8 *Note 2* A provision of a law that gives an entity (including a person) a function
9 also gives the entity powers necessary and convenient to exercise the
10 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

11 **336 Delegation by nominal defendant**

12 The nominal defendant may delegate the nominal defendant's
13 functions under this Act or any other territory law to a public servant
14 or a consultant engaged under this Act (including a claims manager).

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

17 **337 Information and assistance by insurer to nominal** 18 **defendant**

19 (1) The nominal defendant may, by written notice given to an insurer,
20 require the insurer to do 1 or more of the following:

21 (a) give the nominal defendant stated information and assistance
22 that the nominal defendant reasonably considers necessary for
23 the exercise of the nominal defendant's functions;

24 **Example**

25 information about the health of an applicant or claimant given to the insurer
26 by the applicant or claimant

27 (b) give the nominal defendant stated documents in the insurer's
28 possession or control that the nominal defendant reasonably
29 considers necessary for the exercise of the nominal defendant's
30 functions;

- 1 (c) execute stated documents that the nominal defendant reasonably
2 considers necessary for the insurer to execute for the exercise of
3 the nominal defendant's functions.
- 4 (2) An insurer must take all reasonable steps to comply with a
5 requirement of the nominal defendant under subsection (1).
- 6 Maximum penalty: 50 penalty units.
- 7 *Note 1* The [Legislation Act](#), s 170 deals with the application of the privilege
8 against self-incrimination.
- 9 *Note 2* Penalties imposed under this Act must be paid into the nominal defendant
10 fund (see s 327).
- 11 (3) An offence against this section is a strict liability offence.
- 12 (4) In this section:
- 13 **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

338 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.

339 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.

340 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

341 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 289).

Note 2 **Costs** include reasonable and necessary treatment and care (see s 338).

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).

342 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 289).

343 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 289).

344 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.

- 1 (2) The MAI insurer may recover as a debt from the MAI insured person
2 any costs reasonably incurred by the MAI insurer for a motor accident
3 claim for the personal injury if the costs are reasonably attributable to
4 the MAI insured person's inability to exercise effective control of the
5 motor vehicle.
- 6 (3) In this section:
- 7 ***non-medicinal drug*** means a drug other than a drug genuinely and
8 lawfully ingested for medical or therapeutic purposes.
- 9 *Note* An MAI policy insures against the risk of liability for personal injury
10 caused by a motor accident (see s 289).

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

12 **345 Insurer may recover costs if motor vehicle defective**

- 13 (1) This section applies if—
- 14 (a) personal injury is caused by a motor accident involving an
15 insured person; and
- 16 (b) the motor accident is attributable wholly or partly to a defect in
17 a motor vehicle; and
- 18 (c) the defect arose from the wrongful act or omission of the
19 manufacturer or a person who carries on a business of repairing
20 motor vehicles (the ***repairer***).
- 21 (2) The insurer may recover as a debt from the manufacturer or repairer
22 the proportion of the costs reasonably incurred by the insurer for a
23 motor accident claim for the personal injury that reasonably reflects
24 the percentage of the manufacturer's or repairer's responsibility for
25 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 289).

Note 2 An amount recovered under this section by the nominal defendant must be paid into the nominal defendant fund (see s 327).

346 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 327).

- (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

347 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 251.

- (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).

348 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 323) and unidentified motor vehicles (see s 325).

-
- 1 (2) The nominal defendant may recover as a debt from the responsible
2 person for, or the driver of, the motor vehicle, or both, any costs
3 reasonably incurred by the nominal defendant for a motor accident
4 claim for the personal injury.
- 5 (3) However, the nominal defendant is not entitled to recover an amount
6 under this section from the responsible person for, or the driver of,
7 the motor vehicle, if at the time of the motor accident, the vehicle—
- 8 (a) was not required to be registered; or
- 9 (b) was exempt from registration; or
- 10 (c) if required to be registered—was not required to be insured
11 under this Act.
- 12 (4) Also, the nominal defendant is not entitled to recover an amount
13 under this section from the responsible person for, or the driver of,
14 the motor vehicle, for treatment and care benefits or death benefits
15 that the responsible person or driver is entitled to under chapter 2
16 (Motor accident injuries—defined benefits).
- 17 (5) It is a defence to a proceeding under this section against the
18 responsible person for the motor vehicle if the responsible person
19 proves that—
- 20 (a) the motor vehicle was driven without the authority of the
21 responsible person; or
- 22 (b) the responsible person believed on reasonable grounds that the
23 motor vehicle was insured.
- 24 (6) It is a defence to a proceeding under this section against the driver of
25 the motor vehicle if the driver proves that the driver believed on
26 reasonable grounds that—
- 27 (a) the driver had the responsible person's consent to drive the
28 motor vehicle; and
- 29 (b) the motor vehicle was insured.

1 (7) The nominal defendant may bring a proceeding for recovery of costs
2 under this section before the costs have been actually paid in full and,
3 in that case, a judgment for recovery of costs may provide that, as far
4 as the costs have not been actually paid, the right to recover the costs
5 is contingent on payment.

6 (8) This section does not affect a right of recovery the nominal defendant
7 may have, apart from this section, against the insured person.

8 *Note* An amount recovered under this section must be paid into the nominal
9 defendant fund (see s 327).

10 **349 Nominal defendant may recover costs from rail transport**
11 **operator**

12 (1) This section applies if personal injury is caused by a motor accident
13 involving an uninsured light rail vehicle.

14 *Note* The nominal defendant is liable in relation to uninsured light rail vehicles
15 (see s 323).

16 (2) The nominal defendant may recover as a debt from the rail transport
17 operator for the light rail vehicle any costs reasonably incurred by the
18 nominal defendant for a motor accident claim for the personal injury.

19 (3) The nominal defendant may bring a proceeding for recovery of costs
20 under this section before the costs have been actually paid in full and,
21 in that case, a judgment for recovery of costs may provide that, as far
22 as the costs have not been actually paid, the right to recover the costs
23 is contingent on payment.

24 (4) This section does not affect a right of recovery that the nominal
25 defendant may have, apart from this section, against the rail transport
26 operator.

27 *Note* An amount recovered under this section must be paid into the nominal
28 defendant fund (see s 327).

- 1 **350 Nominal defendant—access to territory information etc**
- 2 The nominal defendant is entitled to have access to information and
- 3 materials in the possession of the Territory that may be relevant to the
- 4 recovery of costs that the nominal defendant is entitled to recover
- 5 under this part.

Chapter 7 MAI insurer licences

Part 7.1 MAI insurer licences—preliminary

351 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.

352 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.

353 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 327).

354 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.

355 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

356 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.

357 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

- 1 (ii) a motor accident claim;
- 2 (d) the sharing of information between MAI insurers for the mutual
3 benefit of insurers;
- 4 (e) the monitoring and management of applications for defined
5 benefits and motor accident claims under MAI policies;
- 6 (f) direction and guidance in relation to deciding the relevant
7 insurer for motor accident claims and applications for defined
8 benefits, including entering into arrangements to determine—
- 9 (i) which insurer will accept an application for defined
10 benefits and be the relevant insurer in relation to the
11 application; and
- 12 (ii) the most at-fault vehicle in a multiple vehicle accident;
- 13 (g) direction and guidance for licensed insurers about managing,
14 monitoring and measuring the effectiveness of defined benefits
15 for injured applicants;
- 16 (h) regulation, in any other way, of the conduct of MAI insurance
17 business of licensed insurers under the motor accident injury
18 insurance scheme under this Act.
- 19 (2) A regulation may prescribe—
- 20 (a) what may or must be included in the insurance industry deed;
21 and
- 22 (b) anything else about the content of the insurance industry deed.

Part 7.3 MAI insurer licences—issue

358 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.

359 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 402.

(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 1 A fee may be determined under s 486 for this section.

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

360 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 1).

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 1).

- 1 (3) In deciding whether the applicant would not, or would not be able to,
2 properly exercise the functions of a licensed insurer if issued with an
3 MAI insurer licence, the MAI commission must consider the
4 following:
- 5 (a) the paid-up share capital and reserves of the applicant;
6 (b) the constitution of the applicant (if any);
7 (c) the reinsurance arrangements of the applicant;
8 (d) whether issuing the licence will contribute to the efficiency of
9 the motor accidents injury insurance scheme under this Act
10 generally;
11 (e) anything else prescribed by regulation.
- 12 (4) In deciding the application, the MAI commission may consider
13 anything else the MAI commission considers appropriate.
- 14 (5) If the MAI commission proposes to issue an MAI insurer licence to a
15 corporation, the MAI commission must, at least 14 days before the
16 licence is issued, tell all licensed insurers about the proposal and the
17 name of the corporation.
- 18 (6) Failure by the MAI commission to comply with subsection (5) does
19 not affect the validity of a corporation's MAI insurer licence.
- 20 *Note* Power given by a law to make a decision includes power to reverse or
21 change the decision. The power to reverse or change the decision is
22 exercisable in the same way, and subject to the same conditions, as the
23 power to make the decision (see [Legislation Act](#), s 180).

24 **361 MAI insurer licence—term**

25 An MAI insurer licence—

- 26 (a) takes effect on the day stated in the licence; and
27 (b) continues in force until it is cancelled.

Part 7.4 MAI insurer licences—conditions

362 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 312 (Premium that can be charged by licensed insurer);
- (c) section 314 (Licensed insurer to apply for approval of premiums);
- (d) section 398 (Licensed insurer to have business plan);
- (e) section 399 (Licensed insurer to comply with business plan);
- (f) section 400 (Licensed insurer to revise business plan);
- (g) section 402 (Reinsurance arrangements of licensed insurers).

363 Compliance with MAI guidelines

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

364 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.

- 1 **365 Early payment of treatment and care**
- 2 (1) It is a condition of an MAI insurer licence that the licensed insurer
- 3 pay for the reasonable and necessary treatment and care for injured
- 4 people as soon as practicable.
- 5 (2) A licensed insurer is taken not to have contravened the condition
- 6 mentioned in subsection (1) if the insurer establishes that—
- 7 (a) the insurer gave a report to the MAI commission within a
- 8 reasonable period after the condition is contravened; and
- 9 (b) the report sets out reasonable grounds for justifying the
- 10 contravention.
- 11 **366 Resolution of motor accident claims**
- 12 (1) It is a condition of an MAI insurer licence that the licensed insurer
- 13 resolve motor accident claims as soon as practicable.
- 14 (2) A licensed insurer is taken not to have contravened the condition
- 15 mentioned in subsection (1) if the insurer establishes that—
- 16 (a) the insurer gave a report to the MAI commission within a
- 17 reasonable period after the condition is contravened; and
- 18 (b) the report sets out reasonable grounds for justifying the
- 19 contravention.
- 20 **367 Compliance with ACAT orders**
- 21 (1) It is a condition of an MAI insurer licence that the licensed insurer
- 22 complies with an order of the ACAT made in relation to a decision
- 23 under this Act not later than 14 days after—
- 24 (a) if no appeal from the order is made—the appeal period for the
- 25 order has ended; or
- 26 (b) if an appeal from the order is made—the appeal has been finally
- 27 decided.

1 (2) In this section:

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

5 *appeal period* means the period mentioned in section 197 (2)
6 (External review—time for appeal).

7 **368 Protected information**

8 (1) It is a condition of an MAI insurer licence that the licensed insurer
9 adopts measures to ensure that a person who is or has been employed
10 by the insurer does not disclose protected information about a person,
11 otherwise than in accordance with this Act or another territory law,
12 or the insurance industry deed.

13 (2) In this section:

14 *protected information*, about a person—

15 (a) means information about a person that is disclosed to, or
16 obtained by, a licensed insurer because of the exercise of a
17 function under this Act by the licensed insurer or a person
18 employed by the licensed insurer; and

19 (b) includes personal health information.

20 **369 Provision of information to MAI commission**

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

24 (a) applications for defined benefits; and

25 (b) motor accident claims; and

26 (c) profits.

1 **370 Dealing with complaints**

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

4 **371 Licensed insurer's conduct and practices**

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

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

11 **372 Licensed insurer's measures and policies**

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

- 16 (a) act fairly and without prejudice when dealing with injured
17 people and their representatives; and
- 18 (b) treat injured people and their representatives with dignity and
19 respect; and
- 20 (c) give information that is consistent with this Act.

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

24 **373 Compliance with MAI commission conditions**

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

374 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 394 (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 394 (4)).

- 1 (2) An MAI commission condition may be included on an MAI insurer
2 licence—
- 3 (a) when the licence is issued; or
- 4 (b) by amending the licence.
- 5 (3) The MAI commission may amend or revoke an MAI commission
6 condition included on an MAI insurer licence.
- 7 *Note* A decision by the MAI commission under s (2) or (3) is a reviewable
8 decision (see ch 10 and sch 1).
- 9 (4) If the MAI commission amends a licensed insurer's licence under
10 subsection (2) or (3), the MAI commission must tell the insurer about
11 the amendment as soon as practicable, but not later than 30 days after
12 the day the MAI commission decides the amendment.
- 13 (5) This section is subject to section 375.

14 **375 MAI insurer licence—prohibited conditions**

- 15 (1) An MAI insurer licence must not be subject to any of the following
16 conditions:
- 17 (a) a condition that gives, or is likely to give, a competitive
18 advantage to a licensed insurer over another licensed insurer;
- 19 (b) a condition that requires a licensed insurer to obtain a share of
20 the insurance market.
- 21 (2) A condition mentioned in subsection (1) has no effect.

376 Offence—contravening licence condition

(1) A person commits an offence if the person—

(a) is a licensed insurer; and

(b) contravenes a condition of the person's MAI insurer licence.

Maximum penalty: 100 penalty units.

(2) This section does not apply to a condition mentioned in section 375.

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

(a) suspension of the MAI insurer licence (see s 380);

(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 327).

377 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.

378 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

1 (c) the condition relates to a motor accident.

2 Maximum penalty: 100 penalty units.

3 *Note* Penalties imposed under this Act must be paid into the nominal defendant
4 fund (see s 327).

Part 7.5 MAI insurer licences— suspension

379 Meaning of *suspended insurer*—pt 7.5

In this part:

suspended insurer means an insurer whose MAI insurer licence is suspended under section 382 (Licence suspension).

380 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 382 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).

381 Grounds for licence suspension—other grounds

Each of the following is a ground for suspending a licensed insurer's MAI insurer licence:

- (a) the insurer is not authorised under the *Insurance Act 1973* (Cwlth) to carry on insurance business;
- (b) any of the following is appointed over all or part of the assets, or undertaking, of the insurer:
 - (i) a provisional liquidator or liquidator;
 - (ii) a receiver or receiver and manager;
 - (iii) a trustee;
- (c) the insurer is given a direction under the *Insurance Act 1973* (Cwlth), part IX (Directions);
- (d) an inspector is appointed to investigate the affairs of the insurer under the *Insurance Act 1973* (Cwlth), part V (Investigations of general insurers etc);
- (e) the MAI commission receives a report under section 404 (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;

- 1 (ii) a transfer for the benefit of its creditors;
- 2 (h) a proceeding is commenced to sanction an arrangement,
3 composition, compromise or transfer mentioned in
4 paragraph (g), other than for a reconstruction or amalgamation
5 on terms that have been approved by the MAI commission;
- 6 (i) an application (other than a frivolous or vexatious application)
7 or order is made for the winding up or dissolution of the insurer,
8 other than for a reconstruction or amalgamation on terms that
9 have been approved by the MAI commission;
- 10 (j) a resolution is passed for the winding up or dissolution of the
11 insurer, other than for a reconstruction or amalgamation on
12 terms that have been approved by the MAI commission;
- 13 (k) there is a change in the effective control of the insurer;
- 14 (l) the insurer becomes a subsidiary of a corporation of which it was
15 not a subsidiary when the licence was issued;
- 16 (m) the MAI commission believes on reasonable grounds that the
17 insurer has failed to comply with a condition imposed on the
18 insurer's authority to carry on insurance business under the
19 *Insurance Act 1973* (Cwlth);
- 20 (n) a person claiming to be a creditor of the insurer gives the insurer
21 a demand requiring the insurer to pay an amount of more than
22 \$100 000, and the insurer fails to pay the amount, or secure or
23 compound for it to the satisfaction of the person, within 3 weeks
24 after the demand is given;
- 25 (o) an execution or other process issued on a judgment, decree or
26 order of a court in favour of a creditor of the insurer is returned
27 unsatisfied, completely or partly, and the amount unsatisfied is
28 more than \$100 000;

1 (p) the insurer agrees to the suspension.

2 *Note* A licensed insurer, or former licensed insurer, commits an offence if any
3 of the events or things mentioned in this section, other than paragraph (e),
4 paragraph (m) or paragraph (p), happens and the person does not tell the
5 MAI commission about it (see s 413).

6 **382 Licence suspension**

7 (1) If the MAI commission believes on reasonable grounds that a ground
8 for suspending a licensed insurer's MAI insurer licence exists, the
9 MAI commission may suspend the licence by giving the licensed
10 insurer written notice of the suspension (a *suspension notice*).

11 *Note* A decision by the MAI commission to suspend an MAI insurer licence is
12 a reviewable decision (see ch 10 and sch 1).

13 (2) The suspension notice must state—

14 (a) that the licence is suspended on and from—

15 (i) the day the insurer is given the notice; or

16 (ii) if the suspension notice states a later date—the day stated
17 in the notice; and

18 (b) the ground for the suspension.

19 *Note* Power given by a law to make a decision includes power to reverse or
20 change the decision. The power to reverse or change the decision is
21 exercisable in the same way, and subject to the same conditions, as the
22 power to make the decision (see [Legislation Act](#), s 180).

23 **383 Ending licence suspension**

24 (1) The MAI commission may end the suspension of an MAI insurer
25 licence only if the MAI commission believes on reasonable grounds
26 that the licensed insurer is able to comply with the requirements that
27 would be imposed on the insurer if it were issued with a licence for
28 the first time.

- 1 (2) If the MAI commission ends a suspension, the MAI commission
2 must give a written notice to the licensed insurer stating when the
3 suspension ends.

4 **384 Offence—issuing MAI policy if licence suspended**

5 A person commits an offence if—

- 6 (a) the person is a licensed insurer; and
7 (b) the person's MAI insurer licence is suspended; and
8 (c) the person issues an MAI policy.

9 Maximum penalty: 100 penalty units

10 *Note* Penalties imposed under this Act must be paid into the nominal defendant
11 fund (see s 327).

12 **385 Effect of suspension on existing liabilities—suspended**
13 **insurer**

- 14 (1) The suspension of an insurer's MAI insurance licence does not
15 affect—

- 16 (a) liabilities incurred, or accruing, before the date of suspension;
17 or
18 (b) the suspended insurer's liabilities under MAI policies that came
19 into force before the date of suspension.

- 20 (2) The suspended insurer is subject to this Act and the insurance industry
21 deed in the same way, and to the same extent, as a licensed insurer
22 until all the suspended insurer's liabilities for MAI insurance business
23 have been fully satisfied.

- 1 **386 Suspended insurer selected after suspension**
- 2 (1) If a suspended insurer is selected under part 6.4 (Selecting an MAI
- 3 insurer) to be the MAI insurer for an MAI policy, the road transport
- 4 authority must allocate another insurer under subsection (3) or (4) to
- 5 be the MAI insurer for the MAI policy.
- 6 (2) The MAI commission—
- 7 (a) must consult with the remaining licensed insurers about their
- 8 capacity to underwrite the suspended insurer's MAI policies;
- 9 and
- 10 (b) may consult with any insurer the MAI commission considers
- 11 may be appropriate to become a licensed insurer; and
- 12 (c) must have regard to the result of any consultation with APRA
- 13 relevant to the matter.
- 14 (3) The MAI commission must randomly allocate the MAI policies to the
- 15 remaining licensed insurers in proportion to their shares of the market
- 16 for MAI insurance.
- 17 (4) However, the MAI commission must allocate MAI policies, if—
- 18 (a) the MAI commission decides that the remaining licensed
- 19 insurers do not have capacity to underwrite the MAI policies; or
- 20 (b) an insurer mentioned in subsection (2) (b) becomes a licensed
- 21 insurer.

Part 7.6 MAI insurer licences— occupational discipline

387 Meaning of *licensed insurer*—pt 7.6

In this part:

licensed insurer includes a former licensed insurer.

388 MAI commission may choose occupational discipline instead of prosecution

In regulating the operation of licensed insurers, the MAI commission may, but need not, choose to apply to the ACAT for an occupational discipline order in relation to licensed insurers rather than pursuing a prosecution under this Act if the MAI insurer believes on reasonable grounds it would be in the public interest to do so.

Note The MAI commission may apply to the ACAT under s 390.

389 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 380.

390 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.

391 Occupational discipline orders

(1) This section applies if the ACAT may make an occupational discipline order in relation to a licensed insurer.

Note The [ACT Civil and Administrative Tribunal Act 2008](#), s 65 sets out when the ACAT may make an occupational discipline order.

(2) In addition to any other occupational discipline order that the ACAT may make, the ACAT may require the licensed insurer to pay an amount to the Territory or someone else, of not more than—

(a) if the licensed insurer is an individual—\$10 000; or

(b) if the licensed insurer is a corporation—\$50 000.

Note The [ACT Civil and Administrative Tribunal Act 2008](#), s 66 sets out other occupational discipline orders the ACAT may make.

- 1 (3) However, if a licensed insurer is convicted of an offence under
2 section 376 (Offence—contravening licence condition) in relation to
3 an act or omission, the ACAT must not make an occupational
4 discipline order requiring the licensed insurer to pay an amount to the
5 Territory or someone else in relation to the same act or omission.
- 6 (4) If the ACAT orders a licensed insurer to pay an amount, the amount
7 must be paid into the nominal defendant fund.

Part 7.7 MAI insurer licences— cancellation

392 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 395).

393 Proposed licence cancellation

- (1) If the MAI commission proposes to cancel a licensed insurer's MAI insurer licence on a ground mentioned in section 392 (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.

394 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 1).

- (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 1).

- (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.

- 1 (4) If the MAI commission is unable to cancel a licensed insurer's
2 MAI insurer licence because of subsection (3), the MAI commission
3 may instead impose a condition on the licence that prohibits the
4 insurer from issuing any further MAI policies.

5 *Note* A decision to impose a condition on an MAI insurer licence is a
6 reviewable decision (see ch 10 and sch 1).

Part 7.8 MAI insurer licences—transfer

395 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 1).

- (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).

396 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 1).

(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 1).

(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.

397 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 396—

(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

- 1 (iii) for the balance of the period of the original policy; and
- 2 (c) the old insurer must pay to the new insurer—
- 3 (i) the same proportion of the MAI premium paid, or to be
- 4 paid, for the original policy as the balance of the indemnity
- 5 period of the policy bears to the whole indemnity period of
- 6 the policy; and
- 7 (ii) an additional amount decided by the MAI commission for
- 8 the income from investment and the management fee for
- 9 the MAI premium.
- 10 (2) The new insurer may recover an amount payable under
- 11 subsection (1) (c) as a debt from the old insurer.
- 12 (3) Cancellation of an MAI policy under this section ends the indemnity
- 13 period of the policy but, subject to this section, does not affect any
- 14 right, obligation or liability acquired, accrued or incurred under the
- 15 policy during the indemnity period.

Part 7.9 MAI insurer licences— supervision

398 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 401).

- (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 362).

399 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 362).

400 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 362).

401 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 363).

402 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 362).

403 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 327).

- (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;

1 (g) vouchers and other prime entry documents;

2 (h) the working papers and other documents that are necessary to
3 explain the methods and calculations by which accounts are
4 made up.

5 *Note* A licensed insurer must also comply with the requirements under ch 9 in
6 relation to giving information to the MAI commission (see s 459 and
7 s 462).

8 **404 Audit of accounting records and compliance with**
9 **MAI guidelines**

10 (1) The MAI commission may appoint an appropriately qualified person
11 (an *appointed auditor*) to audit or inspect, and report to the
12 MAI commission on—

13 (a) the accounting records of a licensed insurer; or

14 (b) other records relating to the business or financial position of a
15 licensed insurer; or

16 (c) the licensed insurer's compliance with the MAI guidelines.

17 (2) An appointed auditor is, in exercising a function under this section,
18 entitled to inspect the accounting records and other records of the
19 licensed insurer.

20 (3) An appointed auditor exercising a function under this section has
21 qualified privilege in a proceeding for defamation for any statement
22 that the auditor makes orally or in writing in the course of exercising
23 the function.

24 (4) In this section:

25 *accounting records*, of a licensed insurer—see section 403 (2).

405 Offence—licensed insurer to assist appointed auditor

A licensed insurer commits an offence if—

- (a) an appointed auditor is exercising a function under section 404 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 327).

406 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.

407 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 406 (Audit of licensed insurer's profitability);

- 1 (b) information the MAI commission receives in relation to the
2 insurer under the following sections:
- 3 (i) section 398 (Licensed insurer to have business plan);
4 (ii) section 402 (Reinsurance arrangements of licensed
5 insurers);
6 (iii) section 404 (Audit of accounting records and compliance
7 with MAI guidelines);
8 (iv) section 459 (Licensed insurers must give information to
9 MAI commission);
10 (v) section 460 (Licensed insurer to provide investment
11 details);
- 12 (c) any other information available to the MAI commission under
13 this Act or another territory law in relation to the insurer's
14 expenses or performance.
- 15 (3) A regulation may prescribe the following:
- 16 (a) when the MAI commission may prepare a net profit analysis;
17 (b) the information that may be included in a net profit analysis.
- 18 **408 Action if licensed insurer's actual net profit differs from**
19 **reasonable industry net profit**
- 20 (1) A regulation may prescribe—
- 21 (a) the way the MAI commission must work out the reasonable net
22 profit for a licensed insurer for a year (the *reasonable industry*
23 *net profit*); and
- 24 (b) if a licensed insurer's actual net profit for a year differs from the
25 reasonable industry net profit for the year—action the MAI
26 commission may take in relation to the insurer's actual net
27 profit.

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

16 **409 Reports about insurers**

- 17 (1) The MAI commission may give the Minister reports about—
- 18 (a) the level of compliance by insurers with—
- 19 (i) the requirements of this Act; and
20 (ii) any conditions of MAI insurer licences under this Act
21 (including the MAI guidelines); and
- 22 (b) complaints made about insurers that relate to any matter to
23 which this Act relates; and
- 24 (c) anything else about insurers that relates to any matter to which
25 this Act relates.

- 1 (2) A report may relate to—
2 (a) insurers generally; or
3 (b) a class of insurers; or
4 (c) a particular insurer.
5 (3) A report may identify a particular insurer.
6 (4) A report may include the observations and recommendations the
7 MAI commission considers appropriate.
8 *Note* The Minister may publish a summary of a report prepared under this
9 section. The summary must not identify a licensed insurer, or allow the
10 licensed insurer's identity to be worked out (see s 472).

11 **410 MAI commission may apply for policy holder protection**
12 **order**

- 13 (1) The MAI commission may apply to the Supreme Court for an order
14 (a *policy holder protection order*) to protect the interests of the
15 holders of MAI policies issued by a licensed insurer or a former
16 licensed insurer.
17 (2) If the MAI commission intends to apply for a policy holder protection
18 order, the MAI commission must give the following entities notice of
19 its intention:
20 (a) APRA;
21 (b) ASIC.
22 (3) Each of the following entities has a right to appear, and be heard, in a
23 proceeding for a policy holder protection order:
24 (a) APRA;
25 (b) ASIC.

1 (4) Before considering an application for a policy holder protection
2 order, the Supreme Court may, if in its opinion it is desirable to do
3 so, make an interim policy holder protection order that is expressed
4 to have effect until the application is decided.

5 (5) If the Supreme Court makes an interim policy holder protection order,
6 the court may not require the MAI commission to give an undertaking
7 as to damages as a condition of making the order.

8 **411 Court orders to protect policy holders**

9 (1) The Supreme Court may, on the application of the MAI commission,
10 make any order the court considers necessary or desirable to protect
11 the interests of the holders of MAI policies issued by a licensed
12 insurer.

13 *Note* **Licensed insurer** includes a former licensed insurer (see s (6)).

14 (2) However, the court may make an order for a licensed insurer only
15 if—

16 (a) satisfied that the insurer—

17 (i) is not, or may not be, able to meet the insurer's liabilities
18 under the MAI policies; or

19 (ii) has acted, or may act, in a way that is prejudicial to the
20 interests of the holders of the MAI policies; and

21 (b) the insurer is not a corporation that is in the course of being
22 wound up.

23 (3) Without limiting subsection (1), the court may make the following
24 orders:

25 (a) an order regulating the administration and payment of defined
26 benefits and motor accident claims under the MAI policies;

27 (b) an order prohibiting or regulating the transfer or disposal of, or
28 other dealing in, the assets of the licensed insurer;

- 1 (c) an order requiring the licensed insurer to discharge its liabilities
2 under the MAI policies out of its assets and the assets of any
3 related body corporate;
- 4 (d) an order appointing a receiver or receiver and manager, having
5 the powers that the court orders, of the property or part of the
6 property of the licensed insurer or of any related body corporate.
- 7 (4) If the Supreme Court makes an order under this section, the court
8 may, on application by the MAI commission or anyone else affected
9 by the order, make another order revoking or amending the order.
- 10 (5) To remove any doubt, the powers of the Supreme Court under this
11 section are in addition to any other powers of the Supreme Court.
- 12 (6) In this section:
- 13 *licensed insurer* includes a former licensed insurer.

14 **412 Offence—contravene court order**

15 A person commits an offence if—

- 16 (a) a court order under section 411 is in force for the person; and
17 (b) the person contravenes the order.

18 Maximum penalty: 50 penalty units, imprisonment for 6 months or
19 both.

20 *Note* Penalties imposed under this Act must be paid into the nominal defendant
21 fund (see s 327).

22 **413 Offence—insurer to tell MAI commission about grounds
23 for suspension**

24 A person commits an offence if—

- 25 (a) the person is a licensed insurer or a former licensed insurer; and
26 (b) an event or thing mentioned in section 381 (Grounds for licence
27 suspension—other grounds) happens, other than an event or
28 thing mentioned in section 381 (e), (m) or (p); and

- 1 (c) the person does not tell the MAI commission about the event or
2 thing, in writing, within 21 days after the event or thing happens.

3 Maximum penalty: 100 penalty units.

4 *Note* Penalties imposed under this Act must be paid into the nominal defendant
5 fund (see s 327).

6 **414 Offence—insurer to tell MAI commission of decrease in**
7 **issued capital**

8 A person commits an offence if—

- 9 (a) the person is a licensed insurer; and
10 (b) there is, or is to be, a decrease in the issued capital of the insurer;
11 and
12 (c) the person does not tell the MAI commission about the decrease
13 or proposed decrease, in writing, within 21 days after the
14 decrease or proposal.

15 Maximum penalty: 100 penalty units.

16 *Note* Penalties imposed under this Act must be paid into the nominal defendant
17 fund (see s 327).

18 **415 Offence—insurer to tell MAI commission of bidder’s**
19 **statement or target’s statement**

20 (1) A person commits an offence if the person—

- 21 (a) is a licensed insurer; and
22 (b) receives a bidder’s statement or target’s statement; and
23 (c) does not tell the MAI commission about the statement, in
24 writing, within 21 days after the licensed insurer receives the
25 statement.

26 Maximum penalty: 100 penalty units.

27 *Note* Penalties imposed under this Act must be paid into the nominal defendant
28 fund (see s 327).

1 (2) In this section:

2 *bidder's statement*—see the [Corporations Act](#), section 9.

3 *target's statement*—see the [Corporations Act](#), section 9.

4 **416 Only MAI commission may issue proceeding against**
5 **licensed insurer**

6 A proceeding against a licensed insurer for failure to comply with the
7 terms of the insurer's MAI insurer licence, or this Act, may only be
8 issued by the MAI commission.

Part 7.10 MAI insurer licences—insolvent insurers

417 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 419.

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.

418 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.

419 Insolvent insurer declarations

(1) The Minister may declare a licensed insurer, or former licensed insurer, to be an insolvent insurer (an *insolvent insurer declaration*) if—

(a) the Minister is satisfied that—

(i) a liquidator has been appointed for the licensed insurer or former licensed insurer; or

(ii) the licensed insurer, or former licensed insurer, has been dissolved; and

(b) the Minister has consulted—

(i) APRA; and

(ii) ASIC; and

(c) the Treasurer approves the making of the declaration.

(2) An insolvent insurer declaration is a notifiable instrument.

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

420 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.

421 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 420, 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.

422 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 327).

423 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 327).

- 1 (2) Subsection (1) does not apply to a liquidator if—
2 (a) before the end of the 45-day period, the liquidator—
3 (i) tells the nominal defendant, in writing, that it is not
4 reasonably practicable to give the nominal defendant the
5 documents or information within the period; and
6 (ii) explains why it is not reasonably practicable; and
7 (b) the nominal defendant extends the time for providing the
8 documents or information; and
9 (c) the liquidator provides the documents or information to the
10 nominal defendant within the extended time.

11 **424 Offence—liquidator to allow inspection of documents**

- 12 (1) The liquidator of an insolvent insurer commits an offence if—
13 (a) a person authorised by the Minister asks the liquidator to make
14 available for inspection by the person all documents in the
15 liquidator's possession relating to—
16 (i) MAI policies issued by the insolvent insurer; or
17 (ii) applications for defined benefits in relation to motor
18 accidents for which the insolvent insurer is the relevant
19 insurer; or
20 (iii) motor accident claims or judgments made in relation to the
21 MAI policies; and
22 (b) the liquidator does not make the documents available to the
23 person within 45 days after the day the person asks for them.

24 Maximum penalty: 20 penalty units.

25 *Note* Penalties imposed under this Act must be paid into the nominal defendant
26 fund (see s 327).

(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.

425 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.

426 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.

- 1 (3) If the nominal defendant intervenes, the nominal defendant becomes
2 a party to the proceeding and has all the rights of a party to the
3 proceeding including the right to appeal against any order, judgment
4 or direction of the court.
- 5 (4) The nominal defendant is entitled to be paid, out of the nominal
6 defendant fund, all the costs and expenses incurred by the nominal
7 defendant in exercising a function under this section.
- 8 **427 Nominal defendant may take legal proceeding**
- 9 (1) This section applies to a proceeding if—
- 10 (a) the nominal defendant may take the proceeding for a person who
11 is entitled (or who would be entitled but for the dissolution of
12 the insolvent insurer), under an MAI policy issued by an
13 insolvent insurer, to be indemnified against a motor accident
14 claim or judgment arising from or relating to the MAI policy;
15 and
- 16 (b) the proceeding is for, or for enforcing or securing compliance
17 with, any provision under this part or another Act.
- 18 (2) The nominal defendant is taken to represent sufficiently the interests
19 of the public and may take the proceeding in its own name.
- 20 (3) The nominal defendant is entitled to be paid, out of the nominal
21 defendant fund, all the costs and expenses incurred by the nominal
22 defendant in exercising a function under this section.

Part 7.11 MAI insurer licences— miscellaneous

428 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).

429 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

430 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 431.

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

431 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).

432 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 327).

1 (4) Subsection (3) does not apply to a person if the person's identity card
2 has been—

3 (a) lost or stolen; or

4 (b) destroyed by someone else.

5 *Note* The defendant has an evidential burden in relation to the matters
6 mentioned in s (4) (see [Criminal Code](#), s 58).

7 (5) An offence against this section is a strict liability offence.

8 **433 Authorised person must show identity card on exercising**
9 **power**

10 (1) If an authorised person exercises a power under this Act that affects
11 an individual, the authorised person must first show the authorised
12 person's identity card to the individual.

13 (2) If an authorised person exercises a power under this Act that affects
14 a person, other than an individual, the authorised person must first
15 show the authorised person's identity card to an individual the
16 authorised person believes on reasonable grounds is an employee,
17 officer or agent of the person.

18 **Examples—person other than an individual**

- 19 • corporation
20 • partnership

21 **434 Power to enter premises**

22 (1) For this Act, an authorised person may—

23 (a) at any reasonable time, enter premises that the public is entitled
24 to use or that are open to the public (whether or not on payment
25 of money); or

26 (b) at any time, enter premises with the occupier's consent; or

27 (c) enter premises in accordance with a warrant.

- 1 (2) However, subsection (1) (a) does not authorise entry into a part of
2 premises that is being used only for residential purposes.
- 3 (3) An authorised person may, without the consent of the occupier of
4 premises, enter land around the premises to ask for consent to enter
5 the premises.
- 6 (4) To remove any doubt, an authorised person may enter premises under
7 subsection (1) without payment of an entry fee or other charge.
- 8 (5) In this section:
- 9 *at any reasonable time* includes at any time when the public is
10 entitled to use the premises, or when the premises are open to or used
11 by the public (whether or not on payment).

12 **435 Production of identity card**

13 An authorised person and any other person other than a uniformed
14 police officer who is accompanying the authorised person must not
15 remain at premises entered under this chapter if the authorised person
16 does not produce the authorised person's identity card when asked by
17 the occupier.

18 **436 Consent to entry**

- 19 (1) When seeking the consent of an occupier of premises to enter
20 premises under section 434 (1) (b), an authorised person must—
- 21 (a) produce their identity card; and
- 22 (b) tell the occupier—
- 23 (i) the purpose of the entry; and
- 24 (ii) the reason for, and identity of, any other person
25 accompanying the authorised person; and
- 26 (iii) that anything found and seized under this chapter may be
27 used in evidence in court; and
- 28 (iv) that consent may be refused.

- 1 (2) If the occupier consents, the authorised person must ask the occupier
2 to sign a written acknowledgment (an *acknowledgment of*
3 *consent*)—
- 4 (a) that the occupier was told—
- 5 (i) the purpose of the entry; and
- 6 (ii) the reason for, and identity of, any other person
7 accompanying the authorised person; and
- 8 (iii) that anything seized under this chapter may be used in
9 evidence in court; and
- 10 (iv) that consent may be refused; and
- 11 (b) that the occupier consented to the entry; and
- 12 (c) stating the time and date consent was given.
- 13 (3) If the occupier signs an acknowledgment of consent, the authorised
14 person must immediately give a copy to the occupier.
- 15 (4) A court must find that the occupier did not consent to entry to the
16 premises by the authorised person under this chapter if—
- 17 (a) the question arises in a proceeding in the court whether the
18 occupier consented to the entry; and
- 19 (b) an acknowledgment of consent is not produced in evidence; and
- 20 (c) it is not proved that the occupier consented to the entry.

21 **437 General powers on entry to premises**

- 22 (1) An authorised person who enters premises under this chapter may, for
23 this Act, do 1 or more of the following in relation to the premises or
24 anything at the premises:
- 25 (a) examine anything;
- 26 (b) examine and copy, or take extracts from, documents relating to
27 a contravention, or possible contravention, of this Act;

- 1 (c) take photographs, films, or audio, video or other recordings;
- 2 (d) require the occupier, or anyone at the premises, to give
- 3 information, answer questions, or produce documents or
- 4 anything else (whether the information, document or other thing
- 5 is at the premises or elsewhere) that the occupier or person at the
- 6 premises has, or has access to, that are reasonably needed to
- 7 exercise a function under this chapter;
- 8 (e) require the occupier, or anyone at the premises, to give the
- 9 authorised person copies of documents produced under
- 10 paragraph (d) that are reasonably necessary to exercise a
- 11 function under this chapter;
- 12 (f) require the occupier, or anyone at the premises, to give the
- 13 authorised person reasonable help to exercise a power under this
- 14 chapter.
- 15 *Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the
- 16 privilege against self-incrimination and client legal privilege.
- 17 (2) Also, an authorised person who enters premises under a warrant may
- 18 search the premises or anything at the premises.
- 19 (3) A person must take reasonable steps to comply with a requirement
- 20 made of the person under subsection (1) (d), (e) or (f).
- 21 Maximum penalty: 50 penalty units.
- 22 *Note* Penalties imposed under this Act must be paid into the nominal defendant
- 23 fund (see s 327).

438 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

1 (b) does not have an authorised person's approval to interfere with
2 the thing.

3 Maximum penalty: 50 penalty units.

4 *Note* Penalties imposed under this Act must be paid into the nominal defendant
5 fund (see s 327).

6 (6) An offence against subsection (5) is a strict liability offence.

7 **439 Power to require name and address**

8 (1) An authorised person may require a person to state the person's name
9 and home address if the authorised person suspects on reasonable
10 grounds that the person is committing or has just committed an
11 offence against this Act.

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

15 (2) The authorised person must tell the person the reason for the
16 requirement and, as soon as practicable, record the reason.

17 (3) The person may ask the authorised person to produce the authorised
18 person's identity card for inspection by the person.

19 (4) A person must comply with a requirement made of the person under
20 subsection (1) if the authorised person—

21 (a) tells the person the reason for the requirement; and

22 (b) complies with any request made by the person under
23 subsection (3).

24 Maximum penalty: 10 penalty units.

25 *Note* Penalties imposed under this Act must be paid into the nominal defendant
26 fund (see s 327).

27 (5) Subsection (3) and subsection (4) (b) do not apply to an authorised
28 person who is a police officer in uniform.

29 (6) An offence against this section is a strict liability offence.

Part 8.3 Enforcement—search warrants

440 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 437 (2)).

(b) the offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

- 1 (d) the hours when the premises may be entered; and
2 (e) the date (within 7 days after the day the warrant is issued) that
3 the warrant ends.
- 4 (6) In this section:
- 5 *connected*—an activity is *connected* with an offence if—
- 6 (a) the offence has been committed by engaging or not engaging in
7 it; or
- 8 (b) it will provide evidence of the commission of the offence.

9 **441 Warrants—application made other than in person**

- 10 (1) An authorised person may apply for a warrant by phone, fax, email,
11 radio or other form of communication if the authorised person
12 considers it necessary because of—
- 13 (a) urgent circumstances; or
- 14 (b) other special circumstances.
- 15 (2) Before applying for the warrant, the authorised person must prepare
16 an application stating the grounds on which the warrant is sought.
- 17 (3) The authorised person may apply for the warrant before the
18 application is sworn.

19 **442 Warrants—issue on application made other than in**
20 **person**

- 21 (1) If the magistrate issues the warrant, the magistrate must immediately
22 do either of the following if it is practicable to do so:
- 23 (a) fax a copy to the authorised person;
- 24 (b) email a scanned copy to the authorised person.

- 1 (2) If it is not practicable to fax or email a copy to the authorised person—
2 (a) the magistrate must tell the authorised person—
3 (i) the date and time the warrant was issued; and
4 (ii) the warrant's terms; and
5 (b) the authorised person must complete a form of warrant
6 (the **warrant form**) and write on it—
7 (i) the magistrate's name; and
8 (ii) the date and time the magistrate issued the warrant; and
9 (iii) the warrant's terms.
10 (3) The faxed or emailed copy of the warrant, or the warrant form
11 properly completed by the authorised person, authorises the entry and
12 the exercise of the authorised person's powers under the warrant.
13 *Note* Authorised people have additional powers under this part (see s 437
14 and s 438).
15 (4) The authorised person must, at the first reasonable opportunity, send
16 to the magistrate—
17 (a) the sworn application; and
18 (b) if the officer completed a warrant form—the completed warrant
19 form.
20 (5) On receiving the documents, the magistrate must attach them to the
21 warrant.
22 (6) A court must find that a power exercised by an authorised person was
23 not authorised by a warrant under this section if—
24 (a) the question arises in a proceeding in the court whether the
25 exercise of power was authorised by a warrant; and
26 (b) the warrant is not produced in evidence; and

- 1 (c) it is not proved that the exercise of power was authorised by a
2 warrant under this section.

3 **443 Warrants—announcement before entry**

- 4 (1) An authorised person must, before anyone enters premises under a
5 warrant—
6 (a) announce that the authorised person is authorised to enter the
7 premises; and
8 (b) give anyone at the premises an opportunity to allow entry to the
9 premises; and
10 (c) if the occupier of the premises, or someone else who apparently
11 represents the occupier, is present at the premises—identify
12 themselves to the person.
13 (2) The authorised person is not required to comply with subsection (1)
14 if the authorised person believes on reasonable grounds that
15 immediate entry to the premises is required to ensure—
16 (a) the safety of anyone in relation to the subject matter of the
17 warrant; or
18 (b) the safety of the authorised person or anyone assisting the
19 authorised person; or
20 (c) that the effective execution of the warrant is not frustrated.

21 **444 Details of warrant to be given to occupier etc**

- 22 (1) If an occupier of premises, or someone else who apparently represents
23 the occupier, is present at the premises while a warrant is being
24 executed, the authorised person or anyone assisting must make
25 available to the person—
26 (a) a copy of the warrant or warrant form; and
27 (b) a document setting out the rights and obligations of the person.

- 1 (2) In this section:
2 *warrant form*—see section 442 (2) (b).
- 3 **445 Occupier entitled to observe search etc**
- 4 (1) If an occupier of premises, or someone else who apparently represents
5 the occupier, is present at the premises while a warrant is being
6 executed, the person is entitled to observe the search being conducted.
- 7 (2) However, the person is not entitled to observe the search if—
8 (a) to do so would impede the search; or
9 (b) the person is under arrest, and allowing the person to observe
10 the search being conducted would interfere with the objectives
11 of the search.
- 12 (3) This section does not prevent 2 or more areas of the premises being
13 searched at the same time.
- 14 **446 Moving things to another place for examination or**
15 **processing under warrant**
- 16 (1) A thing found at premises entered under a warrant may be moved to
17 another place for examination or processing to decide whether it may
18 be seized under the warrant if—
19 (a) both of the following apply:
20 (i) there are reasonable grounds for believing that the thing is
21 or contains something to which the warrant relates;
22 (ii) it is significantly more practicable to do so having regard
23 to the timeliness and cost of examining or processing the
24 thing at another place and the availability of expert
25 assistance; or
26 (b) the occupier of the premises agrees in writing.
- 27 (2) The thing may be moved to another place for examination or
28 processing for not longer than 72 hours.

- 1 (3) An authorised person may apply to a magistrate for an extension of
2 time if the authorised person believes on reasonable grounds that the
3 thing cannot be examined or processed within 72 hours.
- 4 (4) The authorised person must give notice of the application to the
5 occupier of the premises, and the occupier is entitled to be heard on
6 the application.
- 7 *Note* For how documents may be given, see the [Legislation Act](#), pt 19.5.
- 8 (5) If a thing is moved to another place under this section, the authorised
9 person must, if practicable—
- 10 (a) tell the occupier of the premises the address of the place where,
11 and time when, the examination or processing will be carried
12 out; and
- 13 (b) allow the occupier or the occupier’s representative to be present
14 during the examination or processing.
- 15 (6) The provisions of this chapter relating to the issue of warrants apply,
16 with any necessary changes, to the giving of an extension under this
17 section.

**Part 8.4 Enforcement—return and
forfeiture of things seized**

447 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 438 (4) (b) (Power to seize things)—that it is an offence under section 438 (5) to interfere with the thing without an authorised person's approval.

448 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.

449 Return of seized thing

(1) If a thing was seized under this chapter and 1 of the circumstances set out in section 450 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](#).

450 Circumstances—s 449

The circumstances for section 449 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

- 1 (ii) is started within the 1-year period but the offence is finally
2 dealt with in the owner's favour;
- 3 **Examples—offence finally dealt with in owner's favour**
- 4 1 a court finds the owner not guilty of the offence
- 5 2 a court finds the owner guilty of the offence, the owner appeals
6 against the conviction and the appeal court sets the conviction
7 aside
- 8 3 a court permanently stays the criminal proceeding against the
9 owner
- 10 (b) an infringement notice for an offence relating to the thing is
11 served on the owner within 1 year after the day the thing was
12 seized, the infringement notice is withdrawn and a prosecution
13 for an offence relating to the thing—
- 14 (i) is not started within the 1-year period; or
- 15 (ii) is started within the 1-year period but the offence is finally
16 dealt with in the owner's favour;
- 17 (c) an infringement notice for an offence relating to the thing is
18 served on the owner and not withdrawn within 1 year after the
19 day the thing was seized, liability for the offence is disputed in
20 accordance with the *Road Transport (General) Act 1999*,
21 section 51 (Disputing liability for infringement notice offence)
22 and an information—
- 23 (i) is not laid in the Magistrates Court against the person for
24 the offence within 60 days after the day notice is given
25 under that *Act*, section 51 that liability is disputed; or
- 26 (ii) is laid in the Magistrates Court against the person for the
27 offence within the 60-day period, but the offence is finally
28 dealt with in the owner's favour;
- 29 (d) an infringement notice for an offence relating to the thing is
30 served on the owner within 1 year after the day the thing was
31 seized, and the infringement notice penalty for the offence is
32 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.

451 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 450 (a) or (b); or
 - (b) the 60-day period under section 450 (c).

452 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.

453 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 452 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;

1 (b) if the thing cannot be returned or has depreciated in value
2 because of the seizure—an order directing the Territory to pay
3 reasonable compensation;

4 (c) an order about the payment of costs in relation to the application.

5 **454 Forfeiture of seized thing**

6 (1) This section applies if—

7 (a) anything seized under this chapter is not required to, or cannot,
8 be returned under section 449; and

9 (b) an application for disallowance of the seizure under
10 section 452—

11 (i) is not made within 10 days after the day the thing was
12 seized; or

13 (ii) is made within the 10-day period, but the application is
14 refused or withdrawn before a decision in relation to the
15 application is made.

16 (2) If this section applies to the seized thing, the thing—

17 (a) is forfeited to the Territory; and

18 (b) may be sold, destroyed or otherwise disposed of as the
19 MAI commission directs.

Part 8.5 Enforcement—miscellaneous

455 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.

456 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.

457 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.

- 1 (3) A court may order the payment of reasonable compensation for the
2 loss or expense only if satisfied that it is just to make the order in the
3 circumstances of the particular case.
- 4 (4) A regulation may prescribe matters that may, must or must not be
5 taken into account by the court in considering whether it is just to
6 make the order.

Chapter 9 Information collection and secrecy

458 Meaning of *publish*—ch 9

In this chapter:

publish includes disseminate by oral, visual, written, electronic or other way.

459 Licensed insurers must give information to MAI commission

(1) A licensed insurer must, on request by the MAI commission, give the MAI commission stated information about the business and financial position of—

(a) the licensed insurer; or

(b) a corporation that is a related body corporate of the licensed insurer.

Note Licensed insurer includes a former licensed insurer (see s (6)).

(2) A licensed insurer must give the MAI commission—

(a) periodic returns prescribed by regulation, containing the information and documents prescribed by regulation; and

(b) information about claims against the insurer—

(i) prescribed by regulation; or

(ii) required by the MAI commission by written notice to the insurer; and

Example

An insurer may be required to provide—

(a) details of motor accident claims against the insurer, and the dates when notice of the claims were received by the insurer; and

(b) information about the claimants; and

-
- 1 (c) information about whether liability was admitted by the insurer, when
2 liability was admitted or denied and, if liability was admitted, the extent
3 to which liability was admitted; and
4 (d) information about the costs of the insurer on claims, and how the costs
5 are made up.
- 6 (c) information about applications for defined benefits made to the
7 insurer—
8 (i) prescribed by regulation; or
9 (ii) required by the MAI commission by written notice to the
10 insurer; and
11 (d) other information that is relevant to the administration of this
12 Act that is—
13 (i) prescribed by regulation; or
14 (ii) required by the MAI commission by written notice to the
15 insurer.
- 16 (3) The MAI commission may request a licensed insurer to make
17 available for inspection by the commission a stated document kept
18 by—
19 (a) the licensed insurer; or
20 (b) a corporation that is a related body corporate of the licensed
21 insurer.
- 22 *Note* A request under s (3) must be in writing and given to the licensed insurer,
23 and state when and how the request is to be complied with (see s 461).
- 24 (4) A regulation may—
25 (a) prescribe the time within which information, or a periodic return
26 or document, must be given to the MAI commission; and
27 (b) make provision in relation to other information the MAI
28 commission may ask a licensed insurer to give, or make
29 available to, the MAI commission.

- 1 (5) This section does not limit—
- 2 (a) any other provision of this Act about the MAI commission
- 3 obtaining information; or
- 4 (b) how the MAI commission may obtain information.
- 5 (6) In this section:
- 6 *document* includes—
- 7 (a) a return or account given under the following Acts:
- 8 (i) the [Corporations Act](#);
- 9 (ii) the [Financial Sector \(Collection of Data\) Act 2001](#)
- 10 (Cwlth);
- 11 (iii) the [Insurance Act 1973](#) (Cwlth); and
- 12 (b) a copy of, or extract from, a document.
- 13 *information*, about the business and financial position of a licensed
- 14 insurer, includes—
- 15 (a) financial information that is, or may be, relevant to the
- 16 consideration by the MAI commission of MAI premiums
- 17 charged by the licensed insurer under this Act; and
- 18 (b) information about—
- 19 (i) the cost of motor accident claims handling incurred by the
- 20 licensed insurer; and
- 21 (ii) the settlement of motor accident claims by the licensed
- 22 insurer; and
- 23 (iii) the cost incurred by the licensed insurer in relation to the
- 24 handling of applications for defined benefits; and
- 25 (c) information about any other matter in relation to the licensed
- 26 insurer.
- 27 *licensed insurer* includes a former licensed insurer.

460 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 461).

- (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).

461 How MAI commission is to make request

- (1) A request by the MAI commission under section 459 (Licensed insurers must give information to MAI commission) or section 460 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.

1 (2) A statement of how a request must be complied with may include a
2 requirement that the licensed insurer, or former licensed insurer, give
3 the MAI commission a certificate of correctness for stated
4 information or a stated document (or a copy of or extract from a stated
5 document).

6 (3) In this section:
7 *certificate of correctness*, for stated information or a stated document
8 (or a copy of, or extract from, a stated document), means a certificate
9 certifying the correctness of the information, document, copy or
10 extract by any of the following:

- 11 (a) a registered tax agent;
12 (b) a registered company auditor;
13 (c) an actuary approved by the MAI commission.

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

17 *registered company auditor*—see the [Corporations Act](#), section 9.

18 **462 Offences—insurer to give periodic returns, documents**
19 **and information**

- 20 (1) A licensed insurer commits an offence if the insurer—
21 (a) must give the MAI commission information, or a periodic return
22 or document, under section 459 (Licensed insurers must give
23 information to MAI commission); and
24 (b) does not give the MAI commission the information, or the
25 periodic return or document.

26 Maximum penalty: 100 penalty units.

27 *Note* Penalties imposed under this Act must be paid into the nominal defendant
28 fund (see s 327).

- (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 459; 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 459; or
 - (ii) in the way or time stated by the MAI commission in a notice under section 461.

Maximum penalty: 100 penalty units.

Note Penalties imposed under this Act must be paid into the nominal defendant fund (see s 327).

- (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 459.

463 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.

- 1 (3) In this section:
- 2 *information sharing entity* means any of the following:
- 3 (a) a licensed insurer;
- 4 (b) the nominal defendant;
- 5 (c) the road transport authority;
- 6 (d) the ACAT;
- 7 (e) a person approved in writing by the MAI commission.

8 **464 MAI commission—disclosure of information relating to**
9 **complaints**

- 10 (1) This section applies if the MAI commission receives a complaint
11 from a person injured in a motor accident, or the injured person's
12 personal representative or guardian (the *complainant*), about the
13 handling of the injured person's application for defined benefits or
14 motor accident claim by the relevant insurer for the motor accident.
- 15 (2) The MAI commission may give the relevant insurer for the motor
16 accident some or all of the information included with the complaint.
- 17 (3) However, the MAI commission must not disclose any other
18 information in relation to the complaint until the MAI commission
19 has completed its inquiries into the complaint.
- 20 (4) The MAI commission must, as soon as practicable after completing
21 its inquiries into the complaint, give the relevant insurer and the
22 complainant written notice of its findings.
- 23 (5) A notice under subsection (4) may include—
- 24 (a) some or all of the information included with the complaint; and
- 25 (b) any response by the relevant insurer to the complaint.

- 1 (6) However, the notice must not include information mentioned in
2 subsection (5) if—
- 3 (a) the MAI commission believes on reasonable grounds that
4 including the information—
- 5 (i) may disclose confidential information about the relevant
6 insurer's business operations; or
- 7 (ii) may prejudice an investigation by the police or relevant
8 insurer of the motor accident, or the application for defined
9 benefits or motor accident claim; or
- 10 (b) a regulation prescribes the inclusion of the information as a
11 prohibited disclosure of information.
- 12 (7) The MAI guidelines may make provision in relation to the handling
13 of complaints.
- 14 (8) In this section:
- 15 *information* includes a document.
- 16 **465 Licensed insurer may disclose information to another**
17 **licensed insurer**
- 18 (1) A licensed insurer may disclose information about an application for
19 defined benefits or a motor accident claim to another licensed insurer
20 if—
- 21 (a) the other insurer is liable, or potentially liable, in relation to the
22 application or claim; and
- 23 (b) the injured person has given the insurer an authority to transfer
24 personal health information to the other insurer.
- 25 *Note 1* The other insurer may then require the applicant or claimant to provide
26 an authority to disclose personal health information.
- 27 *Note 2* **Authority to disclose personal health information**—see s 54.
- 28 (2) A regulation may prescribe conditions in relation to the disclosure of
29 information under this section.

- 1 (3) In this section:
- 2 *authority to transfer personal health information*, for a person
- 3 injured in a motor accident, means an authority—
- 4 (a) signed by or on behalf of the injured person; and
- 5 (b) stating that the injured person consents to the disclosure of
- 6 personal health information about the injured person—
- 7 (i) by the insurer; and
- 8 (ii) to another stated insurer; and
- 9 (iii) for transferring the injured person's application for defined
- 10 benefits or motor accident claim.

11 **466 Lawyers etc must give information to MAI commission**

- 12 (1) A regulation may require lawyers and other stated service providers
- 13 to give information to the MAI commission in relation to applications
- 14 for defined benefits and motor accident claims.
- 15 (2) A regulation may prescribe—
- 16 (a) the information that must be given; and
- 17 (b) the form in which the information must be given; and
- 18 (c) when the information must be given; and
- 19 (d) any other relevant matter.
- 20 (3) For subsection (2) (a), the information may include—
- 21 (a) amounts paid to applicants and claimants; and
- 22 (b) costs and disbursements paid by applicants and claimants; and
- 23 (c) when payments were received by or made to applicants and
- 24 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.

467 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);

1 (iii) section 41AD (Evidentiary certificate—analysis of sample
2 for prescribed drug etc).

3 (2) The MAI commission may give the relevant insurer for the motor
4 accident the information the MAI commission receives under
5 subsection (1) in relation to the injured person.

6 **468 MAI commission may disclose information to**
7 **LTCS commissioner**

8 (1) The MAI commission may disclose information to the
9 LTCS commissioner about the following:

10 (a) motor accident claims under this Act;

11 (b) applications for defined benefits under this Act;

12 (c) payments made to or on behalf of a person who is a participant
13 in the LTCS scheme under the [LTCS Act](#);

14 (d) the treatment and care needs of a person who is a participant in
15 the LTCS scheme in relation to the motor accident injury as a
16 consequence of which the person became a participant in the
17 scheme.

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

19 **LTCS commissioner**—see the dictionary.

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

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

22 **Treatment and care needs**—see the dictionary.

23 (2) In this section:

24 **information**, about the treatment and care needs of a participant in
25 the LTCS scheme, includes the expenses paid or payable by the
26 LTCS commissioner under the scheme in relation to those needs.

469 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 473).

470 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 459 (Licensed insurers must give information to MAI commission);

-
- 1 (f) information about a licensed insurer's market share in relation
2 to the motor accident injuries insurance scheme under this Act;
- 3 (g) information (other than personal information) about internal and
4 external review of decisions by a licensed insurer under
5 part 2.10 (Defined benefits—dispute resolution), and the
6 outcomes of those reviews;
- 7 (h) financial information relating to applications for defined
8 benefits and motor accident claims handled by a licensed
9 insurer, including any amounts ordered by the ACAT or a court,
10 or paid for legal representation, in relation to disputes about
11 applications for defined benefits or motor accident claims;
- 12 (i) any other information about licensed insurers prescribed by
13 regulation.
- 14 (2) For subsection (1) (i), a regulation may prescribe the manner and
15 form in which the information prescribed may be published.
- 16 (3) Information published under this section may identify a particular
17 insurer (an *identified insurer*).
- 18 (4) However, the MAI commission must not publish confidential
19 information relating to an identified insurer if—
- 20 (a) the identified insurer tells the MAI commission that publication
21 of the information would disclose a trade secret not known by
22 other insurers; and
- 23 (b) the MAI commission is satisfied that, having regard to its
24 knowledge of the business practices of insurers, the publication
25 of the information would disclose a trade secret.
- 26 (5) Also, the MAI commission must not publish information about a
27 licensed insurer under subsection (1) (c) that would identify the
28 licensed insurer or allow the licensed insurer's identity to be worked
29 out.

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1 (6) In this section:

2 *personal information*—

3 (a) means information about a person to whom an internal or
4 external review of a decision under part 2.10 relates that—

5 (i) discloses the name, address or suburb of the person, or of
6 a family member of the person; or

7 (ii) would allow the person's identity to be worked out; and

8 (b) includes personal health information.

9 **471 Publication of net profit analysis of licensed insurer**

10 (1) The Minister may publish a net profit analysis, or part of a net profit
11 analysis, of a licensed insurer.

12 (2) However, the net profit analysis, or the part of the net profit analysis,
13 must be published in a form that does not identify the licensed insurer
14 or allow the licensed insurer's identity to be worked out.

15 (3) In this section:

16 *net profit analysis*, of a licensed insurer, means a net profit analysis
17 of the licensed insurer prepared by the MAI commission under
18 section 407.

19 **472 Summary of report about insurers may be made public**

20 (1) The Minister may publish a summary of a report prepared under
21 section 409 (Reports about insurers).

22 (2) However, the summary must be published in a form that does not
23 identify a licensed insurer or allow a licensed insurer's identity to be
24 worked out.

473 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 327).

(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

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- 1 (ii) in relation to the exercise of a function by a person to whom
2 this section applies under this Act or another territory law;
3 or
- 4 (iii) under the insurance industry deed; or
- 5 (iv) in a court proceeding; or
- 6 (b) to the using or divulging of protected information about a person
7 with the person's consent; or
- 8 (c) to the divulging of protected information by an insurer only to
9 another insurer that is in accordance with the insurance industry
10 deed.
- 11 *Note* The defendant has an evidential burden in relation to the matters
12 mentioned in s (3) (see [Criminal Code](#), s 58).
- 13 (4) A person to whom this section applies need not divulge protected
14 information to a court, or produce a document containing protected
15 information to a court, unless it is necessary to do so for this Act or
16 another law in force in the Territory.
- 17 (5) In this section:
- 18 ***court*** includes a tribunal, authority or person having power to require
19 the production of documents or the answering of questions.
- 20 ***divulge*** includes—
- 21 (a) communicate; or
- 22 (b) publish.
- 23 ***person to whom this section applies*** means—
- 24 (a) a person who is or has been—
- 25 (i) the MAI commissioner; or
- 26 (ii) a member of staff of the MAI commission; or
- 27 (iii) a licensed insurer; or

- 1 (iv) an actuary engaged by the MAI commission for this Act;
2 or
- 3 (b) anyone else who exercises, or has exercised, a function under
4 this Act.
- 5 *produce* includes allow access to.
- 6 *protected information*—
- 7 (a) means information about a person that is disclosed to, or
8 obtained by, a person to whom this section applies because of
9 the exercise of a function under this Act by the person or
10 someone else; and
- 11 (b) includes personal health information.
- 12 *use*, in relation to information, includes make a record of the
13 information.

Chapter 10 Notification and review of MAI commission reviewable decisions

474 Definitions—ch 10

In this chapter:

externally reviewable decision means a decision by an MAI commission reviewer under section 479.

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 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

MAI commission reviewer—see section 478.

475 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 1, column 4 in relation to the decision.

Note 1 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).

Note 2 The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

476 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 1, column 4 in relation to the decision;

- 1 (b) any other person whose interests are affected by the decision.
- 2 (2) The application must—
- 3 (a) be in writing; and
- 4 (b) state the applicant's name and address; and
- 5 (c) set out the applicant's reasons for making the application.
- 6 (3) The application must be given to the MAI commission within—
- 7 (a) 28 days after the day the applicant is given the internal review
- 8 notice for the decision; or
- 9 (b) any longer period allowed by the MAI commission before or
- 10 after the end of the 28-day period.

11 *Note* Section 481 provides for ACAT review of reviewable decisions that are

12 MAI commission reviewable decisions.

13 **477 Applications not stay MAI commission reviewable**

14 **decisions**

15 The making of an application for review of an MAI commission

16 reviewable decision does not affect the operation of the decision.

17 **478 MAI commission reviewer**

18 The MAI commission must arrange for a person (the *MAI*

19 *commission reviewer*) who did not make the MAI commission

20 reviewable decision to review the decision.

21 **479 Review by MAI commission reviewer**

- 22 (1) The MAI commission reviewer must, within 28 days (the *28-day*
- 23 *period*) after the day the MAI commission receives the application
- 24 for review of the MAI commission reviewable decision—
- 25 (a) confirm the decision; or
- 26 (b) amend the decision; or

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- 1 (c) set aside the decision and substitute the reviewer's own decision.
- 2 (2) If the decision is not amended or set aside within the 28-day period,
- 3 the decision is taken to have been confirmed by the MAI commission
- 4 reviewer.

5 **480 Reviewable decision notices**

6 If an MAI commission reviewer makes an externally reviewable

7 decision, the MAI commission reviewer must give a reviewable

8 decision notice to each person affected by the decision.

9 *Note 1* The MAI commission reviewer must also take reasonable steps to give a

10 reviewable decision notice to any other person whose interests are

11 affected by the decision (see [ACT Civil and Administrative Tribunal](#)

12 [Act 2008](#), s 67A).

13 *Note 2* The requirements for reviewable decision notices are prescribed under

14 the [ACT Civil and Administrative Tribunal Act 2008](#).

15 **481 Applications for external review**

16 The following people may apply to the ACAT for review of an

17 externally reviewable decision:

- 18 (a) a person to whom a reviewable decision notice is required to be
- 19 given in relation to the decision;
- 20 (b) any other person whose interests are affected by the decision.

Chapter 11 Miscellaneous

482 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 327).

(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 327).

- 1 (3) In this section:
- 2 ***close associate***, of a lawyer, means—
- 3 (a) an employer of the lawyer (including, if the employer is a
- 4 corporation, a director of the corporation); or
- 5 (b) a partner, or a close relative of the partner, in a partnership in
- 6 which the lawyer is also a partner; or
- 7 (c) an employee or agent of the lawyer or of a person mentioned in
- 8 paragraph (a) or (b).
- 9 ***close relative***, of a lawyer, means—
- 10 (a) a domestic partner of the lawyer; or
- 11 (b) a parent, grandparent, child or step-child of the lawyer; or
- 12 (c) a sibling, half-sibling or step-sibling of the lawyer; or
- 13 (d) an aunt, uncle, cousin, niece or nephew of the lawyer.
- 14 ***consideration*** includes a fee or other financial benefit but does not
- 15 include hospitality that is reasonable in the circumstances.
- 16 ***related***—an entity is ***related*** to a lawyer if the entity is—
- 17 (a) a close relative of the lawyer; or
- 18 (b) a close associate of the lawyer; or
- 19 (c) owned or controlled by the lawyer or a close relative or close
- 20 associate of the lawyer.

483 Extraterritorial operation

- (1) It is the intention of the Legislative Assembly that any provision of a territory law that provides for limits on liability for personal injury including damages, resulting from motor accidents that happen in the ACT—
- (a) is to apply to the full extent of the Legislative Assembly's capacity to legislate extraterritorially, even if damages are assessed outside the ACT; and
- (b) is to be regarded by courts as a substantive rather than a procedural provision.
- (2) Subsection (3) applies if, in a proceeding on a claim for damages brought in another jurisdiction, a person recovers damages in excess of the total of the following (the *ACT total*):
- (a) the defined benefits that would have been payable under this Act;
- (b) the maximum amount that could have been recovered if the proceeding had been brought in the ACT.
- (3) The respondent may recover from the person the amount (the *excess amount*) by which the damages exceed the ACT total.
- (4) The excess amount may be recovered as a debt to the claimant.
- (5) In this section:
- another jurisdiction* means a jurisdiction other than the ACT and includes a jurisdiction outside Australia.

484 MAI guidelines

- (1) The MAI commission may make guidelines (the *MAI guidelines*) about any matter required or permitted by this Act to be included in the guidelines.

Note The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

- (2) The MAI guidelines may make provision in relation to any matter required or permitted by this Act.

- (3) The MAI guidelines may apply, adopt or incorporate an instrument, as in force from time to time.

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

- (4) The [Legislation Act](#), section 47 (6) does not apply to an instrument mentioned in subsection (3).

Note An instrument applied, adopted or incorporated by the MAI guidelines does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

- (5) An MAI guideline is a disallowable instrument.

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

485 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.

486 Determination of fees

- (1) The MAI commission may determine fees for this Act.

Note The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees (see [Legislation Act](#), pt 6.3).

- (2) A determination is a disallowable instrument.

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

487 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.

Section 488

- 1 (5) A determination is a disallowable instrument.
- 2 *Note 1* A disallowable instrument must be notified, and presented to the
- 3 Legislative Assembly, under the [Legislation Act](#).
- 4 *Note 2* Power to make a statutory instrument includes power to make different
- 5 provision in relation to different matters or different classes of matters,
- 6 and to make determination that applies differently by reference to stated
- 7 exceptions or factors (see [Legislation Act](#), s 48).
- 8 *Note 3* The power to make a determination includes the power to amend or repeal
- 9 the determination (see [Legislation Act](#), s 46).

10 **488 Refund of motor accident levy**

- 11 (1) This section applies if an MAI policy issued to a person is cancelled
- 12 on the cancellation of the registration for the motor vehicle to which
- 13 the policy relates.
- 14 (2) The MAI commission must refund to the person, on a proportionate
- 15 basis, the motor accident levy paid in relation to the MAI policy.
- 16 (3) In this section:
- 17 *motor accident levy*—see section 487.

18 **489 Regulation-making power**

- 19 (1) The Executive may make regulations for this Act.
- 20 *Note* A regulation must be notified, and presented to the Legislative Assembly,
- 21 under the [Legislation Act](#).
- 22 (2) A regulation may create offences and fix maximum penalties of not
- 23 more than 20 penalty units for the offences.
- 24 *Note* A reference to an Act includes a reference to the statutory instruments
- 25 made or in force under the Act, including any regulation (see [Legislation](#)
- 26 [Act](#), s 104).

490 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.

Chapter 15 Transitional

Note The repeal or amendment of a law does not affect the previous operation of the law or anything done, begun or suffered under the law and does not affect an existing right, privilege or liability acquired, accrued or incurred under the law. An investigation, proceeding or remedy in relation to an existing right, privilege or liability under a repealed law may be started, exercised, continued or completed, and the right, privilege or liability may be enforced and any penalty imposed, as if the repeal had not happened (see [Legislation Act](#), s 84).

600 Definitions—ch 15

In this chapter:

commencement day means the day this Act, section 3 commences.

CTP policy means an insurance policy issued under the [repealed Act](#).

repealed Act means the [Road Transport \(Third-Party Insurance\) Act 2008](#).

601 CTP premiums paid before commencement day

- (1) This section applies to the premium paid for a CTP policy for a registered motor vehicle, a motor vehicle with a trader's plate attached or a light rail vehicle that is in force for a period that starts before the commencement day and ends after the commencement day.
- (2) The MAI commission may make decisions in relation to the amount of the premium (the *remaining premium*) corresponding to the period remaining on the CTP policy starting on the commencement day, having regard to actuarial advice and to other relevant information available to the MAI commission.

602 Motor accidents happening before commencement day

- (1) This section applies to a motor accident that happens before the commencement day.
- (2) The [repealed Act](#) continues to apply to a claim for personal injury arising out of the motor accident.

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).

603 Existing claims under repealed Act

- (1) This section applies to a claim for damages under the [repealed Act](#) that had been made but not finalised before the commencement day.
- (2) The [repealed Act](#) continues to apply to the claim.

604 CTP policies under repealed Act

- (1) This section applies to a CTP policy that was in force immediately before the commencement day.
- (2) The CTP policy—
- (a) is taken to be an MAI policy for the period starting on the commencement day; and
 - (b) continues in force until the earlier of the following:
 - (i) the policy is replaced by an MAI policy;
 - (ii) 15 days after the day the registration period to which the policy relates ends.

605 Licensed insurers

Each licensed insurer under the [repealed Act](#) is, on the commencement day, taken to be a licensed insurer under this Act.

- 1 **606 Former insurers**
- 2 (1) This section applies if, immediately before the commencement day,
- 3 an entity was a former licensed insurer under the [repealed Act](#),
- 4 chapter 5 (Licensing of insurers).
- 5 (2) The entity is, on the commencement day, taken to be a former
- 6 licensed insurer under this Act, chapter 7 (MAI insurer licences).
- 7 **607 Powers of CTP regulator may be exercised by MAI**
- 8 **commission**
- 9 The MAI commission may exercise the functions of the CTP
- 10 regulator under the [repealed Act](#).
- 11 **608 Information to be provided by licensed insurers under**
- 12 **repealed Act**
- 13 A regulation may prescribe information that a licensed insurer must
- 14 give the MAI commission when exercising the functions of the CTP
- 15 regulator under the [repealed Act](#), section 269 (Information to be
- 16 provided by licensed insurers).
- 17 **609 Powers of nominal defendant under repealed Act**
- 18 The nominal defendant may exercise the functions of the nominal
- 19 defendant under the [repealed Act](#), including in relation to the nominal
- 20 defendant fund established under the [repealed Act](#).
- 21 **610 Nominal defendant fund**
- 22 (1) The nominal defendant fund established under the [repealed Act](#),
- 23 section 163B (Nominal defendant fund) is taken to be the nominal
- 24 defendant fund established under section 327 (Establishment of
- 25 nominal defendant fund).
- 26 (2) A payment required to be made under the [repealed Act](#) may be paid
- 27 out of the nominal defendant fund established under section 327.

611 Annual report

- (1) For the *Annual Reports (Government Agencies) Act 2004*, section 7D, the MAI commission must prepare an annual report for the reporting year for the CTP regulator that starts before the commencement day and ends after the commencement day.
- (2) The annual report must include—
 - (a) a report on the operation of the CTP regulator for the part of the reporting year that ends immediately before the commencement day; and
 - (b) a report on the operation of the MAI commission for the part of the reporting year that begins on the commencement day.
- (3) To remove any doubt, the CTP regulator is not required to prepare an annual report about the operation of the regulator for the reporting year that starts before the commencement day and ends after the commencement day.

612 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

613 Expiry—ch 15

This chapter expires 5 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Chapter 16 Repeals and consequential amendments

614 Legislation amended—sch 2

This Act amends the legislation mentioned in schedule 2.

615 Legislation repealed

(1) The following legislation is repealed:

- *Road Transport (Third-Party Insurance) Act 2008* (A2008-1)
- *Road Transport (Third-Party Insurance) Regulation 2008* (SL2008-37).

(2) All other legislative instruments under the *Road Transport (Third-Party Insurance) Act 2008* are repealed.

Schedule 1

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	360 (1)	MAI commission—refuse to issue MAI insurer licence	applicant for licence
5	374 (2) (a)	MAI commission—include MAI commission condition on issue of MAI insurer licence	applicant for licence
6	374 (2) (b)	MAI commission—amend MAI insurer licence to include MAI commission condition	licensed insurer
7	374 (3)	MAI commission—amend MAI commission condition included on MAI insurer licence	licensed insurer
8	382 (1)	MAI commission—suspend MAI insurer licence	licensed insurer
9	394 (1)	MAI commission—cancel MAI insurer licence	licensed insurer

Schedule 1**MAI Commission reviewable decisions**

column 1 item	column 2 section	column 3 decision	column 4 person
10	394 (4)	MAI commission—impose condition on licence prohibiting insurer from issuing further MAI policies	licensed insurer
11	395 (1)	MAI commission—refuse to approve transfer of MAI insurer licence to new insurer	licensed insurer
12	396 (1)	MAI commission—refuse to transfer licensed insurer's MAI policies to another licensed insurer	licensed insurer

Schedule 2 Consequential amendments

(see s 614)

Part 2.1 ACT Civil and Administrative Tribunal Act 2008

[2.1] New section 83 (3)

insert

- (3) However, this section does not apply to an application for external review of an ACAT reviewable decision under the *Motor Accident Injuries Act 2019*, division 2.10.3 (ACAT review of insurer's decisions) (an **MAI application**) or an appeal from an MAI application.

[2.2] New section 85 (4)

insert

- (4) However, this section does not apply to an appeal from an application for external review of an ACAT reviewable decision under the *Motor Accident Injuries Act 2019*, division 2.10.3.

[2.3] Section 86 (1)

after

subsection (2)

insert

or (2A)

1 **[2.4] New section 86 (2A)**

2 *insert*

3 (2A) A party to an application for external review of an ACAT reviewable
4 decision under the *Motor Accident Injuries Act 2019*, division 2.10.3
5 (ACAT review of insurer's decisions) may appeal to the Supreme
6 Court on a question of law from a decision of the appeal tribunal
7 under that Act, section 196 (External review—effect of decision).

8 **Part 2.2 Civil Law (Wrongs) Act 2002**

9 **[2.5] Section 4, note 1**

10 *omit*

11 (Offence not to disclose particular material)

12 *substitute*

13 (Offence—failure to give document or information)

14 **[2.6] Section 5 (2), example and note**

15 *substitute*

16 **Example—scheme of compulsory third-party motor vehicle insurance**
17 the scheme under the *Motor Accident Injuries Act 2019*

18 **[2.7] Section 18 (3)**

19 *omit*

20 *Road Transport (Third-Party Insurance) Act 2008*

21 *substitute*

22 *Motor Accident Injuries Act 2019*

1 **[2.8] Section 38 (3)**

2 *omit*

3 *Road Transport (Third-Party Insurance) Act 2008*, section 25
4 (CTP insurer to indemnify insured people)

5 *substitute*

6 *Motor Accident Injuries Act 2019*, section 292 (MAI insurer to
7 indemnify MAI insured people)

8 **[2.9] Section 46, new note**

9 *insert*

10 *Note* The *Motor Accident Injuries Act 2019*, s 253 provides that, for making a
11 motor accident claim for a no-fault motor accident—

- 12 (a) in the case of a single vehicle accident, the driver of the motor
13 vehicle is taken to be the driver at fault and to have breached their
14 duty of care to an injured person; and
15 (b) in the case of a multiple vehicle accident, the driver of the motor
16 vehicle whose act or omission caused the accident is taken to be
17 the driver at fault and to have breached their duty of care to an
18 injured person.

19 **[2.10] Section 50 (1)**

20 *omit*

21 *Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor
22 Accident Claims)

23 *substitute*

24 *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident
25 injuries—common law damages)

1 **[2.11] Section 50 (4) (a)**

2 *omit*

3 *Road Transport (Third-Party Insurance) Act 2008*, chapter 4

4 *substitute*

5 *Motor Accident Injuries Act 2019*, chapter 5

6 **[2.12] Section 51 (3)**

7 *after*

8 based on a

9 *insert*

10 motor accident claim or

11 **[2.13] New section 51 (3A)**

12 *insert*

13 (3A) For a proceeding based on a motor accident claim, the notice must be
14 given within 3 months after the latest of the following days:

15 (a) if the claimant is taken, under the *Motor Accident Injuries*
16 *Act 2019*, section 133 (WPI taken to be 10% in certain
17 circumstances), to have a WPI of 10% as a result of the motor
18 accident—the day the claimant receives information under the
19 *Motor Accident Injuries Act 2019* stating that the claimant is
20 taken to have a WPI of 10%;

21 (b) if the claimant receives a notice under the *Motor Accident*
22 *Injuries Act 2019*, section 155 (2) (WPI 10% or more—injured
23 person entitled to make motor accident claim)—the due date
24 stated in the notice;

- 1 (c) if the claimant receives a notice under the *Motor Accident*
2 *Injuries Act 2019*, section 162 (2) (Final offer WPI 10% or
3 more—injured person entitled to make motor accident claim)—
4 the due date stated in the notice;
- 5 (d) if the claimant applies to the ACAT for review of a final offer
6 WPI decision under the *Motor Accident Injuries Act 2019*,
7 section 160 (1) (Final offer WPI 5% to 9%), section 161 (1)
8 (Final offer WPI 10% or more—injured person not entitled to
9 make motor accident claim) or section 162 (1) and the ACAT
10 makes an order under that Act, section 194 (External review—
11 decision) to the effect that the claimant has a WPI of at least
12 10% and is entitled to make a motor accident claim—
- 13 (i) if no appeal from the order is made—the date the appeal
14 period for the order ends; or
- 15 (ii) if an appeal from the order is made—the date the appeal is
16 finally decided;
- 17 (e) if the claimant receives a notice under the *Motor Accident*
18 *Injuries Act 2019*, section 210 (4) (SOI report—injury has
19 significant occupational impact) stating that the claimant is
20 taken to have a WPI of 10% for this Act—the date of the notice;
- 21 (f) if the claimant applies to the ACAT for review of an SOI report
22 under *Motor Accident Injuries Act 2019*, section 211 (SOI
23 report—no significant occupational impact) and the ACAT
24 makes an order under that Act, section 215 (1) (b) (ACAT
25 review—decision)—
- 26 (i) if no appeal from the order is made—the date the appeal
27 period for the order ends; or
- 28 (ii) if an appeal from the order is made—the date the appeal is
29 finally decided.

30 *Note* This chapter does not apply to a claim for which a notice has been given
31 by or for the claimant under the [Limitation Act 1985](#), s 30A (2) (see s 50).

1 **[2.14] New section 51A**

2 *insert*

3 **51A Motor accident claims—respondent to identify and notify**
4 **others**

- 5 (1) If a respondent to a motor accident claim knows of anyone else (a
6 ***relevant person***) against whom the claimant may be able to begin a
7 proceeding based on the claim, the respondent must, not later than
8 7 days after the day the respondent receives the notice of claim—
9 (a) give a copy of the notice of claim to the relevant person; and
10 (b) tell the claimant, in writing, about the relevant person, including
11 a short written explanation of why the respondent believes that
12 the person may be a relevant person.
13 (2) If the respondent is a child, the respondent's parent or legal guardian
14 may comply with subsection (1) for the respondent.

15 **[2.15] Section 56 (1)**

16 *substitute*

- 17 (1) If there are 2 or more respondents to a claim, other than a motor
18 accident claim, 1 of the respondents (the ***respondents' claim***
19 ***manager***) may act for 1 or more of the other respondents under this
20 chapter with the agreement of the other respondents.
21 (1A) If there are 2 or more respondents to a motor accident claim, 1 of the
22 respondents (the ***respondents' claim manager***) must act for all of the
23 respondents under this chapter.
24 (1B) For subsection (1A)—
25 (a) the respondents' claim manager must be decided—
26 (i) by agreement between the respondents; or

- 1 (ii) if the respondents cannot agree within 2 months after the
2 day the claimant first gave, or is taken to have given, a
3 respondent for the motor accident claim a complying
4 notice of claim—under the insurance industry deed; and
- 5 (b) until the respondents' claim manager is decided under
6 paragraph (a), the respondent to which the notice of claim is first
7 given under section 51 is the respondents' claim manager.

8 **[2.16] Section 56 (4)**

9 *after*
10 under subsection (1)
11 *insert*
12 or (1B) (a) (i)

13 **[2.17] New section 57 (2A) and (2B)**

- 14 *insert*
- 15 (2A) If the claim is a motor accident claim and the respondent proposes to
16 add the nominal defendant as a contributor because the motor
17 accident involved an unidentified motor vehicle, the respondent may
18 add the nominal defendant only if the respondent has made
19 reasonable inquiry and search for the identity of the motor vehicle.
- 20 (2B) The inquiry or search may be proved orally or by affidavit of the
21 person who made the inquiry or search.

22 **[2.18] Section 64 (1) (a) (ii) and (iii)**

23 *after*
24 reports
25 *insert*
26 or surveillance film

1	[2.19]	Section 64 (1) (b) (vi), new note
2		<i>insert</i>
3		<i>Note</i> Damages may not be awarded in a motor accident claim for
4		gratuitous care (see <i>Motor Accident Injuries Act 2019</i> ,
5		s 246).
6	[2.20]	Section 64 (2) (b)
7		<i>after</i>
8		report
9		<i>insert</i>
10		, film
11	[2.21]	Section 68 (1) (a) (ii) and (iii)
12		<i>after</i>
13		reports
14		<i>insert</i>
15		or surveillance film
16	[2.22]	Section 68 (2) (b)
17		<i>after</i>
18		report
19		<i>insert</i>
20		, film

1 **[2.23] Section 69 (1) (b), (c) and (d)**

2 *after*
3 reports
4 *insert*
5 or surveillance film

6 **[2.24] Section 69 (1) (d)**

7 *omit*
8 person
9 *substitute*
10 personal

11 **[2.25] Section 69 (1) (h), new note**

12 *insert*

13 *Note* Damages may not be awarded in a motor accident claim for
14 gratuitous care (see *Motor Accident Injuries Act 2019*, s 246).

15 **[2.26] Section 69 (2) (b)**

16 *after*
17 report
18 *insert*
19 , film

1 **[2.27] Section 70 (1)**

2 *after*
3 reports
4 *insert*
5 , surveillance film

6 **[2.28] Section 70 (2) (b)**

7 *after*
8 report
9 *insert*
10 , film

11 **[2.29] Section 74**

12 *substitute*

13 **74 Offence—failure to give document, film or information**

14 A person commits an offence if the person—

- 15 (a) is a party for a motor accident claim; and
16 (b) is obliged to give a document, surveillance film or information
17 under this chapter; and
18 (c) does not give the document, film or information in the way
19 required under this chapter.

20 Maximum penalty: 100 penalty units.

1 **[2.30] Section 93 (1)**

2 *omit*

3 *Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor
4 Accident Claims)

5 *substitute*

6 *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident
7 injuries—common law damages)

8 **[2.31] Section 95 (1)**

9 *substitute*

10 (1) Contributory negligence must be presumed if—

11 (a) the injured person was—

12 (i) at least 16 years old at the time of the accident; and

13 (ii) intoxicated at the time of the accident; and

14 (b) the defendant claims contributory negligence.

15 **[2.32] Section 99 (4), note**

16 *substitute*

17 *Note* Under the *Motor Accident Injuries Act 2019*, damages may be awarded
18 for loss of quality of life but not for non-economic loss (see that
19 Act, s 239).

- 1 **[2.33] Sections 107B (4) (b) and 108 (3) (a)**
- 2 *omit*
- 3 *Road Transport (Third-Party Insurance) Act 2008*, chapter 4 (Motor
- 4 Accident Claims)
- 5 *substitute*
- 6 *Motor Accident Injuries Act 2019*, chapter 5 (Motor accident
- 7 injuries—common law damages)
- 8 **[2.34] Section 209**
- 9 *omit*
- 10 *Road Transport (Third-Party Insurance) Act 2008*
- 11 *substitute*
- 12 *Motor Accident Injuries Act 2019*
- 13 **[2.35] Dictionary, new definition of *motor accident claim***
- 14 *insert*
- 15 ***motor accident claim*—**
- 16 (a) means a claim for damages for personal injury caused by a motor
- 17 accident; and
- 18 (b) includes, for a fatal injury, a claim by the dead person's
- 19 dependants or estate.

20 **Part 2.3 Emergencies Act 2004**

- 21 **[2.36] Schedule 1, section 1.8 (5) (b)**
- 22 *substitute*
- 23 (b) the *Motor Accident Injuries Act 2019*, chapter 6 (Motor accident
- 24 injuries insurance);

**Part 2.4 Heavy Vehicle National Law
(ACT) Act 2013**

[2.37] New section 24 (aa)

before paragraph (a), insert

(aa) *Motor Accident Injuries Act 2019;*

[2.38] Section 24 (f)

omit

**Part 2.5 Lifetime Care and Support
(Catastrophic Injuries) Act 2014**

[2.39] Section 6 (1) (a) (iii)

omit

CTP cover under the [CTP Act](#)

substitute

MAI cover under the MAI Act

[2.40] Section 6 (3)

substitute

(3) For subsection (1) (a), a motor vehicle involved in a motor accident is taken to have had MAI cover under the MAI Act at the time of the motor accident if—

(a) an MAI policy was in force for the motor vehicle at that time; or

(b) at that time—

(i) the motor vehicle was owned by the Territory, or a territory authority; and

- 1 (ii) an MAI policy was not in force for the motor vehicle; or
- 2 (c) a compulsory third-party insurance policy was in force for the
- 3 motor vehicle under the law of a jurisdiction other than the ACT
- 4 at that time; or
- 5 (d) the motor vehicle was owned by the Commonwealth, or an
- 6 entity representing the Commonwealth, at that time; or
- 7 (e) there is a right of action against the nominal defendant under the
- 8 MAI Act in relation to the motor accident; or
- 9 (f) there would be a right of action against the nominal defendant
- 10 under the MAI Act in relation to the motor accident if the cause
- 11 of the motor accident was the fault of the responsible person or
- 12 driver of the motor vehicle in the use or operation of the motor
- 13 vehicle.
- 14 *Note* For the application of the MAI Act to motor vehicles owned by the
- 15 Territory, the Commonwealth or a territory or commonwealth authority,
- 16 see the MAI Act, s 285.

17 **[2.41] Section 8 (1)**

18 *omit*

19 [CTP Act](#)

20 *substitute*

21 MAI Act

22 **[2.42] Section 8 (1), note 2**

23 *substitute*

24 *Note 2* **MAI Act**—see the dictionary.

1 **[2.43] Section 16 (6) (a)**

2 *omit*

3 CTP regulator

4 *substitute*

5 MAI commission

6 **[2.44] Section 16 (6), note**

7 *substitute*

8 *Note* **MAI commission**—see the MAI Act, dictionary.

9 **[2.45] Section 16 (8), definition of *insurer*, paragraph (a) and**
10 **note**

11 *substitute*

12 (a) for a claim made by an injured person in relation to a motor
13 accident injury, means—

14 (i) if the injured person is an MAI insured person—the MAI
15 insurer for the person; or

16 (ii) if the injured person is not an MAI insured person—the
17 nominal defendant; or

18 *Note* **MAI insured person**—see the MAI Act, s 283.

19 **[2.46] Section 22 (1)**

20 *omit*

21 CTP Act

22 *substitute*

23 MAI Act

1 **[2.47] Section 22 (1), note**

2 *substitute*

3 *Note* **MAI Act**—see the dictionary.

4 **[2.48] Section 22 (2)**

5 *omit*

6 **CTP Act**, section 146 to section 149

7 *substitute*

8 MAI Act, section 265 to section 268

9 **[2.49] Section 30B (4) (b) (i)**

10 *omit*

11 **CTP Act**

12 *substitute*

13 MAI Act

14 **[2.50] Section 78 (a) and note**

15 *substitute*

16 (a) fund levies paid under this part in relation to the issue of MAI
17 policies;

18 *Note* **MAI policy**—see the MAI Act, s 283.

19 **[2.51] Sections 83A (1) (b) and 84A (1) (b) and (c)**

20 *omit*

21 a CTP policy

22 *substitute*

23 an MAI policy

1	[2.52] Section 84A (2)
2	<i>omit</i>
3	for CTP policies as provided for by the CTP premium guidelines
4	<i>substitute</i>
5	for MAI policies as provided for by the MAI guidelines
6	[2.53] Section 84A (2), note 2
7	<i>substitute</i>
8	<i>Note 2</i> MAI guidelines —see the MAI Act, dictionary.
9	MAI policy —see the MAI Act, s 283.
10	[2.54] Section 85 heading
11	<i>substitute</i>
12	85 Contributions to fund by MAI policy holders
13	[2.55] Section 85
14	<i>omit</i>
15	a CTP policy
16	<i>substitute</i>
17	an MAI policy
18	[2.56] Section 86
19	<i>substitute</i>
20	86 Cancellation of LTCS levy
21	The MAI Act, part 6.6 (Cancellation of MAI policies) applies in
22	relation to an LTCS levy payable in relation to the issue of an MAI
23	policy in the same way it applies to the premium payable for the MAI
24	policy.

1 **[2.57] Section 87 (1)**

2 *omit*

3 a CTP policy

4 *substitute*

5 an MAI policy

6 **[2.58] Section 87 (2)**

7 *omit*

8 CTP policy

9 *substitute*

10 MAI policy

11 **[2.59] Section 89 (1)**

12 *omit*

13 [CTP Act](#), chapter 4 (Motor accident claims)

14 *substitute*

15 MAI Act, chapter 5 (Motor accident injuries—common law damages)

16 **[2.60] Section 89 (1), note**

17 *substitute*

18 *Note* **MAI Act**—see the dictionary.

19 **[2.61] Section 90 (1), note**

20 *substitute*

21 *Note* **Uninsured motor vehicle**—see the MAI Act, s 322.

[2.62] Section 90 (2) (c)

substitute

- (c) the uninsured motor vehicle was exempted from the operation of the MAI Act, section 286 (Offence—use uninsured motor vehicle on road or road related area) by regulation.

[2.63] Section 94 (1) (f)

substitute

- (f) the MAI commission;

[2.64] Dictionary, note 3

substitute

Note 3 The *Motor Accident Injuries Act 2019* contains definitions relevant to this Act. For example, the following terms are defined in the *Motor Accident Injuries Act 2019*, dictionary:

- MAI commission
- MAI commissioner
- MAI guidelines
- MAI insured person (see s 283)
- MAI insurer (see s 284)
- MAI policy (see s 283)
- MAI premium (see s 311)
- motor accident (see s 10)
- motor accident claim (see s 225)
- nominal defendant (see s 16)
- personal injury (see s 9)
- uninsured motor vehicle (see s 322).

[2.65] Dictionary, definition of *claim*, note

substitute

Note ***Motor accident claim***, for a motor accident—see the MAI Act, s 225.

1 **[2.66] Definitions of *CTP Act* and *CTP insurer***

2 *omit*

3 **[2.67] Definition of *insurer*, paragraph (a)**

4 *omit*

5 a CTP insurer

6 *substitute*

7 an MAI insurer

8 **[2.68] New definition of *MAI Act***

9 *insert*

10 *MAI Act* means the *Motor Accident Injuries Act 2019*.

11 **Part 2.6 Limitation Act 1985**

12 **[2.69] New section 16AA**

13 *insert*

14 **16AA Motor accident claims**

15 (1) This section applies to a cause of action that is a motor accident claim
16 under the *Motor Accident Injuries Act 2019*, chapter 5 (Motor
17 accident injuries—common law damages).

18 (2) The cause of action is not maintainable if brought 5 years or more
19 after the day the injury happened.

20 *Note* Under the *Motor Accident Injuries Act 2019*, s 217, a person who receives
21 a notice under that Act, s 210 (4) has 3 months from the date of the notice
22 to make a motor accident claim.

1 **[2.70] Section 16B (1)**

2 *omit*

3 section 16 (Compensation to relatives) or section 16A

4 *substitute*

5 section 16, section 16A or section 16AA

6 **[2.71] Section 30A (3)**

7 *omit*

8 third-party insurer

9 *substitute*

10 insurer for the motor accident claim

11 **[2.72] Section 36 (5)**

12 *substitute*

13 (5) This section does not apply in relation to a cause of action to which
14 any of the following applies:

15 (a) section 16AA (Motor accident claims);

16 (b) section 16B (Other claims for damages for personal injury);

17 (c) the *Civil Law (Wrongs) Act 2002*, part 3.1 (Wrongful act or
18 omission causing death).

1 **Part 2.7** **Road Transport (Alcohol and**
2 **Drugs) Act 1977**

3 **[2.73] Section 1, note 2**

4 *insert*

- 5 • *Motor Accident Injuries Act 2019*

6 **[2.74] Section 1, note 2, 5th dot point**

7 *omit*

8 **Part 2.8** **Road Transport (Driver**
9 **Licensing) Act 1999**

10 **[2.75] Section 1, note 2**

11 *insert*

- 12 • *Motor Accident Injuries Act 2019*

13 **[2.76] Section 1, note 2, 5th dot point**

14 *omit*

15 **Part 2.9** **Road Transport (General)**
16 **Act 1999**

17 **[2.77] Section 1, note 2**

18 *insert*

- 19 • *Motor Accident Injuries Act 2019*

20 **[2.78] Section 1, note 2, 5th dot point**

21 *omit*

1 **[2.79] New section 6 (aa)**

2 *insert*

3 (aa) the *Motor Accident Injuries Act 2019*;

4 **[2.80] Section 6 (f)**

5 *omit*

6 **[2.81] Section 72 (1)**

7 *omit*

8 CTP regulator

9 *substitute*

10 MAI commissioner

11 **[2.82] Section 72 (1) (g)**

12 *omit*

13 CTP insurer licence register kept under the *Road Transport*
14 *(Third-Party Insurance) Act 2008*

15 *substitute*

16 MAI insurance licence register kept under the *Motor Accident*
17 *Injuries Act 2019*

18 **[2.83] Section 72 (1), new note**

19 *insert*

20 *Note* **MAI commissioner**—see the *Motor Accident Injuries Act 2019*,
21 dictionary.

- 1 **[2.84] Section 72 (4)**
- 2 *omit*
- 3 CTP regulator
- 4 *substitute*
- 5 MAI commissioner
- 6 **[2.85] Section 90, definition of *CTP arbitrator***
- 7 *omit*
- 8 **[2.86] Section 90, definition of *decision-maker*, paragraphs (d)**
- 9 **and (e) and note**
- 10 *omit*
- 11 **[2.87] Section 90, definition of *internally reviewable decision*,**
- 12 **paragraphs (c) and (d)**
- 13 *omit*
- 14 **[2.88] New section 90A (3)**
- 15 *insert*
- 16 (3) In this section:
- 17 *road transport legislation* does not include the *Motor Accident*
- 18 *Injuries Act 2019*.
- 19 **[2.89] Dictionary, definition of *CTP arbitrator***
- 20 *omit*

1 **Part 2.10** **Road Transport (General)**
2 **Regulation 2000**

3 **[2.90] Section 9B (5), definition of *road transport authority***
4 ***record or register*, paragraph (c)**

5 *substitute*

6 (c) the MAI insurance licence register kept under the *Motor*
7 *Accident Injuries Act 2019*; or

8 **[2.91] Section 16 (1) (d)**

9 *omit*

10 a compulsory third-party policy under the *Road Transport*
11 *(Third-Party Insurance) Act 2008*

12 *substitute*

13 an MAI policy under the *Motor Accident Injuries Act 2019*

14 **[2.92] Schedule 1, part 1.9A**

15 *omit*

1 **Part 2.11 Road Transport (Offences) Regulation 2005**

2 **[2.93] Schedule 1, new parts 1.2C and 1.2D**

3 *insert*

4 **Part 1.2C Motor Accident Injuries Act 2019**

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
1	21 (2)	responsible person/driver not comply with request of MAI insurer for motor accident information	20		
2	106 (1)	fail to notify insurer about change in circumstances	20		

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
3	286 (1)	use uninsured motor vehicle on road or road related area	50	903	
4	337 (2)	insurer not take all reasonable steps to comply with requirement of nominal defendant	50		
5	353 (1)	issue MAI policy while not licensed insurer	100		
6	353 (2)	purport to issue MAI policy while not licensed insurer	100		
7	376 (1)	licensed insurer contravene condition of MAI insurer licence	100		
8	378	engage in conduct that would, if licensed insurer, contravene condition of MAI insurer licence	100		

Schedule 2 Consequential amendments
Part 2.11 Road Transport (Offences) Regulation 2005

Section [2.93]

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
9	384	licensed insurer issue MAI policy while licence suspended	100		
10	403 (1)	licensed insurer not keep records prescribed by regulation or directed by MAI commission to keep	100		
11	405	licensed insurer not provide all reasonable assistance requested by auditor	100		
12	412	contravene court order made to protect interests of MAI policy holders	50pu/ 6 months prison/both		
13	413	licensed insurer/former licensed insurer not tell MAI commission about event/thing in writing within 21 days	100		

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
14	414	licensed insurer not tell MAI commission about decrease/proposed decrease in issued capital of the insurer in writing within 21 days	100		
15	415 (1)	licensed insurer not tell MAI commission about receiving bidder's statement or target's statement in writing within 21 days	100		
16	422 (1)	liquidator of insolvent insurer not give application for defined benefits in relation to motor accident for which insolvent insurer was relevant insurer to nominal defendant	20		
17	422 (2)	liquidator of insolvent insurer not give motor accident claim in relation to MAI policy issued by insolvent insurer to nominal defendant	20		

Schedule 2 Consequential amendments
Part 2.11 Road Transport (Offences) Regulation 2005

Section [2.93]

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
18	423 (1)	liquidator of insolvent company not give documents or information to nominal defendant within 45 days after request	20		
19	424 (1)	liquidator of insolvent insurer not make documents available to person authorised by Minister to inspect documents within 45 days after request	20		
20	432 (3)	not return authorised person identity card as soon as practicable after person stops being authorised person	1		
21	437 (3)	not take all reasonable steps to comply with requirement of authorised person	50		
22	438 (5)	interfere with seized thing without authorised person's approval	50		

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
23	439 (4)	not comply with requirement of authorised person to give name and address	10		
24	460 (2)	licensed insurer not comply with MAI commission request for investment details within time stated in request	100		
25	462 (1)	licensed insurer not give MAI commission required information/periodic return/document	100		
26	462 (2)	licensed insurer not give required information, periodic return or document to MAI commission in required way or time	100		
27	473 (1)	use protected information about someone else	50pu/ 6 months prison/both		

Schedule 2 Consequential amendments
Part 2.11 Road Transport (Offences) Regulation 2005

Section [2.93]

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
28	473 (2)	divulge protected information about someone else	50pu/ 6 months prison/both		
29	482 (1)	lawyer/related entity give consideration for referral of motor accident claim/application for defined benefits	200		
30	482 (2)	lawyer/related entity receive consideration for referral of motor accident claim	200		

1 **Part 1.2D Motor Accident Injuries Regulation 2019**

column 1 item	column 2 offence provision	column 3 short description	column 4 offence penalty (pu)	column 5 infringement penalty (\$)	column 6 demerit points
1	30 (1)	licensed insurer not pay amount in collection notice on/before due date	20		

2 **[2.94] Schedule 1, parts 1.13A and 1.13B**

3 *omit*

1 **Part 2.12** **Road Transport (Public**
2 **Passenger Services) Act 2001**

3 **[2.95] Section 1, note 2**

4 *insert*

- 5 • *Motor Accident Injuries Act 2019*

6 **[2.96] Section 1, note 2, 5th dot point**

7 *omit*

8 **Part 2.13** **Road Transport (Public**
9 **Passenger Services)**
10 **Regulation 2002**

11 **[2.97] Section 164B (4), definitions of *ambulance* etc**

12 *substitute*

13 ***ambulance***—see the *Motor Accident Injuries Regulation 2019*,
14 schedule 2, section 2.1.

15 ***bus***—see the *Motor Accident Injuries Regulation 2019*, schedule 2,
16 section 2.1.

17 ***motorcycle***—see the *Motor Accident Injuries Regulation 2019*,
18 schedule 2, section 2.1.

19 ***police vehicle***—see the *Road Transport (Vehicle Registration)*
20 *Regulation 2000*, dictionary.

**Part 2.14 Road Transport (Safety and
Traffic Management) Act 1999**

[2.98] Section 1, note 2

insert

- *Motor Accident Injuries Act 2019*

[2.99] Section 1, note 2, 5th dot point

omit

**Part 2.15 Road Transport (Vehicle
Registration) Act 1999**

[2.100] Section 1, note 2

insert

- *Motor Accident Injuries Act 2019*

[2.101] Section 1, note 2, last dot point

omit

[2.102] Section 7 (d), note

omit

Road Transport (Third-Party Insurance) Act 2008, s 163E

substitute

Motor Accident Injuries Act 2019, s 330

1 **[2.103] Section 31 (2)**

2 *omit*

3 *Road Transport (Third-Party Insurance) Act 2008*

4 *substitute*

5 *Motor Accident Injuries Act 2019*

6 **Part 2.16 Road Transport (Vehicle**
7 **Registration) Regulation 2000**

8 **[2.104] Sections 22 (4) and 23 (2)**

9 *omit*

10 a CTP policy or compulsory third-party insurance policy under the
11 law

12 *substitute*

13 an MAI policy or compulsory third-party insurance policy under a
14 law

15 **[2.105] Section 26 (1) (b)**

16 *omit*

17 *Road Transport (Third-Party Insurance) Act 2008*, chapter 2
18 (Compulsory third-party insurance (CTP insurance))

19 *substitute*

20 *Motor Accident Injuries Act 2019*, chapter 6 (Motor accident injuries
21 insurance)

1 **[2.106] Section 34 (l)**

2 *omit*

3 a CTP policy or compulsory third-party insurance policy under the
4 law

5 *substitute*

6 an MAI policy or compulsory third-party insurance policy under a
7 law

8 **[2.107] Section 88 (1) (b), note**

9 *substitute*

10 *Note* If a person applies to the road transport authority for a trader's plate, the
11 person must also select an MAI insurer for an MAI policy for motor
12 vehicles to which the trader's plate may be attached and pay the MAI
13 premium for the MAI policy (see *Motor Accident Injuries Act 2019*,
14 s 297).

15 **[2.108] Dictionary, definition of *CTP policy***

16 *omit*

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

- 1 • parent
- 2 • penalty unit (see s 133)
- 3 • person (see s 160)
- 4 • power
- 5 • public employee
- 6 • Speaker
- 7 • State
- 8 • statutory instrument (see s 13)
- 9 • territory authority
- 10 • territory law
- 11 • the Territory
- 12 • under.

13 *Note 3* The [Road Transport \(General\) Act 1999](#) contains definitions relevant to
14 this Act. For example, the following terms are defined in the [Road](#)
15 [Transport \(General\) Act 1999](#), dictionary:

- 16 • driver
- 17 • infringement notice (see s 24 (6))
- 18 • infringement notice management plan
- 19 • infringement notice penalty
- 20 • jurisdiction
- 21 • light rail vehicle
- 22 • motor vehicle
- 23 • registered operator
- 24 • responsible person
- 25 • ride
- 26 • road transport authority (or authority) (see s 16)
- 27 • road transport legislation (see s 6)
- 28 • trader's plate

- 1 • trailer
- 2 • vehicle.
- 3 *Note 4* If a word or expression is defined in an Act (but not a regulation or
- 4 another publication) included in the road transport legislation, the
- 5 definition applies to each use of the word or expression in other road
- 6 transport legislation unless the contrary intention appears (see [Road](#)
- 7 [Transport \(General\) Act 1999](#), s 8).
- 8 ***ACAT reviewable decision***, for division 2.10.3 (ACAT review of
- 9 insurer’s decisions)—see section 189.
- 10 ***ACTIA*** means the Australian Capital Territory Insurance Authority
- 11 established under the [Insurance Authority Act 2005](#).
- 12 ***allowable expenses***, for chapter 2 (Motor accident injuries—defined
- 13 benefits)—see section 61.
- 14 ***application period***, for an application for defined benefits, for
- 15 chapter 2 (Motor accident injuries—defined benefits)—see
- 16 section 58.
- 17 ***appointed auditor***—see section 404.
- 18 ***APRA*** means the Australian Prudential Regulation Authority
- 19 established under the [Australian Prudential Regulation Authority](#)
- 20 [Act 1998](#) (Cwlth), section 7.
- 21 ***ASIC*** means the Australian Securities and Investments Commission
- 22 under the [Australian Securities and Investments Commission](#)
- 23 [Act 2001](#) (Cwlth).
- 24 ***at premises***, for chapter 8 (Enforcement)—see section 430.
- 25 ***authorised IME providers***—see section 15.
- 26 ***authorised person***, for chapter 8 (Enforcement)—see section 430.
- 27 ***authority to disclose personal health information***, for a person
- 28 injured in a motor accident—see section 54.
- 29 ***average weekly earnings*** (or *AWE*)—see section 17.
- 30 ***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 398.

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 226.

claims manager—see section 334.

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 275.

complying notice of claim, for part 5.7 (Court proceedings on motor accident claims)—see section 254.

compulsory conference—see section 255.

connected, with an offence, for chapter 8 (Enforcement)—see section 430.

contributor, to a motor accident claim, for part 5.7 (Court proceedings on motor accident claims)—see section 254.

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 338; 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 338.

dead person means a person who died as a result of a motor accident.

- 1 ***defined benefits***—see section 33.
- 2 ***dependant***, of a person who died as a result of a motor accident, for
3 part 2.7 (Defined benefits—death benefits)—see section 165.
- 4 ***domestic services expenses***, for a person injured in a motor accident,
5 for part 2.5 (Defined benefits—treatment and care benefits)—see
6 section 114.
- 7 ***drive***, a vehicle, includes—
- 8 (a) be in control of the steering, movement or propulsion of the
9 vehicle; and
- 10 (b) if the vehicle is a trailer—draw or tow the vehicle; and
- 11 (c) if the vehicle can be ridden—ride the vehicle.
- 12 ***driving offence***—see section 41.
- 13 ***enforcing party***, for division 5.7.5 (Judgment for noncompliance with
14 time limits)—see section 275.
- 15 ***externally reviewable decision***, for chapter 10 (Notification and
16 review of MAI commission reviewable decisions)—see section 474.
- 17 ***final offer WPI***—see section 158.
- 18 ***first payment period***, for division 2.4.3 (Income replacement
19 benefits—payments)—see section 93.
- 20 ***first WPI report***—see section 156.
- 21 ***fitness for work certificate***, for part 2.4 (Defined benefits—income
22 replacement benefits)—see section 104.
- 23 ***foreign national*** means a person who is not an Australian citizen or
24 permanent resident.
- 25 ***former licensed insurer***, for chapter 7 (MAI insurer licences)—see
26 section 352.

1 ***full and satisfactory explanation*** by an applicant for a delay in
2 applying for defined benefits, for chapter 2 (Motor accident
3 injuries—defined benefits)—see section 35.

4 ***future treatment payment***, for chapter 4 (Payment of future medical
5 treatment expenses)—see section 219 (2).

6 ***gross income***, of an injured person who is an employee, for part 2.4
7 (Defined benefits—income replacement benefits)—see section 76.

8 ***ground for occupational discipline***—see section 389.

9 ***IME***—see section 14.

10 ***income replacement benefit payment***, for an injured person, for
11 part 2.4 (Defined benefits—income replacement benefits)—see
12 section 75.

13 ***independent health assessor***—see section 203.

14 ***independent medical examiner*** (or ***IME***)—see section 14.

15 ***information***, for part 2.3 (Application for defined benefits)—see
16 section 53.

17 ***initial period***, for an application for defined benefits, for chapter 2
18 (Motor accident injuries—defined benefits)—see section 61.

19 ***injured person*** means a person injured in a motor accident.

20 ***insolvent insurer***, for part 7.10 (MAI insurer licences—insolvent
21 insurers)—see section 417.

22 ***insolvent insurer declaration***, for part 7.10 (MAI insurer licences—
23 insolvent insurers)—see section 419.

24 ***insurance industry deed***—see section 356.

25 ***insured motor vehicle***—see section 283.

26 ***insured person***, for a motor accident claim—see section 228.

1 ***insurer***—

2 (a) in relation to an application for defined benefits, for part 2.10
3 (Defined benefits—dispute resolution)—see section 182; and

4 (b) of a motor vehicle, for a motor accident claim—see section 229;
5 and

6 (c) of a person, for a motor accident claim—see section 229.

7 ***internally reviewable decision***, for division 2.10.2 (Internal review of
8 insurer’s decisions)—see section 183.

9 ***internal review***, of an insurer’s internally reviewable decision, for
10 division 2.10.2 (Internal review of insurer’s decisions)—see
11 section 183.

12 ***internal review notice***—

13 (a) for part 2.10 (Defined benefits—dispute resolution)—see
14 section 188 (1) (b); and

15 (b) for chapter 10 (Notification and review of MAI commission
16 reviewable decisions)—see section 474.

17 ***interstate insurer*** means an entity (including the Commonwealth, a
18 Commonwealth authority and a State authority) that, under a law of
19 the Commonwealth or a State, indemnifies the responsible person for,
20 and the driver of, the motor vehicle against liability for the death or
21 injury of a person.

22 ***Note*** ***State*** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

23 ***issue***, of an MAI policy, includes the issue of a renewal of the policy.

24 ***late application***, for defined benefits—see section 59.

25 ***late party***, for division 5.7.5 (Judgment for noncompliance with time
26 limits)—see section 275.

27 ***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 351; or

(b) for part 7.6 (MAI insurer licences—occupational discipline)—see section 387.

liquidator, for part 7.10 (MAI insurer licences—insolvent insurers)—see section 417.

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 374.

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 474.

MAI commission reviewer, for chapter 10 (Notification and review of MAI commission reviewable decisions)—see section 478.

MAI guidelines means the guidelines made by the MAI commission under section 484.

MAI injury register—see section 469.

MAI insurance business, for a licensed insurer, means any business of the insurer associated with MAI policies.

- 1 **MAI insured person**, for an MAI policy—see section 283.
- 2 **MAI insurer**—see section 284.
- 3 **MAI insurer licence**—see section 351.
- 4 **MAI policy**—see section 283.
- 5 **MAI policy issued by an insolvent insurer**, for part 7.10 (MAI
- 6 insurer licences—insolvent insurers)—see section 417.
- 7 **MAI premium**, for an MAI policy—see section 311.
- 8 **mandatory final offer**—see section 260.
- 9 **medical treatment**, for chapter 4 (Payment of future medical
- 10 treatment expenses)—see section 218.
- 11 **motor accident**—see section 10.
- 12 **motor accident claim**—see section 225.
- 13 **motor accident injuries policy** (or **MAI policy**)—see section 283.
- 14 **multiple vehicle accident** means a motor accident that involves more
- 15 than 1 motor vehicle.
- 16 **net income**, of an injured person who is self-employed, for part 2.4
- 17 (Defined benefits—income replacement benefits)—see section 77.
- 18 **no-fault motor accident**—see section 251.
- 19 **nominal defendant**—see section 16.
- 20 **nominal defendant fund**—see section 327.
- 21 **non-conviction order**, for division 2.2.2 (Limitations and exceptions
- 22 to entitlement)—see section 42.
- 23 **notice of affirmation or increase**—see section 157.
- 24 **occupier**, of premises, for chapter 8 (Enforcement)—see section 430.
- 25 **offence**, for chapter 8 (Enforcement)—see section 430.

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 254.

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.

1 ***person with a mental disability***—

2 (a) means a person who is not legally competent to apply for defined
3 benefits; and

4 (b) includes a person mentioned in paragraph (a) even if a guardian
5 or manager has not been appointed for the person under the
6 [*Guardianship and Management of Property Act 1991*](#).

7 ***post-injury earning capacity***, of an injured person, for division 2.4.3
8 (Income replacement benefits—payments)—see section 93.

9 ***pre-injury earning capacity***—

10 (a) for a person on unpaid leave—see section 85; or

11 (b) for a person with a new work arrangement—see section 86; or

12 (c) for a full-time student—see section 87.

13 ***pre-injury income***, for an injured person—see section 80.

14 ***pre-injury weekly income***—

15 (a) for an ongoing employee or fixed term contractor—see
16 section 81; or

17 (b) for a self-employed person—see section 82; or

18 (c) for a casual worker—see section 83; or

19 (d) for a person receiving workers compensation—see section 84.

20 ***premises***, for chapter 8 (Enforcement)—see section 430.

21 ***private medical examiner***, for an injured person—

22 (a) for chapter 2 (Motor accident injuries—defined benefits)—see
23 section 37; and

24 (b) for division 2.6.3 (Quality of life benefits—WPI assessment)—
25 see section 144.

26 ***publish***, for chapter 9 (Information collection and secrecy)—see
27 section 458.

1 **quality of life benefits application**—see section 137.

2 **quality of life damages**—see section 239.

3 **rail transport operator**—see the [Rail Safety National Law \(ACT\)](#),
4 section 4.

5 **receipt notice**—see section 60.

6 **recovery plan**, for an injured person, for part 2.5 (Defined benefits—
7 treatment and care benefits)—see section 122.

8 **registered motor vehicle** means a motor vehicle registered under—

9 (a) the [Road Transport \(Vehicle Registration\) Act 1999](#); or

10 (b) the [Interstate Road Transport Act 1985](#) (Cwlth).

11 **rehabilitation**, of a person injured in a motor accident—see
12 section 111.

13 **related body corporate**, in relation to a body corporate—see the
14 [Corporations Act](#), section 9.

15 **relevant insurer**, for a motor accident—see section 34.

16 **relevant notice claim**, for division 5.7.5 (Judgment for
17 noncompliance with time limits)—see section 276.

18 **required thing**, under a compliance notice, for division 5.7.5
19 (Judgment for noncompliance with time limits)—see section 274.

20 **respondent**, for a motor accident claim, for chapter 5 (Motor accident
21 injuries—common law damages)—see section 227.

22 **road** means an area that is open to or used by the public and is
23 developed for, or has as 1 of its main uses, the driving or riding of
24 motor vehicles, but does not include an area that would otherwise be
25 a road so far as a declaration under the [Road Transport \(General\)](#)
26 [Act 1999](#), section 12 (Power to include or exclude areas in road
27 transport legislation) declares that this Act does not apply to the area.

- 1 ***road related area***—
- 2 (a) means—
- 3 (i) an area that divides a road; or
- 4 (ii) a footpath or nature strip adjacent to a road; or
- 5 (iii) an area that is open to the public and is designated for use
- 6 by cyclists or animals; or
- 7 (iv) an area that is not a road and that is open to or used by the
- 8 public for driving, riding or parking vehicles; or
- 9 (v) a shoulder of a road; or
- 10 (vi) any other area that is open to or used by the public so far
- 11 as a declaration under the *Road Transport (General)*
- 12 *Act 1999*, section 12 (Power to include or exclude areas in
- 13 road transport legislation) declares that this Act applies to
- 14 the area; but
- 15 (b) does not include an area that would otherwise be a road related
- 16 area so far as a declaration under that section declares that this
- 17 Act does not apply to the area.
- 18 ***second payment period***, for division 2.4.3 (Income replacement
- 19 benefits—payments)—see section 93.
- 20 ***second WPI report***—see section 156.
- 21 ***self-employed***, for part 2.4 (Defined benefits—income replacement
- 22 benefits)—see section 74.
- 23 ***significant occupational impact*** (or ***SOI***), of an injured person’s
- 24 injury on the injured person’s ability to undertake employment—see
- 25 section 202.
- 26 ***single vehicle accident*** means a motor accident that involves only
- 27 1 motor vehicle.
- 28 ***SOI***—see section 202.

- 1 ***SOI assessment***, of a person injured in a motor accident—see
2 section 204.
- 3 ***SOI assessment guidelines***—see section 205.
- 4 ***SOI report***—see section 204.
- 5 ***staff of the MAI commission***—see section 27.
- 6 ***suspended insurer***, for part 7.5 (MAI insurer licences—
7 suspension)—see section 379.
- 8 ***travel expenses***, for a person injured in a motor accident, for part 2.5
9 (Defined benefits—treatment and care benefits)—see section 115.
- 10 ***treatment and care***, of a person injured in a motor accident—see
11 section 110.
- 12 ***treatment and care expenses***, for a person injured in a motor
13 accident, for chapter 2 (Motor accident injuries—defined benefits)—
14 see section 113.
- 15 ***treatment and care needs***, of a participant in the LTCS scheme—see
16 the [LTCS Act](#), section 9.
- 17 ***unidentified motor vehicle***—see section 324.
- 18 ***uninsured motor vehicle***—see section 322.
- 19 ***unpaid leave***, from paid work, for part 2.4 (Defined benefits—
20 income replacement benefits)—see section 74.
- 21 ***unregistered vehicle permit***—see the [Road Transport \(Vehicle](#)
22 [Registration\) Act 1999](#), dictionary.
- 23 ***use***, a motor vehicle—see section 11.
- 24 ***UVP liability contribution***—see section 329.

- 1 ***valid trader's plate*** means a trader's plate that—
- 2 (a) is issued by the road transport authority to a person; and
- 3 (b) the road transport authority has not required the person to return
- 4 to the authority under the [Road Transport \(Vehicle Registration\)](#)
- 5 [Regulation 2000](#)—
- 6 (i) section 89 (Recall of trader's plates); or
- 7 (ii) section 101 (Return of trader's plate); and
- 8 (c) has not been surrendered to the road transport authority under
- 9 the [Road Transport \(Vehicle Registration\) Regulation 2000](#),
- 10 section 102 (Surrender of trader's plates).
- 11 ***warrant***, for chapter 8 (Enforcement)—see section 430.
- 12 ***whole person impairment*** (or ***WPI***), of a person—see section 13.
- 13 ***workers compensation scheme*** means a workers compensation
- 14 scheme under the [Workers Compensation Act 1951](#), the [Safety,](#)
- 15 [Rehabilitation and Compensation Act 1988](#) (Cwlth), or a statutory
- 16 workers compensation scheme of a place outside the ACT.
- 17 ***WPI***, of a person—see section 13.
- 18 ***WPI assessment***, of a person injured in a motor accident—see
- 19 section 142.
- 20 ***WPI assessment guidelines***—see section 145.
- 21 ***WPI report***—see section 143.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 March 2019.

2 Notification

Notified under the [Legislation Act](#) on 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
